B.S. BAJWA AND ANR. A

v.

STATE OF PUNJAB AND ORS.

DECEMBER 11, 1997

[A.M. AHMADI, CJ., B.N. KIRPAL AND V.N. KHARE, JJ.] B

Constitution of India, 1950 : Article 226.

Writ—Laches—Dismissal for.

Service law—Seniority—Claim for seniority after inordinate delay—Permissibility of—Appellants granted Short Service Commission in Army—On being released from Army they joined P.W.D. (B & R)—During a period of more than a decade they were shown junior to other persons—Promotion also made in the meantime—No document produced to show that they ever objected to their position in the gradation list—Writ filed after a decade claiming seniority—Held in service matters the question of seniority should not be re-opened after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable—There was inordinate delay in the present case for making such a grievance—This alone was sufficient to decline interference under Article 226 and to reject the writ petition—Constitution of India—Article 226. C D E

Practice and Procedure—Concession made by Counsel—Effect of—Appeal involving seniority dispute—Advocate General appearing for State—Concession made by him on point of law—Held not binding on State or anyone else adversely affected thereby. F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7605-7610 of 1996.

From the Judgment and Order dated 21.12.1994 of the Punjab and Haryana High Court in L.P.A. Nos. 424, 425 & 483 of 1986 and C.W.P. Nos. 4958, 5777 of 1985 and 2922 of 1986. G

Appellant-in-person, T.N. Singh for the Appellants.

V.C. Mahajan and M.L. Varma, R.D. Bawa, P.N. Puri, S.S. Sodhi, Ms. Madhu Moolchandani and Ms. B.K. Brar, Advocates with them for H

A the Respondents.

The following Order of the Court was delivered :

Delay condoned. Leave granted in SLP Nos. 23599-23600/97 (CC Nos. 8677-8678/97).

B

CA 7605-7610/96

These appeals by special leave are against the Judgment dated 21st December, 1994 of the Division Bench in Letters Patent Appeal arising out of the judgment dated 25.4.1986 of the Single Judge in Civil Writ Petition C No. 772 of 1984 which was filed in the High Court by B.S. Bajwa and B.D. Gupta. The grievance made by them was, in substance, with regard to their seniority and placement in the gradation list of the department.

The material facts in brief are this. Both B.S. Bajwa and B.D. Gupta D joined the Army and were granted Short Service Commission on 30th March, 1963 and 30th October, 1963 respectively when they were students in the final year of the Engineering Degree Course. B.S. Bajwa graduated thereafter in June, 1963 and B.D. Gupta graduated in 1964. On being released from the Army B.S. Bajwa joined the PWD (B&R) on 4.5.1971 E and B.D. Gupta joined the same department on 12th May, 1972. There position in the gradation list was shown throughout with reference to these dates of joining the department. It is sufficient to state that throughout their career as Assistant Engineer, Executive Engineer and Superintending Engineer both B.S. Bajwa and B.D. Gupta were shown as juniors to B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh. It is F also undisputed that B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh got their promotions as Executive Engineer select grade and promotion as Superintending Engineer prior to B.S. Bajwa and B.D. Gupta. It is obvious that the grievance, if any, of B.S. Bajwa and B.D. Gupta to their placement below B.L. Bansal, Nirmal Singh, G.R. G Chaudhary, D.P. Bajaj and Jagir Singh should have been from the very inception of their career in the department, i.e. from 1971-72. However, it was only in the year 1984 that B.S. Bajwa and B.D. Gupta filed the aforesaid writ petition in the High Court claiming a much earlier date of appointment in the department. The learned Single Judge allowed the writ H petition which led to Letter Patent Appeal No. 424/86 being filed by B.L.

Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh before a Division Bench of the High Court. A

By the impugned judgment the Letters Patent Appeal is said to have been allowed but in fact it amounts to dismissal of that LPA inasmuch as it granted certain benefits to B.S. Bajwa and B.D. Gupta which has the effect of making B.S. Bajwa and B.D. Gupta senior to the others by giving them a much earlier date of appointment in the department with effect from 6.4.1964 instead of 4.5.71 and 12.5.72. B.S. Bajwa and B.D. Gupta have preferred these appeals (CA No. 7605-7610/96) despite even with this benefit and they claimed an even earlier date of appointment with reference to the date on which they were granted the Short Service Commission on 30th March, 1963 and 30th October, 1963. On the other hand, the grievance of D.P. Bajaj and Jagir Singh filed appeal as to grant of benefit of the date 6.4.1964 to B.S. Bajwa and B.D. Gupta because it affects their seniority in the cadre and would also adversely affect their prospects inspite of their earlier promotion to the cadre of Executive Engineer and Superintending Engineer. B C D

It is significant that the Division Bench in the LPA, while dealing with the question of laches in filing the writ petition, came to the following conclusion : E

> "It is not disputed that in the confirmation list of P.W.D. (B&R) Branch published from time to time, the writ petitioners were shown junior than the appellants herein. No document has been produced on the record to show that they had ever objected to their position in the gradation list or prayed for the grant of the benefits claimed by them in the writ petitions filed in this Court. F
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> It also cannot be denied that the acceptance of the writ petition would adversely affect the service conditions of the in - service employees like the appellants by altering their seniority and putting them to disadvantageous position. Administrative instructions or the Rules could not be altered to their disadvantage. The intention of the Rule making authority is not so clear as to unambigously hold the intention for conferment of the benefits in favour of the writ petitioners." G H

A Obviously on this conclusion alone the writ petition should have been dismissed by setting aside the judgment of the Single Judge allowing the LPA without any caveat. However, the Division Bench, after reaching the above conclusion, proceeded to grant the benefit of a much earlier date, namely, 6.4.1964 as the date of appointment on the basis of a concession B of the Additional Advocate General made therein without considering the effect of the same or of taking into account the inconsistency with its earlier finding. We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself. That apart that concession made on behalf of the State cannot bind C D.P. Bajaj and Jagir Singh or anyone-else who would be adversely affected thereby. Those persons, therefore, have an independent right to assail that view taken by the Division Bench. It is with regard to this part of the judgment of which we say that even though the LPA is said to have been allowed but it has the effect and in reality of being dismissed because it D grants certain benefits to B.S. Bajwa and B.D. Gupta who were the respondents therein.

Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the E judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more F than a decade they were all along treated as junior to the other aforesaid persons and the rights *inter se* had crystalised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by G the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline H interference under Article 226 and to reject the writ petition.

In view of the above conclusion it is not necessary for us to express any opinion on the merits of the point raised by B.S. Bajwa and B.D. Gupta. We make it clear that the view thereon taken by the High Court is not to be treated as concluded or having affirmation of any kind. The appeals of B.S. Bajwa and B.D. Gupta are dismissed and the appeal filed by D.P. Bajaj and Jagir Singh is allowed. With the result that the judgment of the Single Judge of the High Court is set aside and the writ petition filed by B.S. Bajwa and B.D. Gupta stand dismissed.

CA 7611-7614/96

For the reasons stated above, these appeals are dismissed.

CA Nos. 8914-15/97 in SLP (C) No. 23599- 23600/97
(CC Nos. 8677-8678/97)

For the reasons stated above, these appeals are allowed.

T.N.A. C.A. No. 7605-7610/96 and C.A. No. 7611- 14/96 dismissed. C.A. No. 8914-15/97 and C.A. No. 8677-78/97 allowed.