A MOHAN LAL AND ORS.

v.

STATE OF HIMACHAL PRADESH THROUGH ITS SECRETARY, EXCISE AND TAXATION DEPARTMENT, GOVERNMENT SECRETARIAT, SHIMLA-2 AND ORS.

B MARCH 17, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Service Law:

C *Himachal Pradesh Excise and Taxation Department Inspectorate Staff Class III Service (Seniority) Rules/Himachal Pradesh Excise and Taxation Department (Inspectorate Staff Class III) (Examination) Rules :*

Rule 11/Rule 4—Excise and Taxation Inspectors—Direct recruit-
D *ment—Seniority—After appointment candidates to pass departmental examination within two years—Candidates who pass the examination after two years of appointment—Held, their seniority will be reckoned from the date of their passing the examination.*

Ishwari Kumar & Ors. **v.** *State of H.P.* **(C.A. No. 4258/92) decided on**
E **March 24, 1994, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2417 of 1997.

From the Judgment and Order dated 28.10.96 of the Himachal
F Pradesh Administrative Tribunal, Shimla in O.A. No. 788 of 1995.

Arun Jaitley and Ms. Kamini Jaiswal for the Appellants.

O.P. Sharma, R.C. Gobrele, K.R. Gupta, Vivek Sharma, Ashok Sudan, Mrs. Nanita Sharma for the Respondents.

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A.K. Sikri and Mrs. Madhu Sikri for the Respondent Nos. 18-20 and 35.

The following Order of the Court was delivered :

H Leave granted. We have heard learned counsel on both sides.

This appeal, by special leave arise from the order of the H.P. Administrative Tribunal, made on October 28, 1996 in O.A. No. 788/95.

The determination of inter-se seniority of the direct recruits is the only question in this case. The appellants and the respondents came to be selected by direct recruitment against vacancies in the permanent posts of Excise and Taxation Inspectors in the H.P. Excise and Taxation Department (Inspectorate staff, Class III) Service. The question relates to the interpretation of Rule 11 of the (seniority) service Rules read with Rule 4 (Examination) of the Rules. It is : whether examination has to be passed within two years from the date of appointment on probation or within the extended period of four years? If a candidate passes the examination within two years from the date of the appointment and joins the duty, indisputably under Rule 11(3) of the Rules, on confirmation on the expiry of probation, the seniority relates back to the date of appointment. The situation where a candidate does not pass the examination within two years but within the extended period of four years is dealt with under proviso to sub-rule (3) of Rule 11 which reads thus:

> "11 (3) On the completion of the period of probation a person and passing the prescribed examination the appointment authority may-
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> (a) if his work and conduct is found statisfactory-
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> (i) confirm such person from the date of his appointment if appointed against a permanent vacancy; or
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> (ii) Confirm such person from the date from which a permanent vacancy occurs; if appointed against a temporary vacancy; or
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> (iii) declare that he has completed his probation satisfactory if there is no permanent vacancy; or
>
> (b) if his work or conduct has not been, in its opinion, satisfactory and in the case of non-passing of prescribed departmental examination-
>
> (i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal within such other manner as the terms and conditions of his

A previous appointment; permit; or

(ii) extent his period of probation and thereafter, pass such orders as it could have passed on the expiry of the first period of probation. This shall also apply mutatis mutandis to the departmental examinations;

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Provided that the total period of probation and the time allowed for passing the departmental examinations, including extension, if any shall not exceed four years."

C It appears that series of orders came to be passed by the Administrative Tribunal and one arising therefrom was decided by this Court. In the first round of litigation in which one Sud was the applicant, the Tribunal had held that the seniority would be conferred on those who passed within two years from the date of joining the service and those who passed D subsequently would rank juniors to them. In the case of Mohan Lal & Ors. in the second set of litigation, it was held that those who passed the test within two years, would get seniority from the date of joining the post and those who passed within the extended period of four years, would rank inter-se seniority from the date of the passing of the test. In case of those who did not pass the examinations within the extended period of four years, E it would be open to the State Government to have their services terminated or to take such action as would be open to them. The first litigation has reached this Court. This Court in *Ishwari Kumar & Ors.* v. *State of H.P.* [CA No. 4258/92] decided on March 24, 1994 had held that such of the candidates who passed the examinations within two years and were con- F firmed after passing the departmental tests, would get seniority from the respective dates of their joining the post and the date of passing the departmental test relates back to the date of the appointment. But those who passed the examination after the said two years, would get seniority from the date of passing and would rank junior to those who passed the examination within two years. In this appeal, the third set of litigation, the G question arises: whether the period of passing the test within two years by taking four chances is mandatory or not? In that behalf, it is necessary to read Rule 11 of the Rules which reads as under:

"11. (1) Persons appointed to the service shall remain on probation H for a period of two years.

Provided that-

(a) the incumbents shall within two years of the appointment, pass the departmental examinations prescribed by the Government from time to time and;

(b) the Government may exempt in exceptional cases any person from passing any or all such departmental examinations.

Provided further that-

(a) any period, after such appointment, spent on deputation on a corresponding or higher post shall count towards the period of probation.

(b) any period of officiating appointment to the Service shall be reckoned as period spent on probation, but no person who has officiated shall, on completion of the prescribed period of probation, be entitled to be confirmed unless he is appointed against a permanent post/ vacancy.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or he fails to pass the prescribed departmental examination within two years of his appointment, it may -

(a) if such person is recruited by direct appointment, dispense with his services and

(b) if such person is recruited otherwise-

(i) revert him to his former post; or

(ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation a person and passing the prescribed examination the appointment authority may -

A (a) if his work and conduct is found satisfactory-

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy; or

(ii) confirm such person from the date from which a
B permanent vacancy occurs; if appointed againt a temporary vacancy; or

(iii) declare that he has completed his probation satisfactory if their is no permanent vacancy; or

C (b) if his work or conduct has not been, in its opinion, satisfactory and in the case of non-passing of prescribed departmental examination-

(i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his
D former post, or deal within such other manner as the terms and conditions of his previous appointment; permit; or

(ii) extend his period of probation and thereafter, pass
E such orders as it could have passed on the expiry of the first period of probation. This shall also apply mutatis mutandis to the departmental examinations;

Provided that the total period of probation and the time allowed for passing the departmental examinations, including extension, if
F any shall not exceed four years."

A reading of this Rule would clearly indicate that a person appointed to a service shall remain on probation for a period of two years. The appointment letters issued to the parties indicate the conditions. One of the conditions, namely condition No. (vi) envisaged as under :

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"(iv) He shall have to pass the departmental examination in respect of both the Exercise & Taxation within two years of his joining the duty failing which his services are liable to termination."

Therefore, it specifies that a candidate appointed to the post on
H probation shall have to pass the departmental examination in respect of

both the Excise and Taxation within two years of his joining the duty. A

Rule 4 of the Rules provide as under :

"4. Conduct of Examinations :

(i) The Departmental Examination for the Excise and Taxation Inspectors of the Excise and Taxation Department, Himachal Pradesh shall be held twice a year about the third week of the April and first week of November, or on such other dates as are notified by the Excise and Taxation Commissioner. The dates and the place of the examination will be notified before hand in the Himachal Pradesh Rajpatra. B C

(ii) The deputy Excise and Taxation Commissioner, (North and South Zones) shall forward to Excise and Taxation Commissioner, Himachal Pradesh before 15th January and 15th August, each year or within one month after the publication of the results of the last examination whichever is later the names of the officers who intend to sit for the examination together with the subjects in which they wish to be examined. D

(iii) The examination will be conducted by the HP Institute of Public Administration, Fair Lawns, Shimla." E

A reading of this rule relating to conduct of examination would indicate that the Government shall hold the examinations twice a year between 3rd week of April and 1st week of November, or on such other dates as are notified by the Excise and Taxation Commissioner. The examination so conducted by the Institute of Public Administration, Shimla F shall be in the manner prescribed in Paragraph (ii) of Rule 4 of the Rules. It is, therefore, clear that the Government is required to conduct the examinations twice a year and the candidates are required to pass the examinations within two years from the date of joining the post on probation. The Rule does not give four chances to every candidates. They shall G pass the departmental examination within two years. On successful completion of probation and declaration thereof, his seniority would relate back to the date of appointment.

We are not concerned with the action to be taken by the Government for such of those candidates who did not pass the examinations within the H

A prescribed two years period or extended period of four years of the probation. We are concerned with a case of two sets of persons, i.e., those who passed the examinations within two years and another set of officers who sat for the examination within two years but passed the examination beyond two years. It is a case where the respondents themselves sought for the relief in the OA that their seniority would be reckoned from the date B of their passing the departmental examination. They have given the details of their date of joining the duty and passing of the examination which show that D.S. Sandil had joined the post on june 26, 1977 and he passed his examination on July 16, 1979 D.R. Dewan joined the duty on July 5, 1979 while he passed the departmental examination on October 19, 1981, in C other words, beyond two years.

Shri O.P. Sharma, learned senior counsel appearing for the respondents, contends that they had applied for examination in the month of January; their applications were duly forwarded; examination were required to be conducted in April; instead, they were conducted in the month D of May and the results were declared in the month of October and, therefore, they cannot be blamed for the delay in passing the examinations beyond two years. In the light of the results announced and in the light of the examinations conducted vis-a-vis the operation of the Rules, the question is: whether the seniority of the respondents Sandil and Dewan would E relate back to the date of their appointment or from the date of their passing the examination? In the light of the prayer, they have themselves made that their seniority should be declared from the date of their passing the examination and in the light of the conditions of service and operation of the Rule, we hold that their seniority will be reckoned from the date of F their passing the examination.

The proforma respondents sought to contend they they are governed by the Rules operating in the years 1963 and 1964 and that these Rules have no application to them. We need not express any opinion on that. We are informed that the matter is pending in the Tribunal. It would be for G the Tribunal to consider their claims in accordance with law.

The appeal is accordingly allowed. No costs.

R.P. Appeal allowed.

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