

B.K. Jhamb Vs. Hon'ble the Chief Justice, Delhi High Court, New Delhi and Ors.

B.K. Jhamb Vs. Hon'ble the Chief Justice, Delhi High Court, New Delhi and Ors.

SooperKanoon Citation : sooperkanoon.com/685557

Court : Delhi

Decided On : Oct-17-1975

Reported in : AIR1976Delhi98; ILR1976Delhi1b

Judge : S.N. Shankar,; B.C. Misra and; F.S. Gill, JJ.

Acts : [Delhi High Court Act, 1966](#); Delhi High Court (Staff) Seniority Rule, 1971 - Rule 6

Appeal No. : Civil Writ Appeal No. 1256 of 1973

Appellant : B.K. Jhamb

Respondent : Hon'ble the Chief Justice, Delhi High Court, New Delhi and Ors.

Advocate for Def. : Shri. Dalal

Advocate for Pet/Ap. : B. Kirpal,; S.S. Dalal and; B. Dutt, Advs

Judgement :

S.N. Shankar, J.

(1) The principal question involved in this writ petition is as to the correct meaning of the Explanation to rule 6 of the Delhi High Court (Staff) Seniority Rules, 1971

(hereinafter called the 'Delhi Rules') and the first proviso thereof read with Schedules I and II of the Rules. As the questions involved were important and likely to affect service conditions of the staff of this High Court, the case was referred to this full bench.

(2) On December 1, 1950, petitioner, B. K. Jhamb, joined Punjab High Court as a clerk. On September 15, 1960 he was promoted as Officiating Senior Translator in the grade of Rs. 150-10-300. On August 22, 1961 Ram Chander, respondent No. 5, was appointed in the Punjab High Court as Officiating Judgment Writer. On April 1, 1964 petitioner was confirmed as Senior Translator in the grade of Rs. 150-10-300 but respondent No. 5 was then not confirmed. On November 7, 1964, the pay-scales of Personal Assistants and Judgment Writers in the Punjab High Court were revised by the Government of Punjab from Rs. 150-10-200/10-300 with special pay of Rs. 30.00 per month to Rs. 250-20-450. In October/November, 1964 Punjab High Court held an examination to select candidates for appointment to the post of Readers. Both petitioner and respondent No. 5 appeared in this examination and were successful securing equal number of marks. A list of 16 successful candidates was prepared as a result of this examination in which the petitioner was at Serial No. 6 and respondent No. 5 at Serial No. 7. Rule 16 of A the Punjab Rules provided that the list of candidates for the post of Readers should contain not more than eight names in the order of merit. The question then arose as to how the appointments from amongst the successful candidates in the list were to be made-whether on the basis of their merit in the examination or on the basis of their previous seniority. The matter was referred to a committee of H. R. Khanna, J. (as His Lordship then was) and D. K. Mahajan, J. The Committee submitted its report. On March 9, 1965, Chief Justice of Punjab High Court accepted the recommendations of the Committee.

(3) In the meantime, on January 29, 1965 petitioner was appointed as officiating Reader. On November 23, 1965, respondent No. 5 was also appointed as officiating Reader in the Punjab High Court.

(4) On October 31, 1966, Delhi High Court came into existence. On the same day, the services of respondent No. 5 were transferred on deputation to Delhi High

Court as officiating Reader. On January 11, 1967 petitioner also came on deputation to Delhi High Court as officiating Reader. On May 11, 1971 in exercise of powers conferred under Article 229 of the Constitution of India, the Chief Justice of Delhi High Court framed the Delhi High Court (Staff) seniority Rules, 1971 (hereinafter called the 'Delhi Rules'). The Chief Justice of Punjab & Haryana High Court, by order dated March 29/1st April, 1971 promoted respondent No. 5 to the post of Private Secretary substantive (provisional) with effect from February 27, 1970. Delhi High Court on July 12, 1971 circulated a tentative seniority list of Readers and invited objections to the list. In this list, the petitioner was shown junior to respondent No. 5. On July 22, 1971 the petitioner filed objections to the tentative list which were rejected and final seniority list dated May 6, 1971 in the category of Readers was prepared. In this final list, the petitioner was shown at No. 3 while respondent No. 5 was shown at No. 2. Both the petitioner and respondent No. 5 were thereafter confirmed as Readers in Delhi High Court on May 8, 1972 in the same order as shown in the seniority list.

(5) The prayer of the petitioner in this writ petition is that the seniority list of Readers dated May 8, 1972 be quashed as violative of the Delhi Rules and a writ, order of direction in the nature of mandamus be issued directing re-fixation of the seniority of the petitioner in accordance with law.

(6) Respondents imp led in the original petition were Hon'ble the Chief Justice of Delhi High Court, Registrar of Delhi High Court, Hon'ble the Chief Justice of Punjab and Haryana High Court, Registrar of Punjab and Haryana High Court as respondents 1 to 4 respectively and Ram Chander, aforesaid, as respondent No. 5. After the filing of the petition, it transpired that along with the impugned list of Readers, a joint seniority list had also been prepared by Delhi High Court on the same date in respect of the Superintendents, Readers and Private Secretaries. The correctness of this list was successfully assailed by another employee in C.W. 990 of 1973 decided on February 24, 1975 with the result that a revised joint seniority list of Superintendents, Readers and Private Secretaries was prepared according to which in addition to respondent No. 5, Shri S. B. Vohra and Shri S. L. Nayyar were also shown as senior to the petitioner. The petitioner accordingly moved an application under Order I rule 10 and Order 6 rule 17 for permission to

amend the writ petition to implead these persons as they were likely to be affected by the decision of this writ petition. By order dated July 17, 1975 this application was accepted and the petitioner filed the amended writ petition impleading Sarvshri S. B. Vohra and S. L. Nayyar as respondents 6 and 7.

(7) The case of the petitioner, in substance, is that he was senior to respondent No. 5 in Punjab as Reader and his seniority as such had been determined as a fact by the Punjab High Court. In the alternative, he contends that the list of seniority framed in the said High Court in accordance with rule 25 read with rule 6(c) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1952 (hereinafter called the 'Punjab Rules') in which the petitioner ranked senior to respondent No. 5 was all through acted upon in the said High Court and, therefore, the petitioner was entitled to be ranked senior to respondent No. 5, according to the first proviso to rule 6 of the Delhi Rules. It has further been maintained that even without the proviso the petitioner has greater length of service in the category of Readers and as such is senior to respondent No. 5, according to main Rules 6 without the aid of the proviso.

(8) In the counter-affidavit filed on behalf of respondents 1 and 2, it is denied that inter se seniority of the petitioner and respondent No-5 was ever determined by the Punjab and Haryana Court. It is maintained that as respondent No. 5 held that post of Personal Assistant to Judges in the Punjab and Haryana High Court with effect from November 7, 1964 he was entitled to the inclusion of his period of service with effect from this date in calculating his total length of service for purpose of the main rule 6 because of the Explanation and Schedules I and 11 to the Rule and as the petitioner was appointed Reader in the Punjab High Court only on January 29, 1965, respondent No. 5 was senior to the petitioner and was rightly shown as such in the impugned seniority list. The second ground urged is that the petitioner and respondent No. 5 were confirmed in the post of Readers on the establishment of this Court on the same day i.e. May 8, 1972 by the same order along with the other officers and as in the order of confirmation the name of respondent No. 5 was at Seriall No. while that of the petitioner at Seriall No. 6, according to rule 4 of the Delhi Rules, respondent No. 5 had to be ranked senior to the petitioner. It is also stated in para 2 of the counter that even as unconfirmed

employees, the Hon'ble Chief Justice of this Court had determined that respondent No. 5 was senior to the petitioner. This determination, it was, however, conceded during arguments by Shri Dalal learned counsel appearing for respondents 1 and 2, was no other than the seniority as reflected in order of confirmation so that this plea is not a ground in addition to the second ground set out above.

(9) Respondent No. 5 in his counter has also denied that his seniority vis-a-vis the petitioner was ever determined by the Punjab High Court. His contention is that while the Petitioner was working as Senior Translator in the grade of Rs. 150-10-300, he was working as Judgment Writer/Personal Assistant to the Judges in the Punjab High Court in the higher scale of pay of Rs. 150-10-300 plus special pay of Rs. 30 which scale of pay was further revised on November 7, 1964 to Rs. 250-20-450, so that while the petitioner continued to work as Senior Translator, he worked on a higher scale of Pay and as such was senior to the petitioner. Assuming, without admitting, that Rule 6 of the Delhi Rules applied, respondent No. 5 maintains that he was entitled to seniority above the petitioner by reason of his length of service as Judgment Writer/Personal Assistant in the Punjab and Haryana High Court, according to Rule 6 read with the Explanation. He further maintains that he was confirmed in the Punjab and Haryana High Court with effect from February 27, 1970 in the pay-scale of Rs. 450-800 while the petitioner was then a confirmed employee in the lower scale of Rs. 150-300 and for this reason also he is senior to the petitioner.

(10) Shri Kirpal, learned counsel for the petitioner, to start with, contended that the seniority of the petitioner vis-a-vis respondent No. 5 had been determined by the Punjab High Court and the petitioner was ranked senior to respondent No. 5. In support of this submission he referred us to the report of the Committee constituted of H. R. Khanna, J. (as His Lordship then was) and D. K. Mahajan, J., accepted by the Chief Justice of Punjab and Haryana High Court vide his endorsement dated March 9, 1965 reading 'I agree'. The learned counsel argued that this endorsement read with the subsequent seniority list prepared by the Office in which the petitioner was shown as senior to respondent No. 5 proves that the Punjab High Court had determined the seniority of the petitioner. The argument does not stand scrutiny. We have already set out the circumstances

under which the Committee was appointed. The Committee had to decide whether out of the list of sixteen selected candidates, drawn up in the order of merit as a result of Readers' examination held in October/November, 1964, the appointments had to be made on the basis of merit or on the basis of the previous seniority of the selected candidates. On February 27, 1965 the Committee gave its report and recommended that the 16 selected candidates be split up into two groups-the first group to consist of the first batch of 8 candidates while the second group was to consist of second batch of eight candidates. 'At first', the report said 'the candidates out of the first group should be appointed in accordance with their seniority, and after all the candidates in the first group have been appointed, candidates from the second group should be appointed in order of seniority'. The Committee decided nothing more than this. It is to this principle that the appointments of the selected candidates had to be made on the basis of their seniority and the sixteen selected candidates be split up in two groups of eight each, that the learned Chief Justice of the Punjab High Court agreed by his endorsement dated 9th March, 1965. As a follow-up to the acceptance of this principle by the Chief Justice, a list of seniority was drawn up by the office of the Punjab High Court. The first group, as we have said, included the petitioner as well as respondent No. 5. According to the office note dated August 18, 1966 of the Punjab High Court file (copy Annexure II) in the gradation according to office seniority, the petitioner was placed at No. 4 while respondent No. 5 at No. 8. According to the 'tentative seniority list of Reader candidates' on page 97 of the file against the name of the petitioner at Seriall No. 4 it was mentioned that he held the substantive post of Senior Translator to which he was appointed on September 15, 1960 and confirmed on April 1, 1964 and that his date of appointment as Reader was January 29, 1965. Against the name of respondent No. 5 at Seriall No. 8 it was stated that he held no substantive post and that he was officiating PA/Judgment Writer with effect from August 22, 1961 and that he had been appointed Reader on November 23, 1965. It is true that this list of seniority was repeated again and again in the office nothings on the basis of records and no challenge has been raised before us that the facts on the basis of which the reports were made are wrong (except that the office notes do not create any right in favor of the petitioner for the purpose of determining seniority) but though this

data may be relevant to see how the matters factually stood in Punjab qua the inter se seniority of the petitioner and respondent No. 5, there is nothing to show that the lists so prepared by the office were finally approved by the authority competent to do so to amount to determination of seniority by the Punjab High Court. According to Rule 26 of the Punjab Rules, this determination could be made only by the Registrar of the Court specially empowered or where the Registrar is not so empowered by the Judge in-Charge of the Office or by the Chief Justice. There is no determination by any of these prescribed authorities.

(11) Annexure X which is a copy of a letter dated November 14, 1972 from the Deputy Registrar (Administration) High Court of Punjab and Haryana to the Assistant Registrar of this Court in answer to a letter of this Court on the subject of seniority of the petitioner qua respondent No. 5 finally clinches the matter. It reads as under :

'SUBJECT: Seniority of Sarvshri B. K. Jhamb and Ram Chander as officiating Readers. I am directed to refer to your endt. No. 7884/Estt. dated the 17th August, 1972, on the above subject and to say that the seniority of Sarvshri B. K. Jhamb and Ram Chander was never fixed by this Court prior to their transfer to Delhi High Court, and the question of fixing their seniority inter se by this Court. as this stage does not arise. However, as the facts stand on the records of this Court Shri B. K. Jhamb was on the establishment of this Court since 1950 and his name was at No. 158 of the Final Joint Seniority List whereas Shri Ram Chander joined this Court in the year 1961 and his name does not appear in that List which was prepared according to the position as it stood in the year 1956. In the competitive ' examination for the post of Reader also Sh. Jhamb got 6th position and Shri Ram Chander got 7th position in the order of merit. Yours faithfully, sd/- I. Parshad Deputy Registrar (Admn).'

(12) Thus the petitioner's contention that his seniority vis-a-vis respondent No. 5 had been determined by the Punjab High Court is not correct.

(13) What then follows? At the time of joining the Delhi High Court both the petitioner and respondent No. 5 were officiating Readers i.e. unconfirmed employees in the category of Readers. Interse seniority of unconfirmed employees

of the Court is governed by rule 6 of the Delhi Rules read with Schedules I and II. The Rule and the Schedules read as under :

'6. Inter se seniority of unconfirmed employees in different categories of the staff of the High Court shall be determined on the basis of continuous length of service rendered by them in the category concerned both in the parent organisation as well as in the High Court. Explanation : The continuous length of service in the category concerned shall include any service rendered by the employees on an equated post or in the equal status post or in an officiating or temporary capacity on a post in a higher category in the High Court : Provided that inter se seniority of employees recruited from the same source 'and who are working in the same category shall remain the same as in the parent organisation: Provided further that an employee promoted to the category concerned from a lower category on the basis of a competitive examination, shall rank senior to the employees who were senior to him in the lower category but were subsequently promoted to the category concerned either as a result of a subsequent competitive examination or otherwise'.

SCHEDULE I. (See Rule 2). 'Equated posts (i) Deputy Superintendent and Assistants. (ii) Judgment Writers/Personal Assistants to Judges of Punjab and Haryana High Court (from 7-11-1964) and Private Secretaries to Judges.

SCHEDULE II. (See Rule 2). Equal Status Posts: (i) Principal Private Secretary to the Chief Justice-cum-Assistant Registrar and Assistant Registrars. (ii) Superintendents, Readers and Private Secretaries to Judges. (iii) Librarian Junior Readers, Assistants, Senior Translators, Senior Stenographers and Personal Assistants to Registrar. (iv) Treasurer, Upper Division Clerks, Junior Translators, Junior Stenographers and Personal Assistants to Deputy Registrar. '(v) Lower Division Clerks and Restorers'.

(14) 'THE substantive part of Rule 6 of the Delhi Rules provides that inter se seniority of unconfirmed employees is to be fixed in different categories; in other words, category-wise, on the basis of the continuous length of service rendered by them in the category concerned, both in the parent organisation as well as in the High Court. Emphasis in the rule is on the expression 'category concerned'.

Explanationn to the Rule sets out how the continuous length of service is to be worked out if the employees whose inter se seniority is to be fixed worked in different categories. According to the Explanationn to Rule 6, this has to be done after taking into account the services rendered by them on the 'equated posts' or the 'equal status' posts which are specified in Schedules I and II. The 'equated posts' and the 'equal status posts' have been specified separately in these Schedules.' The expressions 'equated posts' and 'equal status posts' do not mean one and the same thing. They deal with different and separate category of posts. In Schedule I, clause (1) is that of Deputy Superintendent and Assistants; clause (ii) that of Judgment Writers/Personal Assistants to Judges of Punjab and Haryana High Court with effect from November 7, 1964 and the Private Secretaries to Judges. Here, we are concerned with clause (ii) of Schedule 1. The effect of clause (ii) read with the Explanationn is that for calculating the total length of service of an employee in the category of Private Secretary, the employee would be entitled to the inclusion of the period of service rendered by him as Judgment Writer/Personal Assistant to Judges of Punjab and Haryana Court from November 7, 1964. But the post of a Judgment Writer is not equated with the post of a Reader. This is because Readers in Punjab formed a separate category. It was a promotion post. It is Schedule Ii which deals with this category of posts. According to clause (ii) of Schedule Ii, the posts of Superintendents Readers and Private Secretaries to Judges are made equal status posts, so that while calculating the total length of service in the category of Readers, the employees would be entitled, according to the Explanationn to the inclusion of the period of service, if any, rendered by them as Superintendents or Private Secretary. 'The true meaning of the Explanationn read with Schedules I and Ii, therefore, is that when fixing the inter se seniority of employees holding posts in different categories, it is their length of service either in the category of the equated post or in the category of posts specified in the Schedule as equal status posts that can be included. This is clear by the use of the expression 'or' between 'equated posts' and the 'equal status posts' in the Explanationn. This word 'or' in the Explanationn cannot be read to mean 'and'. If the Explanationn be construed to permit an employee to include the period of service in a lower category post specified in Schedule I for determining his seniority in the higher category post of Schedule Ii, it would be in

conflict with the main Rule 6, which provides that inter se seniority will be determined only on the basis of continuous length of service in the 'category concerned'.

(15) Now turning to the facts of this case, both the petitioner and respondent No. 5, when they came from Punjab High Court, were officiating Readers in that High Court and joined this Court as such. The category in which their seniority has to be determined is that of 'Readers'. In this category, the petitioner (after he had been confirmed in the Punjab High Court on April 1, 1964, as Senior Translator) was appointed as Officiating Reader on January 29, 1965. Respondent No. 5 on this date held no substantive post in the establishment of the Punjab High Court. He was only an officiating Judgment Writer and was promoted as Officiating Reader about ten months after the promotion of the petitioner i.e. on November 23, 1965. The period for determining continuous length of service of the petitioner in the category of Readers would thus start from January 29, 1965 while that of respondent No. 5 from November 23, 1965. The petitioner thus has obviously a greater length of service in the category of Readers than respondent No. 5 according to the main Rule 6, without recourse to the Explanation or the first proviso, thereof.'

(16) The date of appointment of the petitioner as Reader in Punjab High Court, on January 29, 1965 and as such his being senior to respondent No. 5 in the Punjab High Court, it may be noticed here, has not been challenged by respondent No. 5 either in this writ petition or at any other stage. On the contrary, it appears from the record that respondent No. 5 was conceding this seniority of the petitioner in the Punjab High Court. This is borne out from the representation dated April 29, 1965 made by respondent No. 5 after Punjab High Court had made certain appointments to the post of Readers in that Court after the examination of October, November, 1964, referred to above. On March 9, 1965, the Chief Justice of the Punjab High Court, it may be recalled, as a result of the report of the Committee of H. R. Khanna, J. (as His Lordship then was) and Mahajan, J., accepted the principle that appointments to the post of Readers will be made in the order of seniority of the successful candidates in the first batch. Names of both, the petitioner as well as respondent No. 5, appeared in the first batch. Even

though the petitioner was appointed an officiating Reader in January, 1965, respondent No. 5 was not so appointed. He, therefore, made the above-referred representation dated April 29, 1965, part of which, relevant for the present purposes, reads as under:

'.....THE Hon'ble the Chief Justice was pleased to agree with the suggestions made by the Examination Committee and passed orders that the first batch of candidates may be exhausted before any candidate from the second batch is appointed. From the first batch, Mr. B. R. Ahuja and myself still remain to be appointed as Readers although Messrs Satpal Singh and Narinder Nath who are junior to us in order of seniority from the first batch and Mr. Gurbachan Singh from the second batch have been appointed as such.....'

Respondent No. 5 here mentions the names of Satpal Singh and Narinder Nath only, and not of the petitioner, as persons junior to him in the order of seniority from the first batch and appointed as Readers. This, to our mind is significant. Respondent No. 5 tried to explain it as an inadvertent omission on his part. The Explanationn cannot be accepted in the face of the material on record. Thus, according to the main rule 6, the petitioner's continuous length of service as a Reader is more than that of respondent No. 5 and the Explanationn to the Rule does not come into the picture at all.

(17) There is another aspect of the matter. Assuming that the Explanationn applies to the instant case, the first proviso to Rule 6 of the Delhi Rules, which is a substantive provision in itself, qualifies the Explanationn and its language makes it plain that it was intended to have an operation more extensive than that of the Explanationn to which it immediately follows. It 'provides that inter se seniority of employees recruited from the same source and who are working in the same category shall remain the same as in the parent Organisation. As the petitioner, in view of the facts already stated, was senior to respondent No. 5 in the category of Readers in the Punjab High Court, according to the first proviso to Rule 6, their inter se seniority has to remain the same so long as they continue to work in this High Court in the same category.' For this reason also, in our view, the petitioner is entitled to be ranked senior to respondent No. 5.

(18) It was urged on behalf of the respondents that the first proviso to Rule 6 applied only to cases where inter se seniority of the employees had been fixed by the Punjab High Court. We are unable to agree. The proviso does not talk of any 'determination'. Seniority is the normal feature of service and it exists irrespective of the fact whether it is determined or not. In the Punjab High Court, it is not denied, there was inter se seniority in regard to employees who were recruited to the category of Readers, even though it was not formally determined in the said Court prior to the petitioner and respondent No. 5 joining this High Court. The proviso operates to protect this seniority and its determination by the Punjab High Court is not a pre-condition for the operation of the proviso.

(19) Both, Shri Dalal, appearing for respondents 1 and 2, and Shri Dutta turn respondent No. 5, urged 'that pay-scales of the posts of Personal Assistants/Judgment Writers in the High Court of Punjab were revised with effect from November 7, 1964 and by virtue of this revision the post of Judgment Writer was upgraded and equated to the post of Readers with effect from this date.' Reference in this connection was made to the letter dated November 7, 1964 from the Secretary to the Government of Punjab (Home Department) to the Registrar of the Punjab High Court, Chandigarh (copy filed on record). In paragraph 2 of this letter, it is stated:

'THE Governor of Punjab is pleased to revise the pay scale of Personal Assistants/Judgment-Writers in the Punjab High Court from Rs. 150-10-200/10-300 with special pay of Rs. 30.00 P.M. to Rs. 250-20-450 with effect from the date of the issue of this memorandum.'

The argument, to our mind, is without merit, 'firstly, because it is counter to the Schedule (1) itself according to which the posts of Judgment-writers/Personal Assistants because of this revision of pay-scales have been equated to the post of Private Secretary but in spite of this revision have not been equated with the post of Readers and secondly, because there is nothing in the letter to indicate that the post of Judgment Writer was upgraded.' The posts in the establishment of the Punjab High Court are mentioned in Appendix 'A' annexed to the Rules. This Appendix divides the establishment in two categories: (i) Gazetted Officers and (ii)

Ministerial Establishment and consists of two columns. Column (I) specifies the name of the posts and column (II) sets out their respective scales of pay. Rule 22 of the Punjab Rules prescribes that the rates of scales of pay to which the holders of a post specified in the first column 'of Appendix 'A' are respectively entitled shall be those specified in the second column of the Appendix. In categorising the posts of Ministerial Establishment, the Appendix specifies Readers to the Judges at Seriall No. 1 while the post of Judgment-writer is as low as Seriall No. 8. In the Appendix these posts have been categorised by the Chief Justice of the Punjab High Court in exercise of his statutory powers, while framing Rules under Article 229 of the Constitution after previous reference to the Governor of Punjab under the proviso to this Article. The letter dated November 7, 1964, though revising E the pay-scale, does not change the order of merit and the categorisation of posts as specified in Appendix 'A'. The subject quoted in the letter is merely: 'Revision of pay scale of PAs./Judgment-writers in the Punjab High Court'. 'The letter thus simply revised the payscales of P.As/Judgment-writers and has no other effect.'

(20) After arguments had concluded, respondents 5, 6 and 7 filed C.M. 1819-W/75 for permission to file copies of some documents from the file of the Punjab High Court with the prayer that they may be read as a part of the record. The correctness of the copies was accepted by the petitioner as well as by the other respondents. The C.M. was, therefore, accepted.

(21) The copies filed relate to correspondence that passed between the Punjab High Court and the Government of Punjab which eventually led to the issuance of the letter dated November 7, 1964 referred to earlier-

(22) Annexure R 5/3 is a copy of the note recorded by the Chief Justice of Punjab High Court, dated December 22. 1959 that recommendation be made to the Government for revising pay-scales 'of the Judgment-writers. The note said that the work which the Judgment-writers had to perform was in no way less onerous or less responsible than the work of Readers. The relevant part of the note read as under:

'ALSO by placing the Readers on a higher footing we are constantly dangling a higher prize before Stenographers who are specialised persons, and inducing

them to look for promotion to the rank of Readers. Some of our best Judgment-writers have in this manner left the job they were most competent at. If Judgment-writers are equated with Readers this temptation will be out of the way.'

The concluding part of this note said:

'THEY certainly deserve to have their scale of pay raised and Government should accede to this request. Make a strong recommendation to Government 'and forward . a copy of the representation.'

The Registrar of the Punjab High Court, thereupon, sent a letter (copy Annexure R 5/4) stating that if the Personal Assistants to the Judges/Judgment-writers are equated with Readers in the matter of their time-scale, the temptation for them to look for promotion as Readers will be eliminated. The concluding part of this letter read as under:

'THE Hon'ble the Chief Justice and Judges, therefore, strongly recommend that their Personal Assistants/Judgment-writers be allowed pay in the time-scale of Rs. 250-20-450 so that it may not be difficult for this Court to recruit competent Personal Assistants/Judgment-Writers. I am to request that necessary sanction of the Punjab Government in this behalf may kindly be communicated to this Court as early as possible.'

This was followed by another letter from the Registrar to the Home Secretary, Government of Punjab (copy Annexure R. 5/5) by way of reminder to the previous letter with the request that 'the payscale of Judgment-writers should be upgraded to Rs. 250-20-450'. After some more correspondence, the Secretary of the Home Department, Government of Punjab, issued the letter dated November 7, 1964 which, as stated earlier, simply revised the pay-scale of P.A./ Judgment-writers in the Punjab High Court. It is, therefore, manifest that the letter dated November 7, 1964 operated only to revise the pay-scale and did not upgrade the post of P.As./Judgment-writers.

(23) This is further borne out by the order of the learned Chief Justice of Punjab High Court dated December 23, 1964 relating to the case of one Shri P. C. Dhingra.

Shri P. C. Dhingra, it appears, had been appointed as Reader to an Hon'ble Judge of the Punjab High Court. His substantive rank was that of a PA/Judgment-writer though carrying the same pay-scale as that of a Reader by reason of the revision vide letter dated November 7, 1964. His appointment as Reader was taken exception to and the office put up a note to the Chief Justice that if he continued to hold post of a Reader he would incidentally be depriving one person higher than him in the merit list from promotion as Reader and it was, therefore, for consideration whether he should be reverted to the post of PA/Judgment-writer. The learned Chief Justice recorded the following note:

'P.C.Dhingra will revert as PA/J.W. sd/- D. Falshaw.

23-12-64'.

(24) If the post of P.A./Judgment-writer had been upgraded to the post of a Reader by reason of the letter dated November 7, 1964, the question of 'reversion of Shri Dhingra would not have arisen. This order of the Chief Justice clearly shows that in spite of the revision of pay-scales, the post of Reader still continued to be higher category post.

(25) In support of his contention that the post had been upgraded, respondent No. 5 also drew our attention to F.R. 22-C which provides that where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. He argued that when he was appointed officiating Reader, no increment was allowed to him and this indicated that the post had already been upgraded. We are unable to accept the submission. The mere fact that no increment was allowed to respondent No. 5 does not in our view mean that the post of PA/Judgment-writer had been upgraded. The upgrading has to be by a positive order and cannot be inferred by implications as suggested.

(26) On behalf of the respondents, reference was next made to rule 2.52 of the Punjab Civil Service Rules. It states that special pay means an addition of the nature of pay to the emoluments of a post or of a Government Servant in consideration of: (a) the specially arduous nature of the duties, or (b) a specific addition to 'work of responsibility, or (c) the unhealthiness of the locality in which the work is performed. This Rule also does not help the respondents as the rule envisages addition to the remuneration attached to the post, without in any manner upgrading it. The fact that respondent No. 5 was getting a special pay of Rs. 30.00 as a Personal Assistant to the Judges of Punjab High Court did not have the effect of upgrading the post. The addition to the pay was because of the considerations mentioned in clauses (a), (b) or (e) of this Rule. Likewise, if because of some consideration the scale of pay of the post of P-As./Judgment-writers was revised by letter dated November 7, 1964 it could not automatically and without anything more affect the category of the post in the hierarchy of the Establishment of Punjab High Court.

(27) The learned counsel relied on observations of the Division Bench in R. P. Singh and others v. Delhi Administration & others. C.W. 1010 of 1971 decided by this Court on July 30, 1973(1) where it was observed that it was open to the Government to provide a parity between posts of two categories on a reasonable basis and one of the known principles was that of pay-scales of the posts in the two categories. These observations are of no assistance to respondent No. 5. In that case, the Administration adopting the principle of equality of pay-scales had actually equated the posts of the two cadres with the consent of the parties concerned and the question posed was whether it was permissible in law to do so. The Bench answered the question in the affirmative and observed that there was nothing illegal in the equation.

(28) Reference was also made in this connection to Rule 2.60 of the Punjab Civil Service Rules where it is provided that a post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a Cadre or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishments.

The note to this rule states that identical time-scales, one governed by the Civil Service Regulations and another by these Rules can be treated as identical for the purpose of the pay-chapter of these Rules. This Rule appears in Chapter 2 of the Punjab Civil Service Rules which contains definitions for purposes of the Rules. The definition simplicities of identical time-scale posts does not carry the matter any further. On the contrary, this Rule read with the note indicates that the operation of the Rule is intended to be limited to the pay-Chapter of the Rules.

(29) For the foregoing reasons, we are unable to sustain the contention of Shri Dalal on behalf of respondents 1 and 2 and Shri Datta on behalf of respondent No. 5 that as respondent No. 5 held the post of P. A. to Judges in the Punjab and Haryana High Court with effect from November 7, 1964 he was entitled to the inclusion of the period of service rendered by him in this post in calculating the total length of his service in the category of Readers.

(30) Shri Dalal then contended that respondent No. 5 was confirmed in the post of Reader in the Establishment of this Court on May 8, 1972 and because in the order of confirmation the name of respondent No. 5 appeared at No. 3 while that of the petitioner at No. 6, according to rule 4 of the Delhi Rules, respondent No. 5 has to rank senior to the petitioner. The learned counsel, as we have stated earlier, frankly and fairly conceded that the confirmation was made on the basis of, and in the order of the impugned seniority list, and as respondent No. 5 was senior to the petitioner in that list he was shown as such in the confirmation order also. For reasons already stated, we are unable to sustain that seniority list and so no reliance can be placed on the order in which confirmations were made in order dated May 8, 1972.

(31) Shri Dutta then argued that because respondent No. 5 had been confirmed in Punjab and Haryana High Court by order dated March 29, 1971 with effect from February 27, 1970 in the pay-scale of Rs. 450-800 he became senior to the petitioner. This confirmation has not been relied upon by respondents 1 and 2 to confer any right of seniority upon respondent No. 5 vis-a-vis the petitioner, and we think, very rightly for the reasons : (i) firstly, after the employees of the Punjab High Court had come to Delhi, the Chief Justice of Punjab High Court passed

orders on 31-5-1969 that no member of the staff of Punjab High Court will be taken back. That High Court sent a letter to this effect to Delhi High Court. Delhi High Court I replied to this by letter dated August 23, 1969. The letter read as under:

'I am directed to acknowledge receipt of your letter No. 11441-EI/VD-13, dated 11-6-69 and to say that this Court has no intention to revert back to Punjab and Haryana High Court any officer of Punjab & Haryana High Court who is now working on the establishment of his Court. But until such time as the cadre of Delhi High Court is not sanctioned on a permanent basis these officials will have to be treated as on deputation and their liens retained. So far as temporary officers/officials are concerned no such question arises as they do not hold any lieu at all. They will be treated as temporary employees of Delhi High Court for all intents and purposes. If in respect of such employees any paper lien has been kept by Punjab and Haryana High Court, I am to request that their lien may be terminated and a list of such employees sent to them'.

Respondent No. 5, thereafter, was a temporary employee of Delhi High Court and the question of his confirmation in Punjab High Court after this decision did not arise', and (ii) secondly, because according to the copy of the order of confirmation produced on record, respondent No. 5 was confirmed in the post of Private Secretary. His confirmation in this category, even if valid, is not relevant for purposes of calculating his total length of service in the described in the order relied upon as 'substantive provisional'. In described in the order relied upon as 'substantive provisional'. In the remarks columns of this order, the following note appears :

'VICESh. Dina Nath Sharma who is on deputation to Pcs and whose lien has been suspended w.e.f. 27-2-70'.

The confirmation thus was not absolute but was 'provisional' subject to Sh. Dina Nath coming back from deputation.

(32) For all these reasons, the order of confirmation relied upon by the learned counsel is of no assistance to respondent No. 5. Case of respondent Nos. 6 and 7

:

(33) At the time of arguments, it was frankly conceded by Shri Dutta, learned counsel for these respondents, that complete data has not been furnished by these respondents in their counter-affidavit to enable the fixation of their seniority. He prayed that the question of their seniority may, therefore, be left open. These respondents desired it to be recorded that they made no concession on any of the issues canvassed in the case and reserve their rights. We accordingly say nothing as to the inter se seniority of respondents 6 and 7.

(34) In view of our conclusion, however, that according to rule 6 of Delhi Rules, petitioner is senior to respondent No. 5, the impugned seniority list has to be quashed.

(35) In the result, we accept the petition, quash the impugned seniority list dated May 8, 1972 and direct a fresh seniority list to be prepared in the light of this order. parties to bear their own costs.