

Jagtar Singh and Others

Vs

State of Punjab and Others

Civil Appeal No. 1039 (N) of 1971

(C.A. Vaidialingam, K.K. Mathew JJ)

03.12.1971

JUDGMENT

MATHEW, J. -

1. This is a appeal, by special leave, from the judgment of the High Court of Punjab and Haryana dismissing Civil Writ No. 3321/1970 filed by the appellants praying for a direction to implement Clause 4 of the directive of the Union Government, dated April 18, 1965, issued under Section 117 of the States Re-organisation Act and allowing the writ petitions filed by the third respondent and others praying for an order quashing the final integrated gradation list published on March 11, 1966, in so far as it concerned Clerks and that issued on March 20, 1970, in so far as it concerned Assistant/Head Clerk of the Co-operative Department of the State of Punjab.

2. In view of the impending merger of the two States of Punjab and Pepsu with effect from November 1, 1956, it was decided on October 26, 1956, by the Joint Integration Council, that the offices of the Deputy Registrars of Co-operative Societies, Pepsu area, will form a separate division on the basis of the pattern obtaining in Punjab. In the erstwhile Punjab State, the staff of the Senior and Junior Clerks in the offices of the Deputy Registrars and Assistant Registrars including Camp Clerks to Inspectors and Sub-Inspectors were placed on divisional cadre in December, 1949, by an order of the Governor of Punjab and there were two such divisions in Punjab viz., Ambala and Jullundur and the rules applicable to the service were the Punjab Co-operative Subordinate Service Rules, 1936. The result was that after the appointed day, i.e. November 1, 1956, the staff of Junior and Senior Clerks of each of the three divisions of the composite State of Punjab continued to be organised as a separate cadre and the officers serving in the office of the Registrar of Co-operative Societies formed a different cadre. In the light of certain observations of the Subordinate Judge, Jullundur, in the judgment, dated August 2, 1957, on the basis of a suit filed by some of the Clerks of the Office of the Registrar of Co-operative Societies, the Government of Punjab decided -

(i) that a joint seniority list must be prepared on State-wise basis instead of divisional basis, in accordance with the Punjab Services Integration Rules, 1957; and

(ii) that pending preparation of the joint seniority list, promotions to the posts of Inspectors should be provisional.

On October 13, 1962, the Registrar of Co-operative Societies, Punjab, apparently with the approval of the Government, issued a directive to all gazetted officers in the Co-operation Department with regard to the procedure to be followed for promotion of Clerks to the post of Assistants/Head Clerks on the basis of State-wise joint seniority list. A joint seniority list was drawn up on March 1, 1963.

The list was passed on to Services Integration Department as it involved the integration of the services of the Co-operative Departments of the erstwhile States of Punjab and Pepsu. The Integration Department issued a provisional joint seniority list on March 9, 1964, which was circulated to all the members of the staff and representations were invited. After considering the representations received, the final gradation list was drawn up; it was approved by the Central Government and was issued by the Governor of Punjab by the notification, dated February 11, 1966. The notification was published in the Punjab Gazette on March 11, 1966. In the meanwhile, the Government of India issued a directive, dated April 18, 1965, to the Punjab Government under Section 117 of the States Re-organisation Act, 1956. The terms of the directive were :

"1. Promotions made before February 27, 1961, on the basis of the Provisional Gradation Lists shall not be disturbed. Provided that the claims of officers for future promotions on the basis of seniority determined in accordance with the principles set out hereafter shall not be prejudiced.

"2. Promotions made after February 27, 1961, on the basis of the Provisional Gradation Lists shall be reviewed to the extent necessary to give effect to the claims of officers who are senior in the Final Gradation Lists to the officers who have been promoted.

"3. The seniority (of an officer who would have been promoted if the Final Gradation Lists had been available on November 1, 1956) should be counted from the date on which an officer junior to him has started continuous officiation in the higher post because of his promotion under the Provisional Gradation Lists.

"4. The pay of an officer whose promotion and seniority is determined in accordance with clauses (2) and (3) shall be fixed at a stage which he would have attained in the time scale of the higher post had he been promoted to that post on the date set out in clause (3) :

Provided that he shall not be entitled to arrears of pay for the period proper to the date of his actual promotion.

Action as aforesaid may be taken without prejudice to the principles of promotion on merit wherever applicable".

3. The final integrated gradation list published on March 11, 1966, showed the ranks of all personnel from Clerks to Superintendents as on November 1, 1956. Soon after, a joint seniority list of Assistants/Head Clerks as on March 1, 1966, depicting the position in the promoted rank, was issued by the Government of Punjab on May 20, 1966. The correctness of this list was challenged in C.W. No. 1821/1966 before the High Court : the prayer in the writ petition was for an order or direction to implement the directive of the Government of India, dated April 18, 1965. On the basis of the concession by the Registrar of Co-operative Societies, Punjab, that the seniority will be modified in accordance with final gradation list, the writ petition was disposed of. Thereafter a tentative joint seniority list of Head Clerks and Assistants was circulated for objections. After considering the objections, the final joint seniority list was issued on March 20, 1970.

4. The prayer of the appellants in the writ petition filed by them was that the Government of Punjab should be directed to implement Clause 4 of the directive of the Central Government. The third

respondent in his writ petition, on the other hand, contended that the final gradation list published on March 11, 1966, as well as the one published on March 20, 1970, should be quashed as they were not drawn up in accordance with the provisions of the Punjab Service Integration Rules, 1957, and the directive of the Registrar of Co-operative Societies, dated October 13, 1962, issued with the approval of the Government of Punjab which, among other things, provided that promotions made up to April 12, 1962, would not be reviewed.

5. As already indicated, High Court dismissed the writ petition filed by the appellants and allowed the writ petition filed by the third respondent and quashed the list published on March 11, 1966, and also that published on March 20, 1970. The High Court found that the directive issued by the Central Government on April 18, 1965, was not applicable as the integration of the services had become complete even before the issue of the directive, and also for the reason that Clauses 1 and 2 of the directive will apply only to promotions made on the basis of provisional gradation lists and that no persons were promoted on the basis of any provisional gradation list. The Court said that there was no necessity of integrating the cadres of Junior and Senior Clerks in all the three divisions as on the date of merger of the erstwhile States of Punjab and Pepsu, namely on November 1, 1956, and after referring to Rules 3, 14, 15, and 16 of the Punjab Services Integration Rules, 1957, held that the Junior and Senior Clerks in Pepsu could be left out as they were not required to be integrated into one group, particularly in view of the fact that this group of service was being maintained on divisional basis, and not on State-wise basis, and therefore, no provisional joint seniority list was required to be drawn up soon after the merger. The High Court also held that the decision to constitute a single cadre of Junior and Senior Clerks in divisional offices as well as of the office of the Registrar of Co-operative Societies was taken only in 1962, and that the decision was not taken under the provisions of Punjab Services Integration Rules, 1957, nor under the provisions of the States Re-organisation Act, 1956, but by way of re-organisation of the clerical services of the Department as an administrative measure. The High Court said that the basis on which the Punjab Government drew up the Seniority List was that promotion of Clerks as Assistants up to April 12, 1962, in officiating arrangements on the basis of separate cadres of Head Office and sub-offices will remain undisturbed subject to the condition that all unqualified Assistants will have to revert, that the joint State-wise seniority list was to be given effect from April 12, 1962, and that there was no necessity for issuing a joint seniority list as on November 1, 1956.

6. We think that the approach of the High Court to the question was totally misconceived. There was no integration of the services by the creation of divisional cadre of Junior and Senior Clerks in the Pepsu area or by the continuance of the Divisional pattern in the two integrating units after November 1, 1956. The High Court went wrong in assuming that the decision of the Government to constitute a single cadre of Junior and Senior Clerks in divisional offices as well as in the Office of the Registrar of Co-operative Societies was not take under the Punjab Services Integration Rules, 1957, and under the States Re-organisation Act, but by way of re-organisation of the clerical services of the department as an administrative measure. If this argument is correct, it is difficult to understand why the Joint Seniority List issued on March 1, 1963, in pursuance of the directive of the Registrar of Co-operative Societies, dated October 13, 1962, was passed on to the Services Integration Department. The fact of the matter is that there was no integration by reason of the creation of the Divisional Cadre of Clerks and Head Clerks in the Pepsu State or by the continuance of the Divisional pattern in the two integrating units after November 1, 1956. The integration of the services in question of the two States was attempted to be effected only by drawing up the joint seniority list issued on March 1, 1963. Apropos the joint seniority list prepared on March 1, 1963, the High Court itself has said in narrating the facts of the case :

"Thereafter a Joint Seniority List seems to have been prepared and passed on to the Services Integration Department because of the reason that it involved the integration of the services of the erstwhile States of Punjab and Pepsu. This point has been made clear by four letters, issued by the Integration Department to the Co-operation Department, which are dated July 20, 1963, August 24, 1963, February 21, 1964 and February 25, 1964."

This is also made clear by the fact that appeals and representations against the list were directed to be made to the Integration Council.

7. It was argued on behalf of the third respondent that the State of Punjab had concurrent authority with the Central Government to integrate the two services, and that when by the Punjab Services Integration Rules, 1957, which had been approved by the Central Government, integration had already been effected on the lines laid down in the directive of the Registrar of Co-operative Societies, dated October 13, 1962, followed up by the joint seniority list as published on March 1, 1963, the Central Government had no authority to issue the directive so as to affect the list already drawn up or the principles on which it was drawn up. Counsel for the third respondent referred to the decisions in *A. J. Patel and Others v. State of Gujarat and Others* [AIR 1965 Guj 23.], and *K. C. Gupta and Others v. Union of India and Others*, [AIR 1969 Punj and Har 34.] in support of the contention that the State Government had concurrent power to integrate the services of the two States. In *M. A. Jaleel and Others v. The State of Mysore and Others*, [AIR 1961 Mys 210.] the High Court of Mysore took the view that the Central Government alone has authority to integrate the services of States on their re-organisation under the States Re-organisation Act, 1956. This Court, after noting the conflict of opinion on the point among the High Courts in *Union of India and Another v. P. K. Roy and Others* [(1968) 2 SCR 186.], left open the question. We do not think that on the facts of this case it is necessary to resolve the conflict, as the State Government had no case that they were not bound by the directive of the Central Government in the matter of the integration of services here. Counsel for the State of Punjab brought to our attention the contents of the return filed by the State of Civil Writ 2896/1965 where the Punjab Services Integration Rules, 1957, were challenged as recited in the judgment of the Punjab High Court in *K. C. Gupta and Others v. Union of India and Others* (supra). There are State of Punjab contended that these rules were made in accordance with the advice of the Central Government and that in applying the Rules the State Government was subject to the directions which the Government of India might issue under Section 117 of the Act. Quite apart from this, Section 117 of the States Re-organisation Act, 1956, seems to us to be quite clear. The section reads :

"117. Power of Central Government to give directions. - The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions".

8. In *Dr. N. Desai and Others v. Government of Andhra Pradesh and Others* [AIR 1968 AP 5.], it was held that the direction given by the Central Government under Section 117 of the States Re-organisation Act was binding on the State Government in the matter of integration of services. See also *Roshan Lal Sharma v. Union of India and Others*, [AIR 1968 Punj 47.] where the same view was taken. So we hold that the directive of the Central Government was binding on the State Government in the matter of integrating the two services and the State of Punjab or the Registrar of Co-operative Societies of that State could not have said that they will not review the promotions

made before April 12, 1962, as the directive of the Central Government required that all promotions after February 27, 1961, should be reviewed.

9. The third respondent who complained that he was shown as junior to the appellants in the lists published on March 11, 1966 and March 20, 1970, whereas as a matter of fact he was senior to them, never filed any objections or representation to the provisional gradation list issued by the Service Integration Department on March 9, 1964. The explanation given by him for not filing any objection to the list, namely, that the Registrar of Co-operative Societies in his communication, dated December 7, 1964, did not insist upon objections being filed to the list, does not carry conviction as by the communication, dated March 9, 1964, the Registrar had required that representations should be filed within one month of the publication of the Provisional Gradation List. That time had already expired when the Registrar issued the communication, dated December 7, 1964. In these circumstances we do not think the High Court was justified in quashing the lists published on March 11, 1966 and March 20, 1970, on the basis of the provisional integrated gradation list published by the Integration Department on March 9, 1964.

10. The appellants' prayer in their writ petition was for a direction to the State of Punjab and the Registrar of Co-operative Societies, Respondents 1 and 2, to implement Clause 4 of the directive of the Central Government issued on April 18, 1965. In effect their prayer was that their pay should be fixed at the stage which they would have attained in the time scale of higher posts had they been promoted to those posts on the date set out in Clause 3 of the directive; Clause 3 stated that their seniority should be counted from the date on which their juniors started continuous officiation in the higher posts because of their promotion under provisional gradation lists. As already stated, the High Court had no occasion to consider the question whether this prayer could be granted, as it held that the directive of the Central Government had no controlling operation in respect of the integration of the services in question. We see no reason to deny the appellants the benefit of Clause 4 of the directive. But we have no material before us to show when the third respondent or the other juniors of the appellants, were promoted on the basis of provisional gradation list. We would, in the circumstances, direct the Respondent 1, the State of Punjab, to implement Clause 4 of the directive of the Central Government, dated April 18, 1965, after considering the factual position of each of the appellants whether he was qualified to the benefit of the clause. The judgment of the High Court is set aside and appeal allowed. In the circumstances we make no order as to costs.

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