

State of Punjab

Vs

Madan Singh and Others

Civil appeals Nos. 2290 and 2291 of 1968

(G. K. Mitter, A. N. Grover, K. S. Hegde JJ )

19.04.1972

JUDGMENT

HEGDE, J. –

1. The question of law to be decided in these appeals by certificate arising from two writ petitions filed by some of the respondents in these appeals in the High Court of Punjab and Haryana, are more or less similar to those which we have decided in Civil Appeals Nos. 1639-1641 of 1968, 31 1279 and 2227 and of 1969.
2. For deciding those questions it is sufficient if we refer to the case of writ petitioner Madan Singh. Before doing so it is necessary to refer to the reliefs asked for by the writ petitioners. They had prayed for issuance of a proper writ, order or direction to annul the executive instructions by which the Government of Punjab in 1950 prescribed a departmental as a condition precedent for considering the promotions of clerks to the post Assistants, as according to the writ petitioners those instructions were not based on any authority of law. They had also asked for consequential direction to the State of Punjab to re-determine the seniority of the petitioners on the basis of Financial Commissioners' (Punjab) Subordinate Service Rules, 1943 (to be hereinafter referred to as the Rules) framed under section 241 of the Government of India Act, 1935. The High Court of Punjab and Haryana has accepted those writ petitions and set aside the orders of reversion of the petitioners made solely on the ground of non-passing the departmental test. It has directed that the seniority of the writ petitioners in their parent State, State of Punjab and their subsequent seniority in the United Punjab, should be determined in accordance with the principles laid down in its judgment.
3. Now let us examine the case of Madan Singh. Madan Singh joined the financial Commissioner's office in Lahore before the partition of India. As per Rule 5(e) of the Rules, anyone could be appointed as an Assistant if he possesses sufficient experience of the Rules and Regulations and was capable of putting up intelligent notes and drafts. Rule 6 provided that the post of an Assistant could be filled by promotion from among the clerks in the Financial Commissioner's office likely to make a good Assistant. It is not denied that under the Rules no clerk had to pass an examination or a test before being considered for promotion as an Assistant. On June 29, 1950, the Revenue Secretary to the Financial Commissioner, Punjab issued as an office order No. 42 of 1950 prescribing a test for those who are working as Senior Clerks and those who are officiating as Assistant in order to guide the making of promotion to the post of Assistants. The office order stated that the officials who refused to take the test or failed to qualify in it "will not be deemed eligible for promotion". This office order was modified from time to time. But we are not concerned with those modifications in these appeals. Under an office order dated June 30, 1955, it was directed that the seniority of Assistant would be counted from the date of actual promotion to the rank and not from the date of

passing the test. Madan Singh had been promoted as an assistant earlier. He was reverted to make room for those who had passed the qualifying test. Similar is the position of other petitioners.

4. For the reasons we have already mentioned in Civil Appeals Nos. 1639 to 1941 of 1968, 31, 1279 and 2227 of 1969, ((1972) 2 SCC 188) we agree with the High Court that the executive instructions issued by the state Government are void as they amount to an alternation of the rules prescribed under section 241 of the Government of India Act.

5. It was urged on behalf of the state that the High Court should not have granted relief in the writ petitions as the petitioners were guilty of laches in as much as they approached the Court after a long delay. This contention does not appear to have been urged before the High Court. The High Court having exercised its discretion in granting the reliefs asked for, we see no reason to interfere with its discretion.

6. In the result these appeals fail and they are dismissed with costs.

</html