

Gurjit Singh Sahota

Vs

State of Punjab and Another

Civil Appeal No. 501 of 1975

(CJI A. N. Ray, K. K. Mathew, Syed Fazal Ali, V. R. Krishna Iyer, J.)

11.08.1975

JUDGMENT

MATHEW, J. -

1. The appellant filed a writ petition before the High Court of Punjab and Haryana praying for issue of a writ of certiorari or other appropriate writ or direction quashing an order reverting him from the post of Divisional Soil Conservation Officer (Class I) to the post of Assistant Soil Conservation Officer (Class II). The High Court dismissed the petition and this appeal, by special leave is from that order.
2. The appellant was appointed as Assistant Soil Conservation Officer (Class II) on September 14, 1962. When the appellant was working as Class II officer, the Government confirmed five Class II officers on September 16, 1968. The appellant was not one among them. But the order of confirmation stated that one post was reserved for the appellant for his being confirmed when found suitable. One Mehtab Singh who was a junior to the appellant in the post of Assistant Soil Conservation Officer was confirmed with effect from July 10, 1968.
3. The Government informed the Public Service Commission on August 1, 1969 that Mehtab Singh was eligible for promotion to the post of Divisional Soil Conservation Officer (Class I) and he was promoted to that post. On June 16, 1971, the appellant was promoted as Divisional Soil Conservation Officer (Class I) on ad hoc basis. Thereafter four of the juniors of the appellant were also promoted to the post of Divisional Soil Conservation Officer (Class I) on ad hoc basis. The appellant was confirmed as Assistant Soil Conservation Officer (Class II) on September 22, 1971 with retrospective effect from June 9, 1968. Subsequently the Government informed the Public Service Commission that as the appellant was confirmed, he became senior to Shri Mehtab Singh and therefore, the Government had decided to promote the appellant as Class I officer on regular basis. The Public Service Commission disagreed with the proposal of the Government on the basis that the appellant's confirmation with effect from a date earlier than that of Mehtab Singh was not justified. The Commission also gave approval of the regularisation of Shri Mehtab Singh's promotion. On August 16, 1974 the appellant was served with an order stating that he had been reverted from the post of Divisional Soil Conservation Officer to the post of Assistant Soil Conservation Officer. As already stated, it was to quash this order that the appellant filed the writ petition.
4. There is no dispute that when the appellant was promoted on ad hoc basis to the Class I post, his record of service was unsatisfactory and it was for this reason that the Public Service Commission advised that he should be reverted and that the Government passed the order reverting him to the

Class II post.

5. The appellant's contention is that when four of his juniors were promoted on ad hoc basis as Divisional Soil Conservation Officer (Class I), his record of service in the Class I post on the basis of ad hoc promotion should have been taken into consideration in adjudging whether he was eligible for promotion to Class I post in preference to any one of them. In other words, the argument was that although he had been found unsuitable for promotion on the date when he was promoted to Class I post on ad hoc basis, that was no reason for not considering his record of service in the Class I post when his juniors were promoted to Class I posts on ad hoc basis.

6. The High Court found that since the appellant was not reverted by way of punishment and the Public Service Committee did not adjudge him suitable for the post the order of reversion was not open to challenge. But the Court, however, observed :

It will be open to the Government to refer the case of the petitioner to the Public Service Commission specifically for advice as to his suitability for the post of Divisional Soil Conservation Officer and thereafter to act in accordance with law.

7. We think that the grievance of the appellant to the extent that his record of service in the Class I post should have been considered when his juniors were promoted to Class I posts is legitimate. It is true that when the appellant was promoted to Class I on ad hoc basis his record of service in Class II post did not justify his promotion and that was the reason why he was ordered to be reverted. But that is no reason why, when his juniors were subsequently promoted to Class I posts the case of the appellant for promotion to Class I posts should not have been considered on the basis of his service in the Class I post, though his ad hoc promotion to that post was subsequently found to be not justified. If, on the basis of the subsequent record of his service, the appellant was entitled to be promoted in Class I post in preference to any one of his four juniors, there was no justification for the order reverting him to Class II service.

8. We would, therefore, direct the Public Service Commission to consider the record of service of the appellant in Class I post on the basis of his ad hoc promotion to that post and see whether he was eligible for promotion to that class of post in preference to any one of this four juniors who have been promoted to Class I posts and tender the proper advice to the government.

9. We quash the order of reversion and allow the appellant to continue in Class I post until the Government passes a fresh order on the basis of the advice to be given by the Public Service Commission. The appeal is allowed to the above extent but is dismissed in other respects. There will be no order as to costs.

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