

Som Raj and Others

Vs

State of Haryana and Others

Civil Appeal Nos. 3221 of 1982 and 3524 of 1983

(Ranganath Misra, M.M. Punchhi, K. Ramaswamy JJ)

23.02.1990

JUDGMENT

K. RAMASWAMY, J. -

1. Since common question of facts and law arise for decision in these two appeals, they are disposed of by a common judgment. Civil Appeal No. 3221 of 1982 and Civil Appeal No. 3524 of 1983 arise out of the common judgment in Civil Writ Petition Nos. 677 of 1979 and 97 of 1979 and a few other petitions dated 2nd May, 1980, on the file on High Court of Punjab & Haryana at Chandigarh. The writ petitions were dismissed and the appellants had leave of this Court under Article 136 of the Constitution. The facts lie on a short compass and reference to the facts on record in Civil Writ No. 97 of 1979 are sufficient for disposal of these appeals. Writ Petition No. 97 of 1979 relates to Punjab service while Civil Writ Petition No. 677 of 1979 relates to Haryana.

2. The appellants were direct recruits to the ministerial services in the Subordinate Offices of the Directorates of Agriculture of the respective States. Admittedly all are governed by Punjab Subordinate Agricultural Service Rules 1933, for short 'Rules'. The respective State Governments upgraded on 8th February, 1979 offices of the Directorates as 'A' Class and the Subordinate offices situated elsewhere remained as 'B' Class. The appellants and others filed writ petitions on 26th February, 1976 seeking a writ of mandamus to direct the respondents to upgrade the Subordinate Offices of the Department of Agriculture as 'A' Class; to treat the appellants on par with the similar employees working in the office of the Directorates of Agriculture; treat the Directorate of Agriculture and Subordinate Offices as one department for maintaining common seniority of all of them; to upgrade their scales of pay on the basis of the said seniority and to quash the order dated 8th February, 1979 declaring the Directorate as 'A' Class as wholly arbitrary and discriminatory. Pending appeals, the respective Governments by proceedings dated 2nd March, 1982 classified the Directorate and Subordinate Offices as 'A' Class. The Government have also accorded equal pay to the employees similar situated. Therefore, the only question that survives to be resolved is whether the Subordinate Offices and the Directorate would be treated as one unit and common seniority of all the employees should be maintained.

3. Shri P. P. Rao and Shri C. M. Nayyar, learned counsel for the appellants in the respective appeals contended that the appellants were selected along with the persons appointed in the office of the respective Directorates. They possessed the same qualifications; their scales of pay are now the same. Their service conditions are also the same under the Rules, and therefore, they are entitled to maintenance of common seniority for the purpose of promotion. It is seen that the appointments were made somewhere in 1973. From the list produced before us in Civil Appeal No. 3221 of 1982 relating to the State of Haryana, among the persons selected by the Recruitment Board, though some

of the persons are found to have secured higher ranking in the list prepared by the Selection Board, they were appointed to the Subordinate Offices while persons below them in ranking were appointed in the Directorate. When we inquired from the counsel for the State Shri Rohtagi, the learned Senior Counsel has produced before us the nothings which show that the Director had taken five of them, one of whom had secured first class in Matriculation, two ex-service candidates and two candidates who secured higher percentage of marks at the qualifying matriculation examination. In the view we are taking this solitary circumstance does not militate against the ultimate conclusion that we have reached in the matter. Admittedly, Rule 3 of the rules provides that the service shall consist of seven sections and in each section there shall be such number of posts whether permanent or temporary, of each grade specified in the appendix as the Local Government from time to time may determine. Under Rule 4(1) the Director of Agriculture shall make appointment to all the posts in the service except the post of Junior Clerks, other than those sanctioned for Head Office, Mukaddams and the posts shown under Section 7 of the appendix. All other appointments shall be made by the Head Office concerned, vide rule 4(2). Rule 7 prescribes the method of recruitment. Rule 7(1)(I) specifies thus :

"7.(1)(I) In the case of Superintendent, Office of the Director -

(i) by promotion from amongst the Head Assistants employed in the office, or

(ii) by selection from amongst Superintendents or Head Assistants with at least five years clerical experience in other Government offices,

Rule 7(1)(J) reads thus :

"7.(1)(J) In the case of Head Assistant -

(i) by promotion from amongst Assistants and Stenographers with clerical experience who have proved their fitness for the appointment, or

(ii) by selection from amongst clerks employed in the offices of government other than the office of the Director."

Rule 7(1)(K) :

"7.(1)(K) In the case of Superintendent or Head Clerk of a Subordinate Office -

(i) by promotion from amongst Senior Clerks who have proved their fitness for the post, or

(ii) by selection from amongst clerks employed in government office other than the office in which the post/office is to be filled."

Rule 7(1)(L) :

"Rule 7.(1)(L) In the case of Assistant -

(i) by promotion from amongst Senior Clerks in their respective offices who have proved their fitness for appointment to the post, or

(ii) by selection from amongst clerks employed in government offices other than the office in which the post is to be filled, or

(iii) by direct recruitment -

provided that no graduate not already in government service shall be appointed to be an Assistant unless he has been recommended as fit for appointment by the Punjab University Appointment Board."

Sub-rule (2) :

"7.(2) Appointment to any post by the promotion of officials already in service or by the transfer of officials shall have any claim to such an appointment as of right."

4. The candidates have to undergo probation as provided in Rule 9, the details of which are not relevant. Rule 10 provides seniority of members of the service. The seniority of the members in the service shall, in each class of appointment shown in the appendix, be determined by the dates of their substantive appointment, on probation or otherwise, to a permanent vacancy in such class. The other details are not necessary. Hence omitted.

5. In the appendix, the office of the Director of Agriculture, Section 6 mentions ministerial posts of Superintendent, Head Assistants, Assistants, Stenographers, Senior Clerks, Junior Clerks. Their varying pay scales have also been mentioned, the details of which are now not material. In the Subordinate Offices one Superintendent, seven Head Clerks and two Senior Clerks are the cadres.

6. A resume of these rules clearly shows that for the appointment of all the posts including Junior Clerks in the Head Office, the appointing authority is the Director. All appointments to the post of Junior Clerks other than Head Offices shall be by the concerned Head Office. As per the appendix, the staffing pattern in the Office of the Director of Agriculture and the Subordinate Offices is entirely different. The only common element is the Senior Clerks. The seniority is to be maintained on the basis of the substantive appointment to the respective cadres. The seniority of the members of the service shall, in each class of appointment shown in the appendix be determined by the date of their substantive appointments or promotion or otherwise to permanent vacancies in such a class. The method of appointments has been adumbrated under Rule 7(1)(I) to (L) by promotion from amongst the persons working in the respective subordinate posts in the respective offices in the first instance, or by selection from amongst persons working in the government offices including Subordinate Offices and in some cases by the direct recruitment. Thereby it is clear that for filling up the vacancies arising in the post of Superintendent, Assistants and Senior Clerks, the persons working in the Subordinate Offices or the government offices are the feeder channels, or in some cases by direct recruitment. Sub-rule (2) of Rule 7 makes the matter clear that they have got right to be considered, but it is strictly by selection and they have no claim to the appointment as of right. It is open to the government to constitute different cadres in any particular service as it may choose according to its administrative convenience and expediency. The office of the Director is the apex office obviously to control and oversee the functioning of the Subordinate Offices and the other allied departments under his control monitoring the implementation of the government's agricultural programmes. It may not be necessary to maintain a common cadre of the employees of the Directorate and the Subordinate Offices. Each cadre is a separate service or a part of the service sanctioned for administrative expediency. Therefore, each may be a separate unit and the posts allocated to the cadre may be permanent or temporary. It is seen from the appendix that in the office

of the Directorate there is one Superintendent, three Head Assistant, four Assistants, two Stenographers, seven Senior Clerks, and twelve Junior Clerks. In the Subordinate Offices, there is one Superintendent, seven Head Clerks and two Senior Clerks. This is obviously on the basis of administrative need. No doubt the office of the Directorate and the Subordinate Offices have been compendiously shown in Section 6 of the Appendix. That does not by itself mean that office of the Directorate and Subordinate Offices are treated under the rules as one unit or at par, as contended for by Shri P. P. Rao. As pointed out in the beginning, the Director had committed some irregularities at the 25 time of initial appointments in the year 1973 when he picked up five persons out of the select list of the candidates and appointed them in the Directorate of Haryana Government deviating from the order of merit prepared by the Board. They were selected as a common selection by the Recruitment Board along with other candidates who stood higher in the order of merit prepared by the Selection Board. But this was done in the year 1973 and the appointments have not been challenged till date of filing of the writ petition in 1979. Even in the writ petition no challenge was made. This is pressed into service only to show that the appellants are similarly situated with them. After the appointments were made and the candidates joined in the respective posts for consideration for promotion the Rules occupy the field and the claims are to be considered according the Rule 7. Therefore, though we may not agree with the learned counsel for the State that the Director had absolute discretion to pick and choose arbitrarily and make appointment to the posts, yet undoubtedly, he had power to appoint them. Normally the order of appointment would be in the order of merit of candidates from the list and must be in accordance with rules. His exercise of power should not be arbitrary. The absence of arbitrary power is the first postulate of rule of law upon which out whole Constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The Rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority. We refrain from going into the correctness of the choice made by the Director due to latches in not assailing the correctness of the appointment for well over six years. The validity of the rules have not been questioned. The only question is, as stated earlier, whether the employees working in the Head Office and the Subordinate Offices are entitled to common seniority. The Rules themselves made a distinction between the persons appointed in the Directorate and the Subordinate Offices as separate cadre and the subordinate cadre in some cases is the feeder cadre for promotion to the post in the Head office. In this view, by no stretch of imagination, the appellants can be considered to be equally placed for treating them at par with the Directorate employees for being treated as being in a common cadre. There is a reasonable nexus to differentiate the two cadre. Therefore, the classification cannot be said to be arbitrary violating Articles 14 and 16 of the Constitution.

7. It is not necessary to burden the judgment with the decision cited by either counsel as they are not directly or nearer to the core in the case. Accordingly we hold that the appellants are not entitled to be treated at par with the employees working in the respective Directorates for giving direction to the respondents to maintain common seniority between the employees of the Directorate and Subordinate Offices. The appeals are accordingly dismissed, but without costs.

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