

H. L. Randev and Others

Vs

High Court of Punjab & Haryana and Others

Civil Appeal No. 5190 of 1990

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

01.11.1990

JUDGMENT

P. B. SAWANT, J. –

1. Leave granted.

2. This is yet another instance of the dispute with regard to seniority between promotees and direct recruits. That this should be between the members of judicial service only shows how intractable and all pervasive the problem is. What is worse, the dispute is raised because there is an alleged incorrect implementation by the High Court of the decision of this Court in (1981) 1 SCR 1024 : 1980 Supp SCC 524 (known as B.S. Yadav case with reference to Haryana Judicial Service and as Pritpal Singh case [B.S. Yadav v. State of Haryana, 1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024] with reference to Punjab Judicial Service).

3. The dispute falls in a narrow compass. The appellants are promotee members of the Punjab Superior Judicial Service governed by the Punjab Superior Judicial Service Rules, 1963 (hereinafter referred to as the "Rules"), while respondents 2 to 12 are the direct recruits. The decision in Pritpal Singh case [B.S. Yadav v. State of Haryana, 1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024] was delivered by this Court on November 5, 1980. Pursuant to the directions given in the said decision, the High Court prepared a provisional list of seniority on December 22, 1981 and invited objections to the same. Since no objections were received, the list was finalised on February 27, 1982. Thereafter, the appellants filed an application being C.M.P. No. 7085 of 1985 in this Court for direction to the High Court to fix the seniority correctly as per the said decision alleging that it was not done so. This Court by its order of February 3, 1987 rejected it holding that it was wholly misconceived as it purported to challenge the seniority list on the ground that there was non-compliance of the directions given by this Court. In the order, this Court also observed that if that was the grievance, the appellants' remedy was by way of a petition under Article 226 of the Constitution to the High Court and not by way of the said application for direction. The appellants were also given liberty to move the High Court if so advised. The appellants thereafter challenged the seniority list before the Punjab and Haryana High Court by a writ under Article 226 of the Constitution. The High Court dismissed the writ petition in limine and hence the present appeal by special leave.

4. The grievance of the appellants centres round the interpretation of the directions of this Court in the Pritpal Singh case [B.S. Yadav v. State of Haryana, 1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024]. Those directions were as follows : (SCC pp. 558-59, para 80)

"(a) The High Court will revise and refix the respective dates of confirmation of the petitioners and respondents 3 to 11, without applying the rule of rotation;

(i) The petitioners, if they are otherwise fit for confirmation, shall be confirmed with effect from the dates on which vacancies became available to them in the quota of promotees;

(ii) Respondents 3 to 11 shall be confirmed against vacancies falling within the quota of direct recruits, with effect from dates on which they successfully completed their two years' probation. Since, the normal period of probation cannot be reduced unless the High Court is satisfied in each individual case that there are "exceptional circumstances" justifying the reduction of that period, and since the High Court had not given such reasons while reducing the probationary period of some of the respondents, respondents 3 to 11 will be confirmed as stated above without reducing the period of their probation.

(b) The High Court will re-draw the inter se seniority -

(i) of such of the petitioners and respondents as were promoted or appointed to the Superior Judicial Service prior to December 31, 1976, on the basis of the respective dates of confirmation allotted to them in compliance with the aforesaid direction (a); and

(ii) of such of the petitioners, respondents and others who were appointed to a post in the service on or after December 31, 1976 in accordance with the amended Rule 12.

(C) The High Court will review and reconsider promotions to the Selection Grade and other allied orders made by it, having regard to these directions and the seniority to be fixed on the basis thereof, The High Court will make necessary adjustments and alterations therein, in the light of the action to be taken in compliance with the aforesaid directions (a) and (b)"

5. To understand the aforesaid directions, it is necessary to state that prior to their amendment on December 31, 1976, the definition of "cadre post" given in Rule 2(2) of the Rules included only a permanent post in the service, and the seniority inter se of substantive members of the service, direct recruits or promotees, was, as per Rule 12 thereof, determined with reference to the respective dates of their confirmation. By the amendment of December 31, 1976, the definition of "cadre post" in Rule 2(2) was changed to mean a permanent or a temporary post, and the Rule 12 of seniority was amended to provide that the seniority of the members of the service shall be determined on the basis of length of continuous service on a post in the service irrespective of the date of confirmation. One more rule of the Rules, viz., Rule 8 is necessary to be referred to in the context of the dispute. That rule provided for a quota for appointment between promotees and direct recruits in the proportion of 2 to 1. This rule was untouched by the amendment.

6. It was contended by Shri Madhava Reddy and Shri P.P. Rao the learned counsel for the appellants, that in view of the aforesaid directions given by this Court, the seniority of the respondent-direct recruits who were appointed to the service prior to December 31, 1976, i.e., the date of amendment, could have been determined only from the date of their confirmation. The period of probation of the direct recruits being two years, their seniority would begin to run only

from the date of the expiration of their probation. However, the High Court had given them seniority from the date of their appointment, under the amended Rules which were not applicable to them. Yet, the same benefit of continuous officiation under the amended Rules was denied to the appellants, although they were also appointed prior to the amendment of the Rules.

7. It is not disputed that the appellants were appointed in the temporary posts, and under the definition of the "cadre post" as per the unamended Rules, the temporary posts did not form part of the cadre. They became part of the cadre only after the amendment. It is also not disputed that under the Rules there was a quota of recruitment between the promotees and direct recruits as pointed out above. It is admitted that the appellants were not appointed in their quota. Hence till the amendment of December 31, 1976, the appellants were not members of the service and they were also not appointed to the posts according to Rules. The appellants became members of the service only after their appointment in the cadre posts after December 31, 1976. Hence, their seniority under the amended Rules could not have been counted from any date anterior to such appointments. As against this, the respondent direct recruits were appointed in the cadre posts according to their quota. Under the amended Rules, therefore, their seniority was rightly counted from the date of their appointment. It is not, therefore, correct to say that while direct recruits were given the benefit of amended Rules, the appellants were not given the said benefit.

8. The other contention advanced on behalf of the appellants was that even if the seniority of the appellants and the direct recruits was counted according to the amended Rules, the seniority of the appellants should have been reckoned from January 1, 1977, i.e., the date immediately after coming into operation of the amended Rules. If it was so counted, some of the appellants would have become senior to the direct recruits who were confirmed much later. This argument is deceptive for while it seeks the application of the amended Rules to the appellants, it denies their application to the direct recruits. For, as stated earlier, if according to amended Rules, the continuous officiation in service is to be counted only from the date of appointment in the cadre post, then the direct recruits having been appointed in the cadre post, their seniority will have also to be counted from their date of appointment. So counted they will be senior to the appellants.

9. The seniority list prepared by the High Court is also not in conflict with the direction given by this Court particularly (a)(i) and (ii). Both the appellants and respondent-direct recruits were to be confirmed with effect from the dates on which vacancies became available to them in their respective quotas. Admittedly, although direct recruits completed their probation period later, they were from the inception appointed in the vacancies which were available to them in their quota. Hence, their seniority will commence from those dates. The posts of the appellants, on the other hand, having become cadre posts for the first time after December 31, 1976, and their entitlement to the quota having become due only some time thereafter, they would rank junior to them.

10. In the result, we find no merit in this appeal and accordingly dismiss it.

11. In the circumstances of the case there will be no order as to costs.

</html