

Ram Saran and Another

Vs

State of Punjab and Others

With

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Vs

Amar Chand Kaplish and Others

Civil Appeal Nos. 945-50 of 1991

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II JJ)

22.02.1991

JUDGMENT

FATHIMA BEEVI, J. –

1. Special leave granted.

2. These civil appeals arise from the common judgment dated August 8, 1990 of the High Court of Punjab and Haryana dismissing Letters Patent Appeals against the judgment dated February 12, 1986 of the Single Judge allowing write petitions filed under Articles 226 and 227 of the Constitution of India. Civil appeals arising out of S.L.P. (C) Nos. 14471-73 of 1990 are filed by the State of Punjab and civil appeals arising out of S. L. P. (C) Nos. 14236-38 of 1990 are filed by Ram Saran and O. P. Singhla, the respondents in the write petitions. We shall hereinafter refer the contesting respondents Ram Saran and O. P. Singhla as 'the appellants' and write petitioners as 'the petitioners' for the sake of convenience.

3. In the Punjab Excise and Taxation Department, there were two separate and distinct cadres known as Assistant Excise and Taxation Officers governed under the Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956 (hereinafter referred to as 'Class III-A Rules') and the Excise and Taxation Officers governed by the Punjab Excise and Taxation Department (State Service Class II) Rules. Under the Class II Rules, appointment to the cadre of Excise and Taxation Officers was made (a) by direct recruitment to the extent of 50 per cent and (b) by promotion from amongst Assistant Excise and Taxation Officers to the extent of 50 per cent. Under Class III-a rules, sub-ordinate staff was eligible for promotion to the extent of 50 per cent of the vacancies of Assistant Excise and Taxation Officers and their shares were as under :

#(i) Taxation Inspector 25 per cent(ii) Excise Inspector 12 1/2 per cent(iii)
Ministerial Staff Head Office 6 1/4 per cent(iv) Ministerial Staff Sub-Office 6 1/4 per cent.##

4. The appellants as well as the write petitioners joined the ministerial cadre of the Excise and

Taxation Department as Clerks and were confirmed as such. The writ petitioners were promoted to the higher post and later appointed as Excise/Taxation Inspectors in 1971-72 by transfers under Rule 7(a) (ii) of the Punjab Excise Subordinate Service Rules, 1943. On such transfer as Excise/Taxation Inspectors, the lien of the writ petitioners was suspended in accordance with the provisions of Rule 3.14(b) of the Punjab Civil Services Rules (Volume I Part I). The appellants continued in the ministerial cadre, Ram Saran as Assistant and O. P. Singhla as Superintendent.

5. The Excise and Taxation Department was reorganised on May 18, 1977. The cadre of Assistant Excise and Taxation Officers was abolished on May 18, 1977 and the Assistant Excise and Taxation Officers were redesignated as Excise and Taxation Officers. Thereafter Class III-A Rules became redundant and inoperative and under Class II Rules, there was no provisions for promotion from subordinate staff direct as Excise and Taxation Officers.

6. The Government in order to provide avenues of promotion to the subordinate staff decided to make suitable amendment to the Class II Rules on the following terms :

"5. The members of the service shall be recruited in the following manner, namely :

#(a) * * *##

(b) In the case of an Excise and Taxation Officer;

(i) by promotion from amongst the Taxation Inspectors and Excise Inspectors who have an experience of working as such for a minimum period of five years; or

(ii) by promotion from amongst the Superintendents, Assistant, Accountants and Senior Scale Stenographers working in the Excise and Taxation Commissioners Head Office and in the Divisional and District Offices of the Department of Excise and Taxation, Punjab."

7. It was further provided that there will be certain quota for each of the above categories for promotion to the rank of Excise and Taxation Officers. The State Government decided to adopt and apply the draft provision of Rule 5 in the matter of filling up of the vacancies in the cadre of Excise/Taxation Officers before rules could be formally promulgated. Thus on August 22, 1983, Ram Saran and O. P. Singhla were promoted as Excise/Taxation Officers. The writ petitioners having been transferred to the other cadres of Excise/Taxation Inspectors have continued there for 14/15 years beyond the period of probation and also qualified the departmental test for Inspectors and they were not considered for the promotion as Excise and Taxation Officers. The writ petitions were, therefore, filed challenging the promotion of the appellants mainly on the ground that on the basis of their seniority and lien on the post in the ministerial cadre, the writ petitioners has a right to be considered for promotion to the post of Excise and Taxation Officers prior to the appellants.

8. The contention of the appellants as well as the State was that though the lien of the writ petitioners in the ministerial cadre was suspended in terms of Rule 3.14(b) of the Punjab Civil Services Rules, if the petitioner wanted that they should be considered for the post of Excise and Taxation Officers on the basis of their lien in the ministerial cadre, they may seek reversion and thereafter their case would be considered on merits and under rules. It was clarified by the Financial Commissioner in the order dated August 7, 1985 that the case of the writ petitioners would be considered in the light of the eligibility under the relevant rule, that is to say, the amended Rule 5. The eligibility prescribed under the said rule for promotion from amongst Superintendents etc. in

the ministerial service includes experience of working as such for a period of five years. The writ petitioners felt that if the service rendered by them as Excise and Taxation Inspectors was not being considered as service rendered in the ministerial cadre, they would be ineligible for consideration to the post of Excise and Taxation Officers.

9. The learned Single Judge accepted the contention of the writ petitioners that there was no conscious decision to apply the draft rules and consequently for the post of Excise and Taxation Officer, the writ petitioners are entitled to be considered without any bar of eligibility as their juniors has already been considered for the post. On appeal, the Division Bench proceeded on the assumption that the draft rules though not promulgated were rightly implemented. The Division Bench dealt with the question whether the service rendered on transfer to the ex-cadre would be available to the writ petitioners in the matter of their promotion to the higher posts thus :

"In view of this, question that calls for determination is as to whether on the return of the writ petitioners from the post of Excise and Taxation Inspectors to the ministerial cadre, the service rendered by them on the post of Excise and Taxation Inspector could by deeming fiction be considered as having been rendered in the ministerial cadre ? The answer to this question is that such a service is to be counted as if the petitioner were always in the ministerial cadre. Once it is held that the petitioner's lien was only suspended under Rule 3.14(b) of the Punjab Civil Service Rules, the petitioners has a right to come back to their posts in the ministerial cadre and one that is so, the rest would follow as if for all times deeminglly they were in the ministerial cadre."

10. The Division Bench relied on the decision of this Court in *State of Mysore v. P. N. Nanjundiah* ((1969) 3 SCC 633), and opined that the entire service rendered by the petitioners as Excise and Taxation Inspectors will be considered in the ministerial cadre and if that is counted the petitioners would be eligible for promotion under the relevant rules. It rejected the contention that the petitioners could not be said to be retaining a lien in the ministerial cadre as they has successfully completed the period of probation as Excise and Taxation Inspectors and they will be deemed to be confirmed there. The Division Bench endorsed the view that the revival of the lien essentially means that it stands revived with effect from the date it had been suspended, and dismissed the appeals observing :

"... We may observe that the petitioners shall not be considered forthwith for the posts of ETOs from the date their juniors were promoted and if found suitable they will be promoted to that rank from the dates their juniors were promoted and they would be entitled to all the consequential benefits arising out of their promotion from the said date."

11. Shri P. P. Rao, the senior counsel for the appellants, and Shri G. L. Sanghi, the senior counsel for the respondents (writ petitioners), conceded that both parties claim promotion to the post of Excise and Taxation Officers only by virtue of the provision in the amended Rule 5 of Class II Rules and, therefore, the question whether there has been conscious application of the said rule before promulgation is only academic. We agree with the view of the High Court that for the purpose of present controversy we have to assume that the amended Rules were rightly implemented before they were formally promulgated in effecting the promotions now challenged.

12. The appellants maintain that the Division Bench was clearly wrong, and that the petitioners in

order to claim the benefit of promotion from the ministerial cadre under the amended Rules have necessarily to satisfy the eligibility test. To be more specific, they should have actual experience of five years in the ministerial cadre even when they are reverted back to that cadre.

13. We have said that the petitioner were appointed as Inspectors by transfer under Rule 7 of the Punjab Excise Subordinate Service Rules, 1943 and thereafter they belongs to a different cadre. Their lien has also been suspended after three years.

14. The Punjab Civil Services Rules, Volume I, Part I, Rules 3.14 reads :

"3.14(a) A competent authority shall suspend the lien of a government employee on a permanent post which he holds substantively; if he is appointed in a substantive capacity -

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another government employee would hold a lien, had his lien not been suspended under this rule.

(b) A competent authority may, at its option, suspend the lien of a government employee on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien, for a period of not less than three years.

#(c) * * *##

(d) If a government employee's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the government employee appointed to hold it substantively shall acquire a lien on it : Provided that the arrangements shall be reversed as soon as the suspended lien revives.

#Note 1. * * *##

Note 2. - When a post is filled substantively under this clause, the appointment will be termed "a provisional appointment"; the government employee appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

#(e) * * *##

(f) A government employee's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceased to be on deputation out of India or on foreign service or to hold a post in another cadre..."

15. According to the appellants, the respondents having been transferred to the cadre of Excise and

Taxation Inspectors and having continued there for 14/15 years beyond the period of probation, their lien over ministerial post was suspended. The consideration of their names for the purpose of promotion as Excise and Taxation Officers from the ministerial post did not arise. The amended rule introduced eligibility that would exclude the service rendered by the petitioners in other posts and if such service is excluded, the petitioners would be ineligible. The lien of the petitioners has been suspended by the competent authority under the mandatory provisions of Rule 3.14(b) referred to. They could seek reversion to their parent ministerial cadre and claim consideration for promotion of the post of Excise and Taxation Officers according to their eligibility and suitability. The next below rule does not apply to the case of promotion to the higher posts in other cadres under specific rules governing promotions to those cadres.

16. The recruitment to the post of Excise and Taxation Officer is governed by Punjab Excise and Taxation Department (State Service Class II) Rules, 1956. The eligibility of Taxation Inspectors and Excise Inspectors and members of ministerial establishment for the post is governed by the amended Rule 5. According to the proposed Rule 5(b) (ii), promotion to the post of Excise and Taxation Officer is to be made from amongst the Superintendents, Assistants, Accountants and Senior Scale Stenographers working in the Excise and Taxation Commissioners Head Office and in the District and Divisional Offices. In view of this provision, the Taxation Inspectors and Excise Inspectors whose lien against their posts in the ministerial cadres has been suspended and who are not working on the eligible ministerial establishment posts and who have been working as Taxation Inspectors and Excise Inspectors for a long number of years cannot claim that they are to be considered automatically for recruitment to the post of Excise and Taxation Officer. The normal lien of promotion within the cadre for the members of the ministerial establishment was from the lowest post of a Clerk to the highest post of a Superintendent. So also the further channel of promotion was open to the Inspectors to the post of Excise and Taxation Officer. If the Inspectors are to be considered for the post of Excise and Taxation Officer from the quota of the ministerial establishment, that will result in the Inspectors getting two avenues for promotion with the ministerial staff losing even the one which had been provided.

17. The appointment to the ex-cadre posts of Excise and Taxation Inspectors is made by transfer in accordance with the provisions of Rule 7 of Subordinate Service Rules, 1943 which provide that appointment to the cadre post shall be made by transfer or deputation of an official already in government service. It implies that any government employee irrespective of his office can be appointed as Excise or Taxation Inspector. The Excise and Taxation Inspectors' cadre is distinctly different from the ministerial cadre having duties or functions altogether different in nature and content. Instead of waiting for their turn to be promoted from the Inspectors quota, the petitioners have laid the claim to the quota in the ministerial service. The appellants are also persons who have been confirmed in the ministerial cadre and have worked for more than 20 years as such. The result would be that there would be no promotions to the post of Excise and Taxation Officer from the ministerial staff as such, and those who got transferred as Inspectors would be getting double benefit by claiming promotion to the post of Excise and Taxation Officer as members of the ministerial staff while retaining their right to claim promotion from within the quota specifically provided for the Inspectors. The petitioners with suspended lien on the post of Clerk and continuously holding the Inspector's post for over 13 years cannot be considered to be at par with official continuously working on the ministerial post for over 21 years.

18. From the scheme of the Rules and the method of recruitment, it is clear that the petitioners while working as Inspectors on appointment by transfer to that cadre had the advantage of being considered for promotion as officers under the amended Rule 5 out of the quota for inspectors,

while the ministerial staff to the exclusion of the Inspectors were entitled to certain percentage. The petitioners without being on the ministerial cadre even by reversion could not claim promotion as a member of the ministerial cadre without revival of the lien. Such revival could be effected only on reversion and not while the lien remained suspended. When the rule requires members of the ministerial staff to have experience as such for five years to satisfy the eligibility requirement, the Inspectors cannot claim that service and the different cadre with their lien suspended should be equated to service in the ministerial cadre and treated as experience in the ministerial cadre even if the functions and duties of the Inspectors may be of identical nature. The purpose of the rule is to provide promotional avenues to different categories within specified limits. The benefit intended for one category cannot be extended to another category by stretching the rules, particularly when no injustice would result. The argument that the petitioners if found ineligible would remain in the lower cadre while their juniors are being promoted to the higher cadre cannot be countenanced. Even when the juniors continued in the lower ministerial cadre for long years, the petitioners were in a different cadre which had a larger promotional avenue and they are satisfied in the post. If the petitioner did not exercise their option to revert back to the ministerial cadre at the right time to qualify themselves for further promotion, the appellants cannot be deprived of the benefit they derived by continuing in the lower cadre on account of that situation. The High Court was clearly wrong in holding that the petitioners have acquired eligibility by rendering service in the cadre of Inspectors since their lien had been suspended.

19. The decision in State of Mysore case ((1969) 3 SCC 633) distinguishable on facts. Rule 53(b) (i) of the Mysore Service Rules considered in that case provided that service in another post whether in a substantive or officiating capacity shall count for increments in the time scale applicable to the post on which the government servant holds a lien or as well as in the time scale applicable to the post, if any, on which he would hold a lien has his lien not been suspended. The court noticed that the service of an officer on deputation to another department is treated as equivalent to the service in the parent department under the rule. On account of that equation between the service in the two departments, it was held that the service on deputation should be deemed to be rendered in the parent department. The ratio of the decision is, therefore, not applicable in the present case.

20. In C. Narasinga Rao v. State of A. P. by its Secretary ((1968) 2 SLR 644), Rule 9 of the Andhra Pradesh State and Subordinate Service Rules provided that service rendered in the transferred department should be deemed to have been rendered in the parent department for promotion and seniority. And when the rule is thus specific, it was held that the petitioner's service in the police department should be deemed to have been rendered in the parent department entitling them to promotion.

21. If the government employee was on deputation or holding a post in another cadre, the lien shall revive as soon as he ceased to hold the post in another cadre. There is no revival of the lien during the period the employee continues to hold a post in another cadre. Therefore, during the period the suspension is operative, the employee cannot claim that he has been continuing in the post in the parent cadre and gaining experience. When the rule is clear and specific that for the purpose of promotion from the cadre of Superintendents, Assistants, Accountants, Senior Scale Stenographers to the post of Excise and Taxation Officers, the eligibility qualification is "experience of working 'as such' for five years", the employee is not entitled to claim the experience in the excadre as experience of working in the ministerial cadre.

22. In the light of what has been stated above, we are unable to uphold the decision of the High Court. The writ petitions are liable to be dismissed. Accordingly, we allow the appeals.

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