

S. S. Grewal

Vs

State of Punjab and others

Civil Appeal No. 241 of 1993

(P. B. Sawant, S. C. Agrawal JJ)

07.05.1993

JUDGEMENT

S. C. AGRAWAL, J.

1. This appeal relates to the inter se seniority of the appellant and respondent No. 3 in the Punjab Superior Judicial Service (hereinafter referred to as 'The Service'). The appellant and respondent No. 3 were both appointed to the Service on May 26, 1986 on the basis of selection by direct recruitment. The appellant belongs to the general category whereas respondent No. 3 is a Mazhabi Sikh, which is a Scheduled Caste in Punjab.

2. The recruitment to the Service is governed by Punjab Superior Judicial Service Rules, 1963 (hereinafter referred to as 'The Rules'). By Rule 8-A, which was inserted in the rules by notification dated June 14, 1977, the instructions issued by the State Government from time to time in relation to reservation of appointments or posts for Scheduled Castes and Backward Classes were made applicable for the purpose of making appointments to the posts in the Service. The orders of the State Government relating to persons belonging to Scheduled Castes in this regard which have a bearing in this appeal are as follows :-

(1) Letter dated June 6, 1974 from the Secretary to the Government of Punjab, Welfare of Scheduled Castes and Backward Classes Department to all Heads of Department etc. It was communicated that it had been decided to increase the percentage of reservation in direct recruitment in all services from 20% to 25% in the case of members of Scheduled Castes and from 2% to 5% in the case of members belonging to Backward Classes. In the said letter, it was also indicated that the vacancies to be reserved for the members of Scheduled Castes in a lot of 100 vacancies would be at the points specified below

1,5,9,13,17,21,25,29,33,37,41,45,49,3, 57, 61, 65, 69, 73, 77, 81, 85, 89,93 and 97 and so on.

It was also directed that the Roster already existing would not be abandoned, but would now be maintained in continuation from the vacancy in the existing Roster last filled up according to the new pattern of reservation that has been prescribed in the earlier paragraphs in the said letter.

(2) Circular dated November 19, 1974 relates to carrying forward of reservation for members of Scheduled Castes/ Backward Classes. It was directed that "the reservation should be carried forward from vacancy to vacancy in the same block until a Scheduled Caste or a Backward Class person, as the case may be, is appointed

or promoted in the same block. It was further directed that if all the vacancies in any block determined on the basis of prescribed Roster are filled up by other category-person due to non-availability of Scheduled Castes or Backward Classes persons, the reservation should be carried forward to the subsequent blocks. The said letter required that the reservation should be carried forward from vacancy to vacancy in each block and from block to block until the carried forward vacancies are filled up by the members of the Scheduled Castes or Backward Classes. It was also provided that only one reserved vacancy out of the carried forward vacancies should be filled in a block of appropriate Roster in addition to the normal reserved point of the block.

(3) Letter dated May 5, 1975, from the Secretary to the Government, Punjab, Welfare of Scheduled Castes & Backward Classes Department addressed to all Heads of Departments etc. It was communicated that the Government have decided that henceforth, 50% vacancies of the quota reserved for Scheduled Castes should be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes candidates.

(4) Letter dated April 8, 1980 addressed by the Under Secretary to the Government of Punjab, Welfare Department Reservation Cell, to all Heads of Departments etc. The position with regard to the implementation of instructions regarding reservation for Mazhbi Sikhs and Balmikis under the letter dated May 5, 1975 was clarified as follows :-

"i) Combined merit list can be disturbed while giving appointment to the candidate belonging to Balmikis and Mazhbi Sikhs.

ii) On the basis of 50% reservation the first reserved vacancy can be offered to Balmikis and Mazhbi Sikhs although his name may be below in the merit list.

iii) On the basis of 50% reservation, Balmikis and Mazhbi Sikhs 1, 3, 5 and so on reserved vacancies shall go to the candidates of these castes if available and 2,4,6 and so on reserved vacancies shall go to other Scheduled Castes candidates.

It is clarified here that these instructions are to be implemented when the names of the candidates of Balmikis and Mazhbi Sikhs are included in the merit list after selection. If no candidate belonging to these communities has been selected or less candidate selected then the reserved vacancy should be filled up from amongst the other Scheduled Castes candidates meaning thereby no reserve vacancy reserved for Balmikis and Mazhbi Sikhs should be carried forward."

3. After the introduction of R. 8A in the Rules, four persons were appointed by way of direct recruitment to the Service in the years 1979. One out of them, Shri Balwant Rai, belonged to a Scheduled Caste (other than Balmikis or Mazhbi Sikhs). Thereafter, in 1981, one post fell vacant but no person belonging to a Scheduled Caste could be selected and the candidate belonging to general category was appointed against the said post. In the year 1982, selection was made for two posts but only one person could be selected and he also belonged to the general category and no person belonging to a Scheduled Caste was available for appointment. In 1986, six persons including the appellant and respondent No. 3 were appointed on the basis of direct recruitment. Out of those six persons, four belonged to the general category and two belonged to Scheduled Caste. One of the two persons was Shri G.S. Samra who belonged to a Scheduled Caste other than Balmikis or

Mazhbi Sikhs, and the other was respondent No. 3 who is a Mazhbi Sikh. In the merit list for the said selection the appellant was placed at No. 1, Shri G.S. Samra was at No. 2 and respondent No. 3 was at No. 5. As per the Roster, Shri G.S. Samra was placed at Point No. 7, the appellant at Point No. 8 and respondent No. 3 at Point No. 9. After joining the Service, Shri G.S. Samra resigned from the same and had ceased to be a member of the Service prior to April 1, 1988.

4. In the tentative seniority list of the members of the Service as on April 1, 1988, the appellant was placed at Serial No. 52 and respondent No. 3 was placed at Serial No. 53. Respondent No. 3 submitted a representation against his placement in the seniority list and claimed that he should be placed against the post reserved for Scheduled Caste at Serial No. 5 in the Roster and on that basis he should be given the seniority of the year of 1981. He also submitted that since he is a Mazhbi Sikh, he is entitled to preference over Shri G.S. Samra who belonged to a Scheduled Caste other than Balmikis and Mazhbi Sikhs, and he claimed that he should have been placed at Point No. 7 in the Roster and Shri G.S. Samra should have been placed at Point No. 9 and on that basis also respondent No. 3 is senior to the appellant. Representation was also invited from the appellant in this regard. After considering the said representations the High Court, on its administrative side, decided that the respondent No. 3 was entitled to be placed above Shri G.S. Samra in view of the Circular Letter dated May 5, 1975 and that he should have been placed against Point No. 7 in the roster and Shri G.S. Samra should have been placed against Point No. 9 in the Roster. On that basis the seniority list was revised and respondent No. 3 was placed at Serial No. 52 while the appellant was placed at Serial No. 53. Feeling aggrieved by the revision in the seniority, the appellant filed a writ petition in the High Court which was dismissed by the High Court by judgment and order dated October 9, 1991. This appeal is directed against the said judgment of the High Court.

5. There is no dispute that appellant has been rightly assigned Point No. 8. If Respondent No. 3 has to be assigned Point No. 7, as found by the High Court, then he would be senior to the appellant but if Respondent No. 3 is assigned Point No. 9 then appellant would be senior to Respondent No. 3. It is, therefore, necessary to determine whether respondent No. 3 is entitled to be placed at Point No. 7 in the Roster in place of Shri G.S. Samra who should be placed at Point No. 9, or that the respondent No. 3 should be assigned Point No. 9 of the Roster. The said question requires consideration of the various orders relating to reservation for Scheduled Castes to which reference has been made earlier. As indicated earlier by letter dated June 6, 1974 points 1, 5, 9, 13, 17, 21, 25, 29, 33, 37, 41, 45, 49, 53, 57, 61, 65, 69, 73, 77, 81, 85, 89, 93 and 97 in the Roster are reserved for members of Scheduled Castes. By letter dated May 5, 1975, 50% of the vacancies of the quota reserved for Scheduled Castes are required to be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes candidates. In view of the clarifications contained in the letter dated April 8, 1980 on the basis of 50% reservation the first reserved vacancy can be offered to Balmikis and Mazhbi Sikhs although his name may be below in the merit list and on the basis of 50% reservation, amongst the vacancies reserved for Scheduled Caste, vacancies 1, 3, 5 and so on would go to Balmikis and Mazhbi Sikhs, if available, and reserved vacancies 2, 4, 6 and so on would go to other Scheduled Castes candidates. It has also been clarified that if no candidate belonging to the communities of Balmikis and Mazhbi Sikhs was selected or less number of candidates were selected then the reserved vacancies should be filled up amongst the other Scheduled Castes candidates and that no vacancy reserved for Balmikis and Mazhbi Sikhs should be carried forward. In view of the aforesaid clarifications out of the posts reserved for Scheduled Castes in the Roster, there was reservation for Balmikis and Mazhbi Sikhs on the posts against the following points in the Roster:

1, 9, 17, 25, 33, 41, 49, 57, 65, 73, 81, 89 and 97.

There was reservation for members of Scheduled Castes other than Balmikis and Mazhbi Sikhs on the posts against the following points in the Roster:

5, 13,21,29,37,45,53,61,69,77,85 and 93.

6. The learned counsel for the appellant has urged that since these orders relating to reservation for Scheduled Castes became applicable to the Service with effect from June 14, 1977, when Rule 8-A was inserted, all appointments to the Service after June 14, 1977 have to be made in accordance with these orders. The submission is that the first appointment, by direct recruitment, of a person belonging to the Scheduled Caste was of Shri Balwant Rai made in 1979. That was at point No. 1 in the Roster. That should have gone to a Balmiki or a Mazhbi Sikh but since no person belonging to those communities was available, Shri Balwant Rai, who belongs to a Scheduled Caste other than Balmikis and Mazhbi Sikhs, was appointed. It has been further urged that in view of the clarification contained in the letter dated April 8, 1980, a vacancy reserved for Balmikis and Mazhbi Sikhs is not required to be carried forward and the Balmikis and Mazhbi Sikhs cannot claim reservation in respect of the next vacancy at Point No. 5 which was reserved for Scheduled Castes other than Balmikis and Mazhbi Sikhs and they can only claim the vacancy that was reserved for Balmikis or Mazhbi Sikhs at point No. 9. It was submitted that Shri G.S. Samra who belonged to a Scheduled Caste other than Balmikis and Mazhbi Sikhs was entitled to be appointed against the reserved vacancy at Point No. 5 reserved for a candidate belonging to a Scheduled Caste other than Balmikis and Mazhbi Sikhs but since at the time of selections that were made in the years 1981 and 1982, no person belonging to a Scheduled Caste was available. The vacancy at Point No. 5 reserved for Scheduled Castes was carried forward to point No. 7 and Shri G.S. Samra had to be adjusted at point No. 7 in the Roster. The submission is that respondent No. 3, being a Mazhbi Sikh, could not claim to be placed at point No. 7 in the Roster against a vacancy which was reserved for a candidate belonging to a Scheduled Caste other than Balmikis and Mazhbi Sikhs and he could be only placed against the vacancy at point No. 9 in the Roster.

7. The learned counsel for the respondent No. 3 on the other hand has urged that in view of the order dated May 5, 1975, 50% vacancies of the quota reserved for Scheduled Castes have to be offered to Balmikis and Mazhbi Sikhs and since Shri Balwant Rai belonging to a Scheduled Caste other than Balmikis and Mazhbi Sikhs had been appointed in 1979, the next post should go to Balmikis and Mazhbi Sikhs, and on that basis, respondent No. 3 was entitled to be appointed against the second post at point No. 7 of the Roster and Shri G.S. Samra could only be appointed against third post at point No. 9 in the roster. In the alternative, it was urged that the order dated April 8, 1980 could only have prospective operation with effect from the date of issue of the said order and the sub-roster indicated by the said order could be given effect to only from that date and on that basis the first post reserved for Scheduled Castes should go to Balmikis or Mazhbi Sikhs and on that basis also respondent No. 3 was entitled to be placed against point No. 7 in the 100 point roster and Shri G.S. Samra against point No. 9 in the said roster.

8. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8, 1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to

be retrospective. (See: Craies on Statute Law, 7th Ed., p. 58). It must, therefore, be held that all appointments against vacancies reserved for Scheduled Caste made after May 5, 1975 (after May 14, 1977 in so far as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980. On that view, the appointment of Shri Balwant Rai in 1979 has to be treated to be an appointment made under the said instructions and operation of these instructions cannot be postponed till April 8, 1980. If the matter is considered in this light then the sub-roster as indicated in the letter dated April 8, 1980 would have to be applied in respect of the post on which Shri Balwant Rai was appointed in 1979 and the said appointment has to be regarded as having been made against the vacancy at point No. 1 in the roster which was reserved for Balmikis or Mazhbi Sikhs but since no Balmiki or Mazhbi Sikh was selected for that post, the said vacancy was assigned to Shri Balwant Rai who belonged to a Scheduled Caste other than a Balmiki or Mazhbi Sikh. The said vacancy which was reserved for Balmikis or Mazhbi Sikhs could not be carried forward in view of the directions contained in the letter dated April 8, 1980. The next post reserved for Scheduled Caste at point No. 5 in the roster was meant for a person belonging to a Scheduled Caste other than Balmikis and Mazhbi Sikhs. In the selections that were made in 1981 and 1982 no person belonging to a Scheduled Caste was selected and, therefore, posts at Points Nos. 5 and 6 in the Roster became available to candidates in the general category and the vacancy at Point No. 5 reserved for Scheduled Castes was carried forward to point No. 7. In 1986, two persons belonging to Scheduled Caste, namely Shri G.S. Samra and respondent No. 3 were selected. Shri G.S. Samra belonged to a Scheduled Caste other than Balmiki and Mazhbi Sikh whereas respondent No. 3 was a Mazhbi Sikh. Since the post at point No. 5 which had been carried forward to point No. 7 was reserved for a candidate belonging to a Scheduled Caste other than Balmiki or Mazhbi Sikh it had to be assigned to Shri G.S. Samra falling in that category and respondent No. 3 who was a Mazhbi Sikh could only be appointed against the reserved vacancy at point No. 9 in the Roster. Respondent No. 3 cannot claim that the vacancy at Point No. 7 should be assigned to him. If respondent No. 3 is adjusted against the vacancy at point No. 9 in the Roster, he has to be placed in seniority below the appellant who was appointed against point No. 8 in the Roster.

9. In the judgment under appeal, the High Court has placed reliance on the instructions dated March 6, 1961 and the decision of this Court in *Jagjit Singh v. State of Punjab*, (1978) 3 SCR 547: (AIR 1978 SC 988). The instructions dated March 6, 1961 deal with a situation where the services of a Government Servant belonging to Scheduled Caste/ Tribes and Backward Classes are terminated and a resultant vacancy occurred. It has been directed as under (at p. 990 of AIR):

"With a view to safeguard the interests of the members of the Scheduled Caste/Tribes and Backward Classes, it has been decided that if the services of a Government Servant belonging to Scheduled Caste/Tribes or Backward Classes are terminated, the resultant vacancy should not be included in the normal pool of vacancies to be filled in accordance with the Block System but should be filled up on ad hoc basis from the candidates belonging to these castes and classes. In other words the intention is that the posts vacated by members of Scheduled Caste/Tribes and Backward Classes should remain earmarked and be filled up by members belonging to these Classes."

10. In *Jagjit Singh's* case (AIR 1978 SC 988), this Court was dealing with appointments to the Punjab Civil Service (Executive Branch). The selection was made for appointment against 12 vacancies in the said Service and other vacancies in the Allied Services. Two of the vacancies in the Punjab Civil service were reserved for Scheduled Caste candidates. Three persons were selected

from among the members of Scheduled Caste. The appellant in the said appeal was at third place in the merit list of the Scheduled Caste candidates. The first two candidates on the merit list were appointed and the appellant was appointed on the post of "A" Class Tehsildar in one of the Allied Services. Subsequently, one of the two candidates who had been appointed to the Punjab Civil Service resigned his office and a question arose as to whether the appellant was entitled to be appointed to the Punjab Civil Service against the vacancy arising on account of resignation of the Scheduled Caste candidate who had been appointed earlier. The appellant laid his claim for such appointment on the basis of the instructions contained in the Circular of March 6, 1961. The said claim of the appellant was upheld by this Court and it was held that the resultant vacancy caused by resignation of one of the Scheduled Caste candidates should have gone to the appellant. The Circular dated March 6, 1961 and the decision in Jagjit Singh v. State of Punjab (AIR 1978 SC 988) (supra) do not have a bearing on the question in controversy in the instant case because here there is no dispute that the respondent No. 3 has been appointed against the post reserved for members of Scheduled Castes and the question is about the inter se placement of two persons appointed against vacancies reserved for Scheduled Caste candidates. The Circular dated March 6, 1961 does not deal with the said question and it has to be dealt with on the basis of the instructions contained in the orders dated May 5, 1975 and April 8, 1980.

11. For the reasons aforementioned the appeal is allowed, the judgment and the order of the High Court dated October 9, 1991 is set aside. The Civil Writ Petition filed by the appellant in the High Court is allowed and it is declared that respondent No. 3 can only be treated to have been appointed against the vacancy at Point No. 9 in the Roster and on that basis he must be placed below the appellant in the seniority list. Respondent No. 2 is directed to revise the seniority list of the members of the Service accordingly. The appellant would be entitled to consequential benefits, if any, accruing to him as a result of such revision in the seniority. The parties are left to bear their own costs. Appeal allowed.

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