

Harbans Singh

Vs

State of Punjab and Others

Civil Appeal No. 7412 of 1995

(K. Ramaswamy, K. S. Paripoornan JJ)

03.08.1995

ORDER

1. Leave granted.

2. We have heard the learned counsel on both sides. The appellant joined as a clerk in the Department of Legal and Legislative Affairs, State of Punjab in June 1965. He was promoted as an Assistant on 13-8-1974. Ajit Lal Arora, third respondent was appointed as clerk in another department. When a vacancy as an Assistant had arisen and was notified for recruitment, Ajit Lal Arora had applied for the post and was appointed on 22-8-1974 and had joined on 17-9-1974. The Punjab Law and Legislative Department Provincial Service Class III Rules, 1951 was in vogue at the date of the respective appointments. On that day, there was no distinction of a technical and non-technical post. The Rules were amended in 1976. Thereafter dichotomy of technical and non-technical post was created and Ajit Lal Arora was working on the technical side. When the vacancy as a Legal Assistant had arisen, the appellant was eligible for consideration. He claimed for promotion by virtue of his seniority in the Department. Ajit Lal Arora came to be appointed on 20-5-1977 as a Legal Assistant. The appellant made a representation to the Government, who by its order dated 6-6-1981 found that the appellant was eligible for promotion but was wrongly overlooked. Therefore, the appellant was appointed as Legal Assistant w.e.f. 20-5-1977. A direction was given that if any future vacancy arises, Ajit Lal Arora would therein be accommodated. A review petition filed by Ajit Lal Arora was dismissed on 5-5-1982. Dissatisfied therewith, Ajit Lal Arora filed a writ petition in the High Court which was allowed by a Single Judge and on appeal in LPA No. 447 of 1993, it was confirmed by the Division Bench. Thus, this appeal by special leave.

3. The crucial question is whether the appellant is entitled to be considered for promotion as on 20-5-1977, the date on which Ajit Lal Arora came to be appointed by promotion as Legal Assistant. It could be seen that at the time when the Rules were in vogue, there was no distinction between technical and non-technical Assistants. It could also be seen that admittedly the appellant passed his LL.B. (two years) course in November 1973 and third year course in 1974. By 1977, he had already had two years' experience as on legal side. By fortuitous circumstance, the third respondent was working on the technical side while the appellant was continuing on non-technical side. For no fault of his a dichotomy for consideration of the respective claims of the appellant and the third respondent was made and the third respondent came to be preferred when vacancy had arisen in 1977. Therefore, the Government was right in reconsidering the matter in January 1981 and given promotion to the appellant as a Legal Assistant and the consequential benefits. We are informed that the appellant as well as Ajit Lal Arora have been further promoted as Deputy Legal Remembrancers and both of them have been continuing as such. Under those circumstances, justice and equity would need to mould the relief and be worked out by giving appropriate direction to the

Government. The Government is, therefore, directed to create a supernumerary post of Deputy Legal Remembrancer and till Mr Ajit Lal Arora retires from service or a supernumerary post of legal assistant must be created till date of A.L. Arora was promoted as Deputy Legal Remembrancer, as the case may be and that he would continue in the post. As far as the appellant is concerned, since the Government itself had found him to be eligible and was appointed w.e.f. 20-5-1977 i.e. the date on which Ajit Lal Arora was promoted, it must be deemed that the appellant was duly promoted with effect from that date and he is entitled to all consequential benefits.

4. The appeal is allowed to the above extent. No costs.

</html