

Jatinder Pal Singh and Others

Vs

State of Punjab

Civil Appeals Nos. 316-17 of 1999

16.09.1999

JUDGMENT

M. JAGANNADHA RAO, J. –

1. In this judgment we shall deal with certain appeals relating to officers of the State of Punjab. We shall also deal with Interlocutory Applications Nos. 10-12 of 1998 filed by the Railways and IAs Nos. 4-6 by the Union of India. We shall also deal with certain contempt applications and other interlocutory applications.

I. CAs Nos. 316-17 of 1999

2. The two appeals CAs Nos. 316-17 of 1999 have been preferred by the general candidates of Punjab against the judgment of the Punjab & Haryana High Court in CWPs Nos. 10756 and 10759 of 1997 dated 8-10-1998. The High Court, in the judgment under appeal, followed Jagdish Lal v. State of Haryana ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550) in preference to the judgment in Ajit Singh Januja v. State of Punjab ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) hereinafter called Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239). The Officers here belong to the Punjab Education Department and the contest is for the post of Principals governed by the Punjab Education Service (School and Inspection Cadre) (Class II) Rules, 1976.

3. Today, we have delivered judgment in IAs Nos. 1 to 3 filed in Ajit Singh by the State of Punjab (CAs Nos. 3792-94 of 1989). That judgment will be described here as Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) for convenience.

4. The facts of these two civil appeals are as follows : CWP No. 10756 of 1997 was filed by Ms. Gurbachan Kaur and 6 others (Headmistresses), all belonging to the reserved category praying for a writ of certiorari to quash the promotion order dated 3-7-1997 and for a mandamus seeking promotion of the said writ petitioners as Principals. Similarly, CWP No. 10759 of 1997 was filed by Charan Singh and 9 others (Headmasters), all belonging to the reserved category for similar relief and also for promoting the writ petitioners in the place of the opposite party. They impleaded the appellants (general candidates) as respondents in the writ petition. The appellant Jatinder Pal Singh in CA No. 316 of 1999 was a respondent in CWP No. 10759 of 1997. The array of the parties shows that the writ petitioners (Headmasters/Headmistresses) (reserved category) were all working as Headmasters in 1997 while the non-official respondents (general candidates) were working as Senior Lecturers/Principals or as Deputy District Education Officers. The general candidates have come up in appeal because the High Court has followed Jagdish Lal ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550).

5. So far as this Department is concerned, the relevant rules are as follows : under Rule 10 of the Class II Rules, the posts of Principal, Deputy District Education Officer, Senior Lecturer etc. are to be filled up by promotion in respect of 75% and 25% by direct recruitment. Under Class II Rules, 1976, sub-clause (5) of Rule 10 states that all appointments to the posts shall be made on the basis of seniority-cum-merit and no member of the service shall have any right for promotion merely on the basis of seniority. Rule 12 of the rules states that inter se seniority of the members of the service shall be determined by the continuous length of service on a post counted from the date of appointment etc. Appendix B (Rule 9) specifies the required years of teaching experience as Head of high/higher schools (i.e. Headmaster/Headmistress) or equivalent post. As stated in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) the seniority rule of continuous officiation is interlinked with the promotional rule based on equal opportunity and cannot be delinked.

6. Admittedly, the promotion of the reserved candidates from the post of Master/Mistress to the post of Headmaster/Headmistress was governed by roster points in Punjab, by the circular dated 19-7-1969 referred to in our judgment in Ajit Singh II (Ajit Singh v. State of Punjab, (1997) 7 SCC 209) delivered today, which stated that "roster points are seniority points". The writ petitioners (Master/Mistress) who belonged to the reserved category admittedly got promotion as Headmaster/Headmistress on the basis of such a roster. On the date when the impugned order promoting the respondents was made (i.e. 3-7-1997), the law as laid down by this Court in Ajit Singh case ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) (judgment dated 1-3-1996) was holding the field. Inasmuch as subsequently, on 7-5-1997 the judgment of this Court in Jagdish Lal ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550) was delivered, the reserved candidates filed these two writ petitions which were allowed under the impugned judgment following Jagdish Lal ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550).

7. In the light of our judgment in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) delivered today, it is clear that the respondents (writ petitioners) cannot rely on Jagdish Lal ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550). The case is governed by Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) as affirmed in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) both in regard to seniority and prospectivity based on R. K. Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481).

8. Therefore, the appeals are allowed and the writ petitions are dismissed subject to the principles laid down in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). It will be for the State of Punjab to implement Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) both in regard to seniority as stated in Points 1 to 3 therein and as to prospectivity of R. K. Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) as explained in Point 4 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). The respective cut-off dates of Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) shall have to be adhered to as stated in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209).

## II. IAs Nos. 1-3 in CPs Nos. 148-50 of 1997

9. These IAs have been filed by the petitioner, party-in-person, who is a reserved candidate, in the CPs which were disposed of on 17-3-1997. The petitioner was promoted as Superintendent Grade II

on 10-7-1987 while Rewa Singh (general candidate) was promoted as Superintendent Grade I on 3-3-1989. Some more general candidates were promoted as Superintendents Grade I on 1-4-1996. His grievance is about the above promotions of general candidates. (The petitioner has since been promoted as Superintendent Grade I in April 1997.)

10. Contempt Petitions Nos. 148-50 of 1997 were dismissed by this Court on 17-3-1997 stating that there was no contempt or breach of the interlocutory orders of this Court dated 9-8-1994/16-10-1995 passed in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239). In these IAs and in his written submissions the petitioner contends that roster points have to be applied on a vacancy basis and as and when vacancies arise, even if the roster has exhausted itself This plea cannot be accepted in view of Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481). The petitioner also relies on Jagdish Lal ((1997) 6 SCC 538 : 1997 SCC (L&S) 1550) which contention can no longer survive.

11. There are thus no merits in these IAs. They are dismissed.

III. IAs by the Union of India : IAs Nos. 4 to 6 in IAs Nos. 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

12. IAs Nos. 4 to 6 are filed by the Union of India in IAs Nos. 1 to 3 in CAs Nos. 3792-94 of 1989 (Ajit Singh case (Ajit Singh v. State of Punjab, (1999) 7 SCC 209)). We have disposed of these IAs Nos. 1 to 3 filed by the State of Punjab for clarification by our judgment delivered today and described it as Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). The Union of India wants Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) to be confirmed. That has been done. These IAs Nos. 4 to 6 stand disposed of.

IV. IAs for impleadment : IAs Nos. 7 to 9 in IAs Nos. 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

13. IAs Nos. 7 to 9 are filed in IAs Nos. 1 to 3 in CAs Nos. 3792-94 of 1989 for impleadment of the All-India Confederation of SC/ST Organisations. The IAs are allowed. Our judgment in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) delivered today shall govern.

V. IAs by Railways : IAs Nos. 10 to 12 in IAs Nos. 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) Seniority of roster-point promotees will be Governed by Virpal (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813) as explained in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209)

14. IAs Nos. 10-12 of 1998 are by the Railways in IAs Nos. 1 to 3 in Ajit Singh case (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). (On 18-1-1999, by mistake, it is shown that these IAs are allowed. We recall the said order and restore the IAs to file.) The Railways want to say that Union of India v. Virpal Singh (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813) has not been correctly decided. The same point was raised by the reserved candidates in IAs Nos. 1 to 3 filed in Ajit Singh case (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) by the State of Punjab for clarification. We have dealt with this aspect in our main judgment in IAs Nos. 1-3 of 1997 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) and rejected the same. That will govern these IAs. In fact, admittedly the Railways have implemented Virpal (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S)

1 : (1995) 31 ATC 813) as per their orders dated 28-2-1997 in respect of selection and non-selection posts. Thus, there are no merits in these IAs Nos. 10-12 and they are liable to be dismissed. In other words, the question of seniority of the roster-point promotees will be on the basis of what was decided in Virpal (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) and as explained under Points 1 to 3 in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209).

Prospectivity of Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

15. So far as the "prospectivity" based on Sabharwal (R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481) is concerned, the decision on Point 4 of Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) will apply.

16. So far as the prospectivity of Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) is concerned, our decision in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) will apply in principle but with a slight modification of the cut-off date as stated above.

17. It appears that in the Indian Railways which is a very huge organisation, after Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) was decided, the said judgment could not be taken up for implementation immediately. Therefore, there were certain further promotions after 1-3-1996 on the basis of the continuous officiation of the roster-point promotees (reserved candidates) even though several general candidates had reached the promotional level before the reserved candidates moved further upwards. The Railways made a special plea through the learned Additional Solicitor General, Shri C. S. Vaidyanathan that such reserved candidates be not reverted from the higher post if promoted before 1-4-1997.

18. We are acceding to this request made on behalf of the Railways as a special case but subject to a reservation - which was accepted by learned Senior Counsel. We agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1-3-1996 but before 1-4-1997. But their promotions shall have to be deemed ad hoc as they were otherwise irregular and further their seniority in the promoted category shall however have to be determined by following Virpal (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813) and Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) as explained in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209) as if they were not so promoted. To give an example - in the case of roster points at two levels i.e. from Level 1 to Level 2 and Level 2 to Level 3, if the reserved candidate was promoted before 1-4-1997 to Level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate from Level 3 to Level 4 before 1-4-1997, the senior general candidate at Level 2 had reached Level 3, he has to be considered as senior at Level 3 to the reserved candidate because the latter was still at Level 3 on that date. But if such a general candidate's seniority was ignored and the reserved candidate was treated as senior at Level 3 and promoted to Level 4, this has to be rectified after 1-3-1996 by following Virpal (Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813), Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) as explained in Ajit Singh II (Ajit Singh v. State of Punjab, (1999) 7 SCC 209). In other words, if a reserved candidate was promoted to Level 4 before 1-4-1997, without considering the case of the senior general candidate who had reached Level 3 before such promotion such reserved candidate

need not be reverted, but the said promotion to Level 4 is to be reviewed and seniority at Level 3 has to be refixed and on that basis promotion/seniority at Level 4 (as and when the general candidate is promoted to Level 4) is again to be refixed. The seniority of the reserved candidate at Level 4 will be refixed on the basis of when his turn would have come for promotion to Level 4, if the case of the senior general candidate was considered at Level 3 in due time.

19. Subject to the above, IAs Nos. 10 to 12 are dismissed.

VI. IAs by Karnataka officers : IAs Nos. 13 to 15 in IAs Nos. 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239)

20. IAs Nos. 13 to 15 of 1998 have been filed by certain officers of Karnataka State who are the respondents in pending SLPs (C) Nos. 24115-16 of 1996. By an order dated 9-1-1998, this Court directed that the said SLPs be listed after the decision of the Constitution Bench. No orders are necessary in these IAs.

21. Civil Appeals Nos. 316-17 of 1999 and the IAs filed in CPs Nos. 148-50 of 1997 and the various other IAs filed in IAs Nos. 1 to 3 in Ajit Singh I ((1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) are disposed of accordingly.