

W. C. Monga

Vs

State of Punjab and Others

Civil appeal No. 5793 of 1999

(S. Saghir Ahmad, D. P. Wadhwa JJ)

06.10.1999

JUDGMENT

D. P. WADHWA, J-

1. Leave granted.

2. The appellant is aggrieved by the judgment dated 24-9-1997 of the division Bench of the Punjab and Haryana High Court dismissing his writ petition wherein he had claimed seniority as assistant Director (Industries) w.e.f. 8-2-1979. The appellant claimed to be senior to the respondents who had been appointed Assistant Directors (Industries) in September 1979. As per the seniority list dated 25-1-1996, the appellant has been shown to have held the post of Assistant Director (Industries) on 25-10-1982.

3. The appellant was appointed assistant district Industries Officer (ADIO) on 26-9-1975 in the pay scale of Rs 300-25-600. At that time pay scale for the post of Assistant director (Industries) was Rs 350-25-500-30-590/30-900. Service conditions of ADIO and assistant Director (Industries) at the relevant time were governed by the Punjab Industries Service (State Service Class II) Rules, 1966. Post of assistant director (Industries) was a promotional post from ADIO. Method of recruitment to the post Assistant Director (Industries) was as under:

(a) In the case of Deputy director, community Project Officer (Industries), Project Officer (Industries), Marketing Officer (Emporia Organisation), by promotion from amongst the Assistant Director, Assistant controller of Stores, District Industries Officer, Store Inspection Officer, Purchase Officer (Emporia Organisation), Textile Officer (Marketing) and Textile officer (Development) having at least five years' experience as such.

(b) In the case of Assistant Director, assistant controller of Stores, District Industries Officer, Store Inspection Officer, Purchase Officer (Emporia Organisation), Textile Officer (Marketing) and textile officer (Development)-

(i) by direct appointment on the basis of selection made through a competitive examination to be held by the Commission;

An official serving in the Industries Department shall also be eligible to sit in such examination, subject to his availing the three chances in addition to those which might have been availed of by him as a direct candidate before his joining the

service, provided that-

1. he fulfils the minimum qualifications specified for the posts in appendix 'B' to these rules;

(2) he has not attained the age of thirty-five years;

1. he has not less than four years' service in the Department on the first day of January next preceding the last date fixed by the commission for the submission of application;

(ii) by promotion from amongst the Assistant district Industries Officers, development Officers, Planning-cum-Survey Officers, Assistant marketing Officer (Emporia Organisation) having at least five year's experience as such:

Provided that fifty per centum posts shall be filled in by method specified in clause (i) and fifty per centum posts shall be filled in by method specified in clause (i) and fifty per centum posts shall be filled in method specified in clause (ii)."

4. As per these rules, post of assistant director was equivalent of Store Inspection Officer and other posts and mentioned in rule 9 above. These 1966 Rules were repealed by the new rules called the Punjab Industries Service (Class II) Rules, 1992. Both the rules of 1966 and 1992 were made in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The 1992 rules came into force on 17-2-1992. Rule 20 of the 1992 Rules provides for repeal and savings and it is as under:

"20. Repeal and Savings.- The Punjab Industries Service (State Service class II) Rules, 1966, are hereby repeals:

Provided that any order issued, or any action taken under the rules so repealed, shall be deemed to have been issued or taken under the corresponding provisions of these rules."

5. In the 1992 Rules, post of Assistant Director has been shown as equivalent to Functional Manager/Store Inspection Officer/Assistant controller of Stores/Assistant Director (Data)/Research Officer.

6. There is history of an earlier writ petition filed by the appellant in the High Court questioning the appointment of the respondents who were appointed as Assistant directors in September 1979. That writ petition was dismissed on 17-7-1981. We, however, need not refer to the proceedings in that writ petition for the purpose of considering the controversy involved in this appeal. The contention of the appellant, in brief, is that he was holding the post of Store Inspection Officer from 28-11-1977 which is equivalent to that of Assistant director and, thus, he is senior to the order appointing the appellant as store Inspection Officer, we find that on 28-11-1977 which is equivalent to that of assistant director and, thus, he is senior to the assistant directors who were appointed in September 1979. If we refer to the order appointing the appellant as store Inspection Officer, we find that on 28-11-1977 certain postings/transfers were made in the Department of Industries and the appellant was shown as assistant director (Industries) Officer transferred to store Inspection Officer in the office of Additional controller of Stores, Punjab "against a vacant post to own pay scale". Considering everything in favour of the appellant, we find

that under the 1966 Rules, which were in force at the time, the appellant could not have been promoted to the post of Assistant Director till he had completed 5 years of service as ADIO which admittedly he could not have put in till the year 1980.

7. It is significant to note that though the appellant was discharging the function of assistant Director from 28-11-1977 but he was in the pay scale of ADIO. He could not have been promoted to the post of Assistant Director against the Rules which are statutory. Thus, the appellant must rank junior to the assistant directors appointed in September 1979. We are not going into the other contentions raised by the appellant and even if we consider his case from all possible points in his favour, it is difficult to see as to how he could claim his right to the post of Assistant Director (Industries) before September 1975. As a matter of fact, the appellant was promoted to the post of Assistant director (Industries) on a purely temporary basis w.e.f. 25-10-1982 for a period of six months which was subject to the approval of the Punjab Public Service commission. The case of the appellant has been that the post of ADIO was kept in abeyance from 8-2-1979 as the Department of Industries was being revamped under a certain scheme of the Central government and that he was working as functional Manager, a post equivalent to Assistant Director (Industries) and, therefore, he should rank senior to other Assistant Directors (Industries) appointed in September 1979 as he has been working as Functional Manager w.e.f. 8-2-1979. There is no order promoting the appellant to the post of Functional Manager. Assistant Directors (Industries), Who were appointed in September 1979, were by way of direct recruitment through the Punjab Public Service commission. There is no merit in this submission of the appellant as well. The appellant thus cannot be considered as senior to those respondents appointed as Assistant Directors (Industries) earlier in time than the appellant.

8. We uphold the impugned judgment of the High Court and dismiss the appeal. Parties are directed to bear their own costs.