

PUNJAB AND HARYANA HIGH COURT

Roshan Lal

Vs

Union of India

Civil Writ No. 686 of 1966

(R.S. Narula, J.)

20.09.1966

JUDGMENT

R.S. Narula, J.

1. This writ petition is mainly based on a complaint about the alleged failure of the respondents to effectively implement the directive of the Central Government dated April 18, 1965 under Section 117 of the States Reorganisation Act, 37 of 1956 (hereinafter called the Act), relating to pay and other matters concerning officers included in the final joint seniority list of the group of services consisting of Superintendents Deputy Superintendents, Assistants-in-charge and Assistants of the Punjab Civil Secretariat consequent on the merger of the erstwhile Pepsu State with that of trip State of Punjab.

2. At the time of the merger of the two States on October 31, 1956 the petitions was holding the post of Assistant in the Civil Secretariat of the Patiala and East Punjab States Union (commonly known as PEPSU) in a substantive permanent capacity in the time-scale of pay of Rs. 150-10-300. He was consequently integrated with effect from November 1, 1956, in the joint integrated cadre of Assistants in the larger State of Punjab. In due course, he was promoted as Deputy Superintendent since June 23, 1962, and has been serving as such since then. In the provisional joint seniority list of Superintendents, Deputy Superintendents and Assistants of the enlarged Punjab Civil Secretariat prepared in July 1958, which was circulated in September 1958, the inter se seniority of the petitioner on the one hand and of Sushil Rattan Chopra (respondent No. 3) and Kuldip Chand Thakar (respondent No. 4) on the other hand was shown as follows :-

(i) Respondent No. 3 at serial No. 203;

(ii) Petitioner at serial No. 234; and

(iii) Respondent No. 4 at serial No. 282. (In paragraph 4 of the writ petition, it had been claimed that the petitioner had been placed in the provisional list at serial No. 233 but it has been averred in the corresponding paragraph of the State's written statement that his correct position in the provisional joint seniority list was at No. 234. Though this slight

discrepancy does not make any material difference, I have taken the position of the petitioner as admitted by the respondents to be the correct one for the purposes of deciding this case.)

3. In 1960 the Punjab Government framed an Assistant Section Officers scheme. By an order dated March 14, 1961 (Annexure-B), it was decided by the Punjab Government to fix inter se seniority of the officials who were at that time working as Assistant Section Officers on the basis of the position obtained by them in the competitive examination held for their recruitment. In that merit list respondent No. 3 was placed at No. 1 and respondent No. 4 at No: 2. It has, however, to be borne in mind that the said order (Annexure-B) made it explicitly clear that the merit list contained therein was made only for the purpose of fixing inter se seniority of the Assistant Section Officers and the same neither purported to nor was intended to disturb the inter se seniority of the erstwhile Assistants including Assistant Section Officers in the joint seniority list. Paragraph 2 of the order made this clear beyond any doubt in the following words :-

"Their (that of Assistant Section Officers) seniority in their normal line as Assistants will remain unchanged and their promotion as Deputy Superintendents/Superintendents will be governed by their seniority as Assistants." The case of the petitioner is that because of the express, valid and binding provisions made in paragraph 2 of the order dated March 14, 1961 (Annexure-B), the petitioner did not care to take any examination held from time to time for recruitment of Assistant Section Officers, as adopting such a course would, according to the abovesaid order, have made no difference in the chances of promotion of the petitioner to the post of a Superintendent. On October 14, 1963, the Punjab Government issued an order for continuing on a permanent basis, as a part of the Secretariat system, the Assistant Section Officers scheme which had been introduced in 1960 on mere experimental basis. The said order (produced by the respondents at the hearing and marked Exhibit R-1/A) further directed that there would thereafter be a separate cadre of Assistant Section Officers in the Civil Secretariat. The order did not abrogate the safeguard and the protection which had been given to the Assistants, who had not chosen to take the Assistant Section Officers' examination, in the Government's directive dated March 14, 1961 (Annexure-B), in the matter of inter se seniority of the relevant employees in the joint seniority list.

4. The Punjab Civil Secretariat (State Service, Class II) Rules, 1963, hereinafter referred to as the 1963 Rules, were promulgated by the Governor of Punjab under the proviso to Article 309 of the Constitution for regulating the recruitment and conditions of service of persons appointed to the Class II State Service in the Punjab Civil Secretariat. The Rules came into force from 27-12-1963, the date of their publication in the "Punjab Government Gazette". Rule 2(b) and (d), 3, 5, 8 (1) (a) and (3), 9(3) and 16 alone appear to be relevant for deciding this case and the same are, therefore, quoted below :-

"2 (b) "direct recruitment" means recruitment made otherwise than by promotion or by transfer of an official already in service of a State Government or of the Union

Government;

(d) "service" means the Punjab Civil Secretariat (State Service, Class II).

3. The service shall be comprised of the posts shown in Appendix A to these rules in two separate groups mentioned therein;

Provided- that nothing in this rule shall affect the right of Government to make additions to or reductions in any group of the service either permanently or temporarily.

5. Appointments to the Service shall be made by Government after such consultation with the Commission as may be necessary.

8 (1) The posts in the Service shall be filled in the following manner :-

(a) In the case of Superintendents other than the Superintendent in the Press Branch -

(i) By promotion from amongst Deputy Superintendents, Assistants-in-charge and Assistants, who are members of the Punjab Civil Secretariat (State Service, Class III) with minimum experience of one year as a Deputy Superintendent or a total experience of 10 years as an Assistant; or

(ii) By direct recruitment or by transfer of deputation of an official already in Government service holding a ministerial post :

Provided that appointment in this manner will be made only in exceptional circumstances, namely, when it becomes necessary to appoint a person with technical or specialised experience or qualifications to one of the posts included in the Service and when a person considered suitable is not available for promotion within the Civil Secretariat

8(3) Appointment to any post by promotion shall be made strictly on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone.

9 (3) On the completion of the period of probation of a person, the appointing authority may -

(a) if he was appointed against a permanent vacancy, confirm such person from the date of his appointment; or

(b) if he was appointed against a temporary vacancy, confirm such person from the date from which a permanent vacancy exists; or

(c) if there is no permanent vacancy, declare that he has completed his probation satisfactorily; or

(d) if his work or conduct has, in its opinion, not been satisfactory, dispense with his

service; if he was by direct recruitment; or if he was appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment permit; or

(e) extend his period of probation and thereafter pass such orders as it would have passed on the expiry of the first period of probation :

Provided that the total period of probation including extension, if any, shall not exceed three years.

16. Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may, by an order, dispense with or relax the requirements of that rule to such extent and subject to such Conditions as it may consider necessary for dealing with the case in a just and equitable manner."

5. In Appendix ' A ' (referred to in rule 3) we are concerned with Group I only dealing with posts of Superintendents (also called Section Officers). In the third column of the relevant part of the Appendix, the number of posts (permanent) of Superintendents (including Section Officers) is mentioned to be 57 as on the 14th of October, 1963.

6. On December 27, 1963, respondent No. 3 was promoted as Superintendent in the grade of Rs. 350-650. On January 7, 1965, respondent No. 4 was similarly promoted. At the time of their respective promotions respondents Nos. 3 and 4 were serving as Assistant Section Officers though the petitioner was admittedly serving at that time as a Deputy Super intendent. As disclosed in paragraph 6 of the State's written statement, 15 posts of Assistant Section Officers, which had been in existence for three years or more, were made permanent by the Punjab Government with effect from April 1, 1964, After mentioning the above fact It has been further averred in paragraph 8 of the written statement as below :-

"It was also decided by Government that in order to afford further avenue of promotion for Assistant Section Officers as incentive to good work, a reasonable percentage of the posts of Superintendents should be reserved for promotion from amongst Assistant Section Officers - percentage being the same as the percentage which the branches manned by Assistant Section Officers bear to the branches the rotation being vacancy/vacancies in a block Assistant Section Officer."

7. On November 18, 1964 Superintendents that the last would go to an a final joint seniority list (Annexure-C) was prepared in respect of the group of services consisting of Superintendents, Deputy Superintendents, Assistants-in-charge and Assistants in the Punjab Civil Secretariat. According to this list the position of the petitioner and respondents Nos. 3 and 4 was as below :-

(i) Petitioner was at serial No. 189;

(ii) Respondent No. 3 was at serial No. 268; and

(iii) Respondent No. 4 was at serial No. 282.

8. In exercise of the powers conferred by Section 117 of the Act, the Central Government directed the Government of Punjab to determine the seniority, pay and other matter concerning officers included in the final gradation list in accordance with the principles set out in the said directive dated April 18, 1963 (Annexure-D). The relevant directions contained therein were in the following words :-

"1. Promotions made before 27th February, 1961, on the basis of the provisional Gradation Lists shall not be disturbed. Provided that the claims of officers for future promotion on the basis of seniority determined in accordance with the principles set out hereafter shall not be prejudiced.

2. Promotions made after 27th February, 1961, on the basis of the Provisional Gradation Lists shall be reviewed to the extent necessary to give effect to the claims of the officers who are senior in the final Gradation Lists to the officers who have been promoted;

3. The seniority of an officer who would have been promoted if the final Gradation Lists had been available on 1st November, 1956, should be counted from the date on which an officer junior to him has started continuous officiating under the Provisional Gradation Lists.

4. The pay of an officer whose promotion and seniority is determined in accordance with clauses (2) and (3) shall be fixed at a stage which he would have attained in the time-scale of the higher posts had he been promoted to that post on the date set out in clause (3)."

9. In accordance with the said directive, the promotion of respondents Nos. 3 and 4 (which was in both cases subsequent to 27th February, 1961) had to be reviewed if the said promotion had been made on the basis of the provisional gradation list in order to give effect to the claim of the petitioner who was admittedly senior to respondents Nos. 3 and 4 in the final gradation list (the joint seniority list- Annexure-C). In pursuance of paragraphs 2 and 3 of the above-quoted directive, the petitioner had to be promoted before respondents Nos. 3 and 4. If all the three persons had either been in the same cadre or in any of the equated cadres at the time of the impugned promotions on the assumed fiction that the final gradation list (wherein the petitioner was shown as the seniormost amongst three persons concerned) had been available on the 1st November 1956; and the petitioner was to be deemed to have become a Superintendent on the date on which respondent No. 3 had started continuously officiating under the provisional gradation list, that is, with effect from December 27, 1963. The main grievance of the petitioner, an analysis of which is given in a later part of this judgment is that the respondents have sidetracked the above-quoted directive and that also in an unauthorised and illegal manner. The petitioner, therefore, came up to this Court under Article 226 of the Constitution on April 6, 1966, to compel the State of Punjab to observe the final gradation list (Annexure-C) for all intents and purposes including promotions and reversions and to direct the State to implement the directive of the Central Government (Annexure-D) by reverting respondents Nos. 3 and 4 and promoting in their place the petitioner as a Superintendent in any one of the vacancies caused by those reversions. Interim stay of promotion of Assistant Section Officers as Superintendent was

also prayed for. The writ petition was admitted by the Motion Bench (S.B. Kapoor and P.D. Sharma JJ.) on April 7, 1966, but interim stay was not granted. In the written statement of the State consisting of the affidavit of Shri R.D. Mathur, Assistant Secretary to the Government Punjab, most of the relevant facts have been admitted. Justification for the impugned promotions is contained in paragraph 6 of the return, which paragraph is reproduced below :-

"Regarding Para 6 of the petition, it is stated that for promotion as Superintendent (also called Section Officer) in the Punjab Civil Secretariat, Rule 8 of the Punjab Civil Secretariat (State Service Class II) Rules, 1963, lays down the minimum experience of one year as a Deputy Superintendent or a total experience of 10 years as an Assistant. The respondent No. 3 was appointed as Assistant in the Punjab Civil Secretariat with effect from 16-8-1949. The respondent No. 4 was appointed as Assistant in the Civil Secretariat on 6-12-1950. They were promoted as Section Officers (Superintendents) on 27-12-1963 and 7-1-1965 respectively. Both of them possessed the requisite length of service as Assistants as laid down in Rule 8 *ibid* and were thus eligible for promotion as Superintendent (Section Officer).

Before their promotion as Section Officers, the respondents Nos. 3 and 4 were working as Assistant Section Officers. The Assistant Section Officer Scheme, under which one A. S. O. in the scale of Rs. 250-20-450, assisted by a junior scale stenographer in the scale of Rs. 100-5-150/5-175 replaces two Assistants in the scale of Rs. 150-10-200/10-300 and one clerk (record-keeper) in the scale of Rs. 60-4-80/5-120/5-175, was introduced in the Punjab Civil Secretariat in 1960 with a view to achieving the three-fold objective of improving efficiency, speeding up disposal of work and saving as a solution of the problem of the expanding numbers in the Civil secretariat that tended to make it an unwieldy organisation. The A. S. Os. were appointed from amongst the Deputy Superintendents /Assistants with at least three years service as Assistant, on the basis of a competitive examination held by the Punjab Public Service Commission. The working of the system, which was originally introduced on experimental basis, was reviewed in 1962. The system was rated a success and was brought on to a regular and permanent footing. Formal orders for the continuance of the system on a permanent basis, as a part of the Secretariat system, were issued vide the order of the Governor of Punjab dated October 14, 1963. In accordance with the Government policy of making permanent the posts which were in existence for 3 years or more, 15 posts of Assistant Section Officers sanctioned in 1960 were made permanent with effect from 1-4-1964. It was also decided by Government that in order to afford further avenue of promotion for Assistant Section Officers as incentive to good work, a reasonable percentage of the posts of Superintendents should be reserved for promotion from amongst A. S. Os. percentage being the same as the percentage which the branches manned by A. S. Os. bear to the Superintendents' branches, the rotation being that the last vacancy/vacancies in a block would go to an Assistant Section Officer. It was further decided that before an A. S. O. becomes eligible for promotion as Superintendent, he should have rendered ten years service as an Assistant and that service as an A. S. O. should be given weightage; one year's service as an A. S. O. being counted as equivalent to 1½ years service as an Assistant. This decision was given

effect to from the 16th September, 1963, in consultation with the Punjab Public Service Commission, who conveyed their necessary concurrence to the reservation of vacancies of Superintendents for the Assistant Section Officers in the manner proposed by the Government. In accordance with the above decision of the Government, the respondents Nos. 3 and 4, whose position in the seniority list of Assistant Section Officers was at serial Nos 1 and 2 respectively, and who had a very good record of service, were promoted as Superintendents. Their promotion as Superintendents was approved by the Punjab Public Service Commission. Both of them it may be mentioned, had competed successfully in the A. S. Os. examination held by the Commission. Like respondents Nos. 3 and 4 and all other Deputy Superintendents/Assistants with at least 3 years service as Assistant, the petitioner (Shri Roshan Lal Sharma) was also eligible to take the said A. S. Os. examination. Had he obtained either of the first two positions in the said examination, he would also have been considered for promotion as Superintendent against the quota of posts earmarked for A. S. Os. While taking the decision regarding the continuance of the Assistant Section Officers' system on a permanent basis, it was also decided by Government that necessary provision regarding the system be made in the relevant rules. However, on the assumption of office by the new ministry in July 1964, certain Assistants and clerks submitted a spate of representations against the Assistant Section Officers' system it was, therefore, decided to refer the question of continuance or otherwise of the system to the State Establishment Board for consideration. The views of the members of the Board were, however not unanimous. These views were considered by Government and it was decided that the Assistant Section Officers' system should remain under study for a period of six months whereafter the case would be reviewed and a final decision taken. The period of six months has expired but the final decision has yet to be taken by Government. In the circumstances, it has not so far been possible to make a specific provision regarding the promotion of Assistant Section Officers as Superintendents in the service rules, as was decided before the assumption of office by the Ministry headed by Comrade Ram Kishen.

Rule 8(3) of the Punjab Civil Secretariat (State Service Class II) Rules provides as under :

'Appointment to any post by promotion shall be made strictly on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone'. In view of the above explicit provision in the rules, the petitioner is not entitled to claim promotion as Superintendent on the basis of seniority alone".

10. In paragraph 7 of the return, it has been added that the appointment of Assistant Section Officers as Superintendents could be governed by their seniority as Assistants for so long as there was no separate cadre of Assistant Section Officers; but that a separate cadre of Assistant Section Officers having come into existence by the order of the Governor of Punjab dated October 14, 1963 (Annexure-R. I/A) the promotion of respondents Nos. 3 and 4, who held the first two positions in the separate seniority list of Assistant Section Officers, was fully justified as their promotion as Superintendents could not be governed by their seniority as Assistants. It has also been averred in the written statement that the promotion of the Assistant Section Officers to the post of Superintendent had been approved by the then Chief Minister of Punjab and that, therefore, the approval of the Council of Ministers was not necessary. Regarding the position of

the Assistant Section Officers, what is stated in paragraph 10 of the written statement is that they were not at all affected by the final gradation list published on the basis of the directive of the Central Government dated April 18, 1965, which was in respect of the cadre of Assistants etc., whereas respondents Nos. 3 and 4 belonged to a separate cadre of Assistant Section Officers. On the legal aspect of the matter, it has been stated in the return that in view of sub-rule (3) of Rule 8 of the 1963 Rules, the petitioner is not entitled to claim promotion as a matter of right on the basis of seniority alone and that in any case the posts held by respondents Nos. 3 and 4 cannot become available for being offered to the petitioner since those posts were earmarked for Assistant Section Officers.

11. Kujdip Chand Thakur (respondent No. 4) has filed a separate written statement dated August 4, 1966. It has mainly been emphasised by him that he had been promoted as "section officer" from the rank of Assistant Section Officer" (to which latter rank he had been promoted as a result of competitive test conducted by the Punjab Public Service Commission) in accordance with the decision of the Punjab Government to reserve vacancies in the rank of Superintendents/Section Officers for the Assistant Section Officers in proportion to the number of branches in the Punjab Civil Secretariat manned by such Assistant Section Officers vis-a-vis the number of branches manned by Superintendents under the old system. According to respondents Nos. 3 and 4 they had not been promoted on the basis of the provisional gradation list drawn up by the Punjab Government after the integration of the two States. On that basis it has been claimed that respondents Nos. 3 and 4 are not at all affected by the directive of the Central Government. Respondent No. 4 has added in his return that he had already been confirmed in substantive permanent capacity as Assistant Section Officer by the Punjab Government and, therefore, he no longer holds any lien whatsoever on the post of an Assistant and cannot thus claim any promotion to the post of Deputy Superintendent/ Superintendent on the basis of his seniority in the list of Assistants and Deputy Superintendents in the Punjab Civil Secretariat. The averment in the written statement of respondent No. 4 to the effect that Roshan Lal Sharma petitioner had also been promoted as Superintendent in consequence of the implementation of the directive of the Central Government with effect from July 13, 1966, has not been denied by the petitioner, but it is stated on his behalf that he was so promoted in a leave vacancy and has since reverted to his substantive post of an Assistant.

12. Before dealing with the contentions of the petitioner it appears to be necessary to notice some of the admitted facts. Petitioner admits that his seniority has been properly fixed in the final joint gradation list dated November 18, 1964 (published in the official gazette on November 27, 1964). It is not disputed that none of respondents Nos. 3 and 4 was promoted to the post of Superintendent before February 27, 1961, and that on the respective dates of his promotion, each one of them was acting as Assistant Section Officer. It is also to be noticed that the Assistant Section Officers scheme had been brought in under executive orders of the Government and it is admitted that no rules for promotion of Assistant Section Officers to the post of Superintendent have been framed even till today. It is further clear that Rule 8 of 1963 Rules (Annexure-A) deals with State Service Class II, the service to which Superintendents belong. It is admitted that Deputy Superintendents, Assistant Section Officers and Assistants belong to State Service Class III. Under Rule 8 (supra; posts of Superintendents can be filled either by promotion under Clause (a) of sub-rule (1) of Rule 8 or "by direct recruitment" under Clause (ii) of the same sub-rule. It is admitted case of both parties that the promotion of Assistant Section Officers in State Service Class III to the Post of Superintendent in the State service Class II could not be deemed, to

amount to "direct recruitment" within the meanings ascribed to that expression in Clause (b) of Rule 2. The only category of persons, who could be appointed as Superintendents under Rule 8(1)(a)(i) of the 1963 Rules on and with effect from December 27, 1963, were -

- (a) Deputy Superintendents with a minimum experience of one year as such;
- (b) Assistants-in-charge; and
- (c) Assistants who were members of the State Service Class III in the Punjab Civil secretariat and who had to their credit minimum experience of ten years as Assistants.

13. Rule 8 of the 1963 Rules does not permit the appointment of any other Government servant to the post of a Superintendent in the Punjab Civil Secretariat (State Service Class II) by promotion. The averment of respondents Nos. 3 and 4 to the effect that they lost their Ken on their respective permanent posts of Assistants on being appointed as A. S. Os. is not supported by Government and does not appear to be quite correct in view of the admitted fact that the A. S. O. scheme is still at an experimental stage and has not been made permanent so far. That being so, the case of respondents Nos. 3 and 4 for promotion to the post of Superintendent could, if at all, be considered only qua their seniority as Assistants and not as A. S. Os. The argument of the respondents is that even after the coming into force of the 1963 Rules, it was open to the State Government to make appointments to the posts of Superintendents in the Punjab Civil Secretariat otherwise than in accordance with Rule 8 by virtue of the executive power of the State under Article 162 of the Constitution. I will deal with this point later. The last factual aspect of the case, which appears to be relevant, is that respondent No. 3 as well as respondent No. 4 had to their credit more than 10 years service as Assistants (in State Service Class III) at the time of their promotion to the post of Superintendents, though they were not, at that time, serving as Assistants but as Assistant Section Officers.

It is also not disputed that the petitioner had not only put in more than ten years service as Assistant by December 1963 but had also by then qualified himself for promotion to the post of Superintendent on account of his having put in service as Deputy Superintendent for more than one year. It is, therefore, not contested that the petitioner as well as respondents Nos. 3 and 4 were all qualified and eligible under Rule 8 of the 1963 Rules for promotion to the post of Superintendent and there was nothing against any one of them which might have stood in the way of their promotion.

14. The contention of Mr. Ambalvi, learned counsel for the petitioner, is that no Assistants, whose names were included in the final joint gradation list could be taken out of that list, so as to separate those persons from other Assistants duly qualified and eligible for promotion to State Service Class II by fixing a reserve quota for A. S. Os. Learned counsel argued that the action of the State Government reserving certain posts for Assistant Section Officers and promoting some of the juniors to the petitioner on that basis is void, illegal and ineffective because :-

- (1) it amounts to side-tracking and flouting all the intents and purposes of the binding directive of the Central Government dated April 18, 1965;

(2) Such reservation could not be made Otherwise than by the framing of statutory rules under Article 309 of the Constitution or by means of a law passed in that respect by the appropriate Legislature;

(3) In any case on and with effect from December 27, 1963, the date of the coming into force of the 1963 Rules, no promotions to the posts of Superintendents could be made Otherwise than strictly in accordance with Rule 8 of those rules and Assistant Section Officers are not at all entitled to be so promoted under the said rules;

(4) The reservation of posts for some of the Assistants on the ground that they were better qualified on taking a competitive departmental examination amounted to change of conditions of the service to which the petitioner as well as respondents Nos. 3 and 4 belonged and the same could not be implemented without the previous sanction of the Central Government required under Section 115(7) of the Act, and

(5) No rule framed by the Government had abrogated the guarantee contained in paragraph 2 of the State Government's order dated March 14, 1961 (Annexure-B). The impugned action of the authorities amounted to direct violation of the guarantee contained in the said paragraph to the effect that the seniority of erstwhile Assistants in their normal line as Assistants was to remain unchanged and their promotion as Deputy Superintendents/Superintendents was to be continued to be governed by their seniority as Assistants irrespective of the promulgation of the Assistant Section Officers' scheme and in spite of the preparation of a separate inter se seniority list of Assistant Section Officers.

15. It was also contended that even if the alleged approval of the Chief Minister to the reservation of posts of Superintendents for Assistant Section Officers was deemed to amount to a rule, the same was invalid as the said provision for reservation had admittedly not been approved by the Council of Ministers and had not been published in the State Government's official gazette.

16. In support of his abovementioned contentions Mr. Ambalvi has first relied on an unreported Division Bench judgment of this Court (S. B. Kapoor and I.D. Dua, JJ.) - *Professor Ramanand, Mahendra College, Patiala v. Union of India*¹. The complaint of Professor Ramanand was described in the judgment of this Court in the following words :-

"The result in actual working has been, as submitted by the petitioners, that though theoretically the petitioners are senior to the respondent officers of the former Punjab State, many of the latter have already received promotions to the P. E. S. Class I, which the Punjab Government is determined not to disturb. It is urged that in point of fact there was no determination or directive by the Central Government that the past promotions would not be disturbed and arrears of seniority and pay would not be allowed, and these riders were added by the Punjab Government out of malice and merely in order to benefit the former Punjab Officers to whom by deliberately delaying decisions the State Government had given promotions in the vacancies in P. E. S. Class I that arose during the interval, and thus the injustice was sought to be perpetrated".

17. During the pendency of Rama Nand's writ petition, the Central Government issued an order dated April 18, 1965, under Section 117 of the Act giving directions to the Punjab Government to determine the seniority, pay and other matters concerning the officers Included in the final gradation list in accordance with the principles set forth therein (copy of the said directive is Annexure-D to the writ petition in the instant case). The attack against the validity of the Central Government's directive on the ground that it was outside the scope of its authority under Section 117 of the Act was repelled in Ramaiiand's case, Civil Writ No. 1278 of 1964, D/-2-11-1965 (Punj), and it was held that no part of the directive in question was ultra vires Section 117 or otherwise in excess of the statutory powers of the Central Government under the Act. While upholding the directive, it was observed by the Division Bench as follows :-

"In the directive dated the 18th April, 1965, the Government of India, has, after keeping before it the considerations of equity and fair-play, arrived at a compromise solution and promotions, which are safeguarded, are those which were made before the 27th February, 1961, that is, some four years before the date of the directive. As stated in the return submitted on behalf of the respondents, the directive has to be taken as a whole and the petitioners cannot select that part only which is favourable to them and ask the Court to quash the other part";

18. It is unnecessary to deal any further with the judgment of this Court in Professor Ramanand's case, Civil Writ No. 1278 of 1964, D/-2-11-1965 (Punj), as the validity, legality and binding nature of the directive (Annexure-D) has not at all been questioned before me by the respondents.

19. Counsel then referred to the unreported Judgment of a Division Bench of this Court (Meher Singh C.J. and D.K. Mahajan, J.) *Dated. 19-7-1966, in Joginder Singh Grewal v. State of Punjab*², Joginder Singh was B.Sc. (Agriculture) and was at the time of integration of the two States in Class II of the Punjab Agricultural Service. He was appointed as District Agricultural Officer with effect from January 10, 1957, on the advice of the Punjab Public Service Commission as a direct recruit and was confirmed in that post with effect from May 8, 1959. In April 1959 the Punjab Government effected by an executive order a change in the qualifications required for appointment to the post of Deputy Director (Agriculture) to which post Joginder Singh Grewal could have been entitled but for the new directions. According to the revised qualifications prescribed by the Punjab Government for the said higher post in Punjab Agricultural Service Class I, no one could be appointed to that post unless he held, in addition to a degree or diploma in Agriculture, an M.Sc. degree or at least 5 years practical experience in agricultural research. The first, out of the grievances of Joginder Singh Grewal before Grover J., who heard his writ petition in the first instance, was that by administrative or executive communication or letter, qualifications for eligibility for appointment to the post of a Deputy Director (Agriculture) could not be altered as was purported to be done by the Punjab Government's letter of April 1959, referred to above.

In the learned Judge's order of reference dated December 2, 1965 Grover J., observed in connection with the above mentioned first point raised by Joginder Singh Grewal as follows :

"As regards the first point raised by Mr. Doabia Rule 10 of Class I Rules lays down the qualifications for appointment by promotion. No minimum academic qualification, however, has been expressly or specifically mentioned in that rule. I cannot see, therefore, how it was open to the Government, by executive instructions, to add anything to the aforesaid rule by way of prescribing the minimum academic qualification, as was done for the post A Deputy Director (Agriculture). In the return, it has been maintained in categorical terms that only a person who had obtained M.Sc. degree in Agriculture was entitled to be promoted to that post, since that had been laid down in the letter (Annexure-D) at least with effect from the year 1963, Mr. M.S. Pannu for the State says that it was within the powers of the executive Government to lay down some test of merit for promotion and that is why up to 1963 a degree or diploma in agriculture from Indian or foreign University together with five years' practical experience in agricultural research or extension was laid down as the minimum qualification required for the post of Deputy Director (Agriculture) and from 1963 onwards the minimum qualifications were M.Sc. degree in agriculture and five years' practical experience in agricultural research or extension. It is also pointed out that the promotions by which the petitioner feels aggrieved were made before 1963; and, therefore, the petitioner could not have any legitimate grievance in respect of the laying down of minimum qualifications by the aforesaid memorandum. It must not be forgotten, however, that the position of the State in the return still is that since the petitioner does not possess those qualifications, he would be debarred for all times from being promoted to the post of Deputy Director (Agriculture). I am of the view that since Class I Rules did not lay down any such limitation or qualification, the executive Government could not amend or alter the rules or add to them by prescribing any particular qualifications". While allowing the writ petition by its order dated July 19, 1966, only on the basis of the aforesaid first contention of Joginder Singh Grewal, the Division Bench reproduced verbatim the above-quoted passage from the order of reference and observed that the learned Judges were clearly of the view that the observations of the learned Single Judge were correct and no exception could be taken to them.

20. The only other case, to which counsel for the petitioner has referred, is the unreported judgment of their Lordships of the Supreme Court in *B. N. Nagarajan v. State of Mysore*³, Both sides have relied on this judgment. It was contended on behalf of the respondents that on the authority of the judgment of their Lordships of the Supreme Court in *Ram Jawaya Kapur v. State of Punjab*⁴, and on the basis of the judgment of their Lordships in Civil Appeals. Nos. 430 to 461 of 1964, D/-1-3-1966 : (reported in AIR 1966 Supreme Court 1942) (supra), State Government has the executive power in relation to all matters with respect to which the Legislature of a State has the power to make laws and the Governor of a State has the power to make rules. Article 309 of the Constitution was held not to abridge the power of the executive to act under Article 162 of the Constitution. On the other hand, the learned counsel for the petitioner laid emphasis on the following observations in the aforesaid judgment of the Supreme Court in the case of B.N. Nagarajan, Civil Appeals Nos. 430 to 461 of 1964, D/-1-3-1966 : (reported in AIR 1986

Supreme Court 1942) :-

"It is hardly necessary to mention that if there is a statutory rule or Act on the matter, the executive must abide by that Act or rule and it cannot, in exercise of the executive power under Article 162, ignore or act contrary to that rule or Act".

(A short note of the unreported judgment of the Supreme Court appears at serial No. 133-A at page 92 of 1966 Supreme Court Notes : (reported in AIR 1966 Supreme Court 1942).

21. The legal position which appears to emerge from a study of the relevant provisions of the Act and of the cases referred to above may be summarised thus :-

(1) In the absence of any statutory rules governing appointment to any State Service, the appropriate State may recruit members to that service in any manner it likes in exercise of its executive powers under Article 162 of the Constitution provided the guarantees contained in Articles 14 and 16 of the Constitution are not infringed.

(2) So long as the action of the Government does not violate any fundamental or statutory rights of the person concerned, mere absence of a statute or a rule justifying a particular manner of appointment will not invalidate it.

(3) If, however, there is in existence any valid law or statutory rule relating to appointment to a particular service, the executive is bound to abide by the relevant law or rule and has no jurisdiction to ignore, outstep or violate the same under the guise of executive power. In short, if there is any legislation or any set of rules governing the conditions of recruitment etc., to a particular cadre, the otherwise wide executive power of the State Government is automatically subjected to the relevant law or set of rules and all actions of the executive sought to be controlled by the relevant provision of law must conform to it. In other words, when statutory rules direct anything to be done in a particular way, the executive is bound to comply with the directions contained in those rules and any action of the State Government contrary to those rules would be void and consequently' liable to be struck down in appropriate legal proceedings.

(4) The State Government is bound to carry) out the orders of the Central Government passed under Section 117 of the Act.

22. Applying the above principles of law to the admitted facts of this case, it is clear that :

(i) The 1963 Rules promulgated earlier had come into force from the earliest point of time on the 27th December, 1963.

(ii) That neither respondent No. 3 nor respondent No. 4 had been promoted as Section Officer or Superintendent prior to the 27th of December, 1963.

(iii) That a mere reading of Rule 8 of the 1963 Rules leaves no doubt that the promotion of respondents Nos. 3 and 4 could not possibly be affected under that rule.

(iv) That there were no other rules in force at the relevant time governing promotion to the post of Superintendent/Section Officers except Rule 8 of the 1963 Rules.

(v) It is admitted in paragraph 6 of the written statement of the Government in so many words that "it has not so far been possible to make a specific provision regarding the promotion of Assistant Section Officers as Superintendents in the Service Rules, as was decided before the assumption of office by the Ministry headed by Comrade Ram Kishen'. In fact, it is further admitted in the return filed by the Government "that the Assistant Section Officers system has been directed to still remain under study for some time more after which time the case would be reviewed and a final decision taken whether the system should be adopted or not". The Government has categorically admitted that despite the expiry of the period fixed for the purpose no final decision about adopting or nullifying the scheme of Assistant Section Officers has yet been taken by the Punjab Government.

(vi) As a necessary corollary to the above finding the promotion of respondents Nos. 3 and 4 is in direct contravention of Rule 8 of the statutory 1963 Rules framed under the proviso to Article 309 of the Constitution.

(vii) That the language as well as the intention of the Central Government's directive (Annexure-D) under Section 117 of the Act has been violated by the Government in this case inasmuch as the petitioner as well as respondents Nos. 3 and 4 were borne on the joint integrated emulation list from which respondents Nos. 3 and 4 were promoted after the 27th February, 1961, to a higher post contrary to their seniority in the final gradation list and on the basis of a fictitious inter se seniority between them and some of their other counter-parts, 'who had been similarly picked and chosen out of the members of the joint cadre.

(viii) That subsequent to the directive of the Central Government (subsequent to the 18th April, 1965) the State Government did not carry out the direction contained in paragraph 2 thereof and has declined to review the order of promotion of respondents Nos. 3 and 4 on the ground that their names had not been taken out of the joint seniority list. If this was a good defence to non-implementation of the Central Government's directive, it would indeed have been open to the State Government to treat the directive as a dead letter.

(ix) It is admitted that in the final joint seniority list of Assistants, petitioner was and continues to be far senior to respondents Nos. 3 and 4. If the guarantee contained in paragraph 2 of the State Government's order dated March 14, 1961 (Annexure-B) (which guarantee does not appear to have been withdrawn at any time and which is consistent with the Central Government's directive) had not been violated, the impugned action could never have been taken by the State Government.

(x) The impugned action of the State Government appears to have been cleverly planned to side-track the Central Government's directive, which would be contrary to the statutory

requirements of Section 117 of the Act.

23. Learned counsel for the respondents first contended (as pleaded in the written statement also) that certain posts of Superintendents/ Sections Officers had been reserved for Assistant Section Officers in order to give them incentive for good work. It has been beyond me to understand why it was not necessary to give a similar incentive to the larger number of Assistants for doing good work particularly when that would have been consistent with the statutory rules. It was then urged by Mr. H.L. Soni on behalf of the State that only two posts had been reserved for Assistant Section Officers and both of them had gone to respondents Nos. 3 and 4, who happened to be at the top of the separate seniority list prepared for the Assistant Section Officers. This was sought by him to be justified on the authority of the judgment of the Andhra Pradesh High Court in *A. Muralidhar v. State of Andhra Pradesh* ⁵That case related to reservation of certain seats for admission in a College and does not at all appear to be relevant for the decision of this writ petition. Mr. H.S. Gujral, Advocate for respondent No. 4, supplemented the argument of the learned counsel for the State by urging that the 1963 Rules had not been violated as they related only to 57 posts of Superintendents which had later been increased to 73 posts, whereas the posts against which respondents Nos. 3 and 4 have been promoted were amongst temporary posts of Superintendents, which are not included in the posts mentioned in the Appendix attached to the 1963 Rules. The basis of the argument of Mr. Gujral in that rule 3 of 1963 Rules provides that ' "service" shall be comprised of the posts shown in Appendix A to these Rules' and that the relevant part of Appendix A mentions only 57 posts of Superintendents (also called Section Officers). The fallacy in the argument of Mr. Gujral is based on the scope of the word "service" as contained in rule 3. "Service" has been defined in rule 2(d) of the said Rules to mean "The Punjab Civil Secretariat (State Service, Class II)". The expression "service" in rule 3, therefore, refers to the cadre mentioned in rule 2(d) subject to the proviso to rule 3, which authorises the Government to make additions to or reductions in any group of the service "either permanently or temporarily". The opening part of the notification (Annexure-R.I/B) shows that the Governor of Punjab had made the 1963 Rules for "regulating the recruitment and conditions of service of persons appointed to the Punjab Civil Secretariat (State Service, Class II)" and that the Rules had to govern the entire service known by that name including the number of posts that might subsequently have been added either on permanent or temporary basis to those mentioned in Appendix A to those Rules. It was lastly contended by Mr. Gujral that even if the status of respondents Nos. 3 and 4 as Assistant Section Officers was ignored, they were entitled to have been promoted to the post of Superintendent under rule 8 as each one of them had completed more than ten years service as an Assistant. On the basis of these premises, it could no doubt have been argued that respondents Nos. 3 and 4 were also eligible for appointment to the post of Superintendent. Had it been the case of the State that the petitioner and a large number of other Assistant equally qualified for promotion had been superseded because they were not fit to become Superintendents, there could be no quarrel with the impugned order. It is, however, admitted that there is no such thing and that, in fact, the petitioner had also been promoted to the higher post in a leave vacancy for some time. From the admitted facts and circumstances of the case, it is clear that respondents Nos. 3 and 4 have been promoted to the higher post simply

because of their being at the top of the seniority list of Assistant Section Officers and not because of their qualifications under rule 8 of the 1963, Rules. If the State Government wanted to act contrary to the Central Government's directive, it was necessary for the State to take the sanction of the Central Government under Section 115(7) of the Act. That has admittedly not been done.

24. I, therefore, hold that the promotion of respondents Nos. 3 and 4 to the post of Superintendent based exclusively on their seniority in the separate list of Assistant Section Officers and the ignoring of the petitioner for such promotion on the basis of his seniority in the joint integrated gradation list is in violation of the guarantee given by the Government in paragraph 2 of its order dated March 14, 1961 (Annexure-B), infringes the Central Government's directive under Section 117 of the Act and is contrary to rule 8 of the statutory 1963 Rules.

25. This writ petition is accordingly allowed with costs against respondent No. 2. The orders of promotion of respondents Nos. 3 and 4 to the posts of a Superintendent are set aside and a direction is issued to the State Government to fill in the vacant posts of Superintendents including those vacated by the reversion of respondents Nos. 3 and 4 strictly in accordance with rule 8 of 1963 Rules. The inter se seniority of the candidates for promotion out of those whose names occur in the joint seniority list dated 27th November, 1964, shall be determined in accordance with the said list. The separate list fixing inter se seniority of Assistant Section Officers shall be ignored in making appointment to the post of Superintendents (also known as Section Officers).

Petition allowed.

Cases Referred.

1Dated. 2-11-1965, in Civil Writ No. 1278 of 1964 (Pimj)

2Civil Writ No. 1960 of 1965 (Punj)

3Civil Appeals Nos. 430 to 461 of 1964, D/-1-3-1966 : (reported in AIR 1966 SC 1942)

4(1955) 2 SCR 225 : AIR 1955 SC 549

5AIR 1959 And Prad 437