

PUNJAB AND HARYANA HIGH COURT

Labhu Ram Teacher

Vs

The State of Punjab

Civil Writ No. 1113 of 1966

(S.B. Capoor, Acting C. J. and R.S. Narula, J.)

13.10.1967

JUDGMENT

R. S. Narula, J.

1. Labhu Ram and the eight other petitioners before us entered into the services of District Board Ludhiana; as junior vernacular trained teachers on different dates between 1928 to 1941. On April, 1, 1946 they were all serving in the time scale of ₹ 40-2-60-3-90. In 1953, the above said scale was revised to ₹ 47/- 1/2-2-67 1/2-3-97/- 1/2-4- 117/1/2. The petitioner had in the meantime improved their educational qualifications by passing the Senior Vernacular Teachers examination and had requested for being fitted in the higher scale of senior Vernacular teachers. They were promoted to the said higher scale of Rs 50-3-80/4-100 with effect from February 1, 1957, by the order of the Chairman, District Board, Ludhiana dated March 11, 1957 with the approval of the District Inspector of Schools, dated March 13, in that year. On October 1, 1957, when the District Board Schools in Jullundur and Ambala Divisions of the erstwhile State of Punjab were provincialised, the petitioners were employed as confirmed junior vernacular teachers but were holding officiating or temporary posts of senior vernacular teachers. On their integration into Government service with effect from October 1, 1957, their existing status was maintained. The order of provincialisation provided that all the incumbents of the Local Bodies Schools which were to be provincialised would be given the same grades of pay and other allowances as were being given to their counter-parts already in Government service and that their pay will be fixed under the rules and their would be no drop in the emoluments which they were then drawing.

2. At the time of provincialisation there were two different cadres of teachers in the State Service, namely, (1) J. T. (Junior Trained) (2) S. V. (Senior Vernacular). Since the emoluments of the erstwhile J. V. (Junior Vernacular) School teachers were to be protected and since exactly same grades were not available in Government Service, the petitioners and other District Board teachers were integrated into slightly higher scales of pay in Government Service. Both the S. V. and J. V. teachers of District Board Schools, therefore, got fitted into the Government scale of pay of ₹ 60-4-80/ 5-120. Separate seniority lists of J. V. and S. V. teachers were prepared. Since the petitioners were officiating in the S. V. cadre, they were brought at the bottom of the seniority

list of that cadre, below the permanent members of that Service. Though they were confirmed J. V./J.T. teachers, their names were omitted from the seniority list of that cadre. This resulted in bringing at the top of the J. V. Cadre list, teachers who were junior to the petitioners in that cadre. A certain percentage of J. V. and S. V. teachers were entitled to get comparatively higher emoluments in their respective selection grades. As the senior-most teachers in their respective cadres had the first chance to get selection grade the petitioner could not aspire to get the S. V. selection grade. If, however, they had not been promoted to the S. V. Cadre, they would have got the J. V. selection grade as they were amongst the senior-post teachers in that Cadre. Even if the petitioners were not to get selection grade. they would not have lost anything, except perhaps in names only, by being sent down to J. V. cadre as both the District Board Cadre i. e. J. V. and S. V. had been put in single higher unified scale of pay in the provincialised Service. These circumstances compelled the petitioners to try to get back to the J. V. Cadre.

3. It has been admitted in paragraph 10 of the State's return that the petitioners would have been promoted to the higher grade if they had been retained in the J. V./J. B. T. Cadre. The allegations made in the corresponding paragraph of the writ petition to the following effect have been admitted in the written statement to be correct:

"That on 1-3-1959 as many as 227 J. V. teachers were promoted to the grade of ₹ 120 -5-175 and again on 1-3-1960 as many as 74 J. V. teachers were promoted to the grade of ₹ 120-5-175. These promotions were made without considering the claims of the petitioners; although the petitioners were senior to and better qualified than those promoted".

4. In the situation detailed above, the petitioners submitted various representation to be permitted to remain in the J. V./J. T. Cadre so as to enable them to get promotion to the selection grade ₹ 120-5-175. In letter dated May 25, 1961 (Annexure'A') the Director of Public Instruction, Punjab stated that as a result of the consideration of the said representations, it had been decided "that the S. V. teachers who have not been confirmed in S. V. grade but are permanent in J. T. may be allowed to revert to J. T. Cadre in the normal way". The Inspector of Schools Jullundur Division was asked in that communication to furnish the requisite information to the Director of Public Instruction in respect of such officials who were willing to revert to the J. T. Cadre and also to forward to the Director the written consent of such teachers. When the requisite information and the applications of the concerned teachers for reversion to the J. T. Cadre were received in the office of the Director he wrote to the Education Commissioner on February 22, 1964 that from the applications received in his office it was evident that the teachers concerned were desirous to have benefit with restrospective effect, but that the adopting of such a course was likely to involve reversion of the teacher who had already been promoted to the higher grade and consequent recovery of arrears from them. The Department felt that those teachers should not in any way be affected adversely on account of the reversion of the teachers from S. V. Cadre as it would create heart burning. Direction of the Education Commissioner (Secretary to Punjab Government in the Education Department) was, therefore, sought in the said latter of the Director to implement the decision contained in Annexure 'A' with effect from the date of issue of the orders and not with retrospective effect. The petitioners claimed that all this trouble had arisen on account of illegal omission of their name from the seniority list of J. T. Cadre resulting in the

petitioners not being considered with promotions were made from J. T. Cadre to the selection grade of ₹ 120-5-175. The case of the respondents in that behalf (as contained in paragraph 13 of the written statement) was that the petitioners were working as S. V. teachers in the erstwhile Local Body Schools prior to provincialisation and were integrated as such in their respective Cadres on the provincialisation of those schools and that these teachers should not, therefore, claim seniority or promotion in the other grades in which they had not been integrated. Refusal to revert them was justified on the ground that adopting of such a course would have resulted in the reversion of teachers who had already been promoted to the higher grade. In spite of the above-said position taken up by the Government, the petitioners continued to represent for implementation of the order of the Director of Public Instruction, Punjab contained in his memorandum dated May 25, 1961 (Annexure 'A'). While the proposal of reversion of such teachers of J. T./J. B. T. Cadre was under examination, it was decided by the Government to merge the grades of J.T./J.B.T. Cadre, namely ₹ 60-120 and 120-175 into one running grade of ₹ 60-175 with effect from April 1, 1965. It has been claimed by the State that with the unification of the two grades into one running grade, the proposal regarding ta reversion of old S. V. teachers to the post of J.T /J B.T. Cadre had bee dropped. This decisions of the Government was communicated by the Director of Public Instructions to the District Education Officer of Ludhiana in the formal memorandum dated September 3, 1965 (Annexure 'D'). The petitioners again submitted a represent ton dated January 25, 1966 (Annexure 'E) to the Secretary to Government, Punjab is the Education Department, but got no redress. This writ petition was lied by the petitioners on May 26, 1966, praying for the issue of an appropriate writ order or directions to the respondents (State of Punjab. Director of Public Instruction, Punjab and District Education Officer, Ludhiana) to include the names of the petitioners in the J.T. Cadre in which the petitioners he'd their rank substantively with appropriate place in seniority and to consider the claim of the petitioners for promotion to J. T. Selection grade of ₹ 120-175 on merits on that basis with retrospective effect, on the following summary of facts :

- (i) "The petitioner, held the substantive rank of J. V. teachers both before and after the provincialisation of Local Bodies Schools.
- (ii) They were holding temporarily posts in the S. V. Cadre. They have not been confirmed in the said Cadre till today.
- (iii) At the time of promotions of 227 in 1959 and 74 in 1960, from J. B. Cadre to the grade of ₹ 120-175, the claims of the petitioners were not considered.
- (iv) The applications of tie petitioners for reversion to their substantive rank in spite of the decision of the Government to grant those applications (Annexure -A") have not been granted.

5. As return of respondents 1 and 2, an affidavit of the second respondent dated October 26, 1966 has been filed. Most of the relevant facts stated in the writ petition have been admitted in the return. It has, however, been added "that there and never been any committee t by the Department that these teachers will be converted from S. V. posts/Cadre to J.T /J.B.T. Cadre". It has also been added in the written statement that "the promotions made in the J.T./J.B.T. Cadre as

mentioned in para 18 of the writ petition had "no relevancy with the points raised by the petitioners". The last relevant submission made in the return is that in case the petitioners are allowed reversion from S. V. to J. V. Cadre, they would have no right to claim benefit with retrospective effect and that they can, in the normal course, get pay of the post from the date when they have been appointed against the same. It has been emphasised that the petitioners cannot claim pay of the post for the period during which they actually did not work against it. By leave of the Court granted on February 20, 1967; the petitioners filed a counter-affidavit dated February 16, 1967 sworn by Jagan Nath petitioner No. 5 by way of replication to the State's return. In para 3 of the replication, it has been stated that the petitioners were entitled to be reverted to J. V. Cadre in implementation of the order of the Director of Public Instruction dated May 25, 1961 (Annexure 'A') and that the mere fact that this would entail retrospective promotions being given to the petitioners is no ground for refusing relief to the petitioners. Reference has been invited in the replication to an extract from memorandum dated July 27, 1962 (Annexure 'Z' to the replication), from the Director of Public Instruction Punjab to the District Inspector of Schools, Gurgaon, which is in the following terms:

"Similary due to certain changes in this seniority list promotion orders of Sarvashri Udo Dass, Behari Ram. Namat Ram, Chankanda Ram, Shiv Dayal and Genesh Dass at Serial No. 8, 45, 159, 160, 176 and 191 of the promotion orders issued with this office No. 5/6 59-60. Pr. III (I) dated the 14th March, 1960, about their promotion to ₹ 120-175 grade with effect from 1-3-1959 are cancelled and in their place Sarvshri Kanahya Ram, Chuttan Lal, Himat Ram, Hari Ram, Risal Singh and Banwari Lal at Serial No. 90-A, 90-B, 114-A, 212-A, 212-B, and 214-B of the amended seniority list are promoted to ₹ 120-175 grade with effect from 1-8-1959".

The grievance of the petitioners made out in the replication in respect of the above-said communication is that the petitioners who were teachers of Ludhiana district have been discriminated against, as compared with the teachers of Gurgaon district. The petitioners claimed that they should have been treated with equality and in the same manner as the erstwhile District Board teachers of Gurgaon district had been treated.

6. When this writ petition came up before me sitting in Single Bench on April 10, 1962, it was conceded by the learned Assistant Advocate-General, that the names of the petitioners should have continued to have occurred in the J. V. Cadre Seniority List, so long as they were not confirmed in the S. V. Cadre, but that by operation of Rule 6 of the Punjab Educational Service (Provincialized Cadre) Class III Rules, 1961 (hereinafter called the 1961 Rules') the petitioners were deemed to have been confirmed in the S. V. Cadre, after the expiry of three years from October 1, 1957 and having been so automatically confirmed in the higher posts. in view of the law laid down by a Division Bench of this Court in *Dharam Singh v. State of Punjab*,¹ the petitioners could not claim to go back to the J. V./J.B.T. Cadre. It was conceded that no formal order of confirmation of any of the petitioners in the S. V. Cadre having been passed if the petitioners were not deemed to have been automatically confirmed in the S. V. Cadre, they would indeed be entitled to the relief claimed by them. On behalf of the petitioners it was pointed that Dharam Singh's case related to a teacher who had not retained lien on any other post and that inasmuch as each of the petitioner held a lien on his respective post in the J. V./J.B.T. Cadre, the

case of the petitioners would be covered by Rule 5 and not by Rule 6 and they could not, therefore, be deemed to have been automatically confirmed as S. V. teachers. In the above mentioned circumstances, I referred this case to a larger Bench by my order dated April 10, 1967, in view of the importance of the question raised by the learned counsel for the petitioners and in view of the further fact that in either eventuality, the judgment of a Single Judge would, in this case, have been appealable under clause 10 of the Letters Patent. This is how the petition came up for hearing before us in Division Bench.

7. In order to appreciate the legal position, it would be appropriate to set out the relevant rules governing the petitioners. The 1961 Rules came into operation with retrospective effect from October 1, 1957. The Punjab Educational Service (Provincialized Cadre) Class III Service, as stated in rule 3, comprises the posts shown in Appendix 'A' to the rules. In Appendix 'A', three categories of Services have been mentioned, namely, (A) Anglo, Vernacular Section, (B) Classical and Vernacular Section and (C) Junior Teachers. The contest in the instant case is between Category (B) and Category (C). The said two categories are, therefore, quoted below :-

Serial No.	Designation of Post	Scale of pay.
	B-Classical and Vernacular Section (Men and Women Branches),	
5	Classical and Vernacular Teachers.	(₹ 60-4-80/5-100/5-120) (Lower)
	Hindi, Punjabi, Sanskrit Teachers.	(₹ 120-7-1/2. 165/10-175) (Middle)
	Physical Training Instructors Drawing Teachers, Manual Training Instructors, Arts and Crafts Teachers S.T.S.)	(₹ 140-10-220) (Upper) (Selection Grades)
	C-Junior Teachers (Men and Women Branches),	
6	Junior Teachers and Junior Basic Teachers.	₹ 60-4-80 / 5-100/5-120 ₹ 120-5-175 (Selection

Grade) revised to ₹ 120-7-1/2 165/10-175 with effect from 1st October, 1958 (Classical and Vernacular) Teachers (Selection Grade).	
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Rules 5 and 6 of the 1961 Rules may be quoted verbatim :-

Rule 5 :-Confirmation.-Members of the Service who were confirmed prior to the provincialisation of local authority schools shall be deemed to have been confirmed in the Service :

Provided that such Headmasters/Headmistresses of High Schools as were officiating or temporary immediately before the provincialisation of local authority schools shall not be confirmed in the Service unless they qualify such departmental test as may, from time to time, be prescribed by the Director.

Rule 6 --Probation-(1) Members of the Service, officiating or to be promoted against permanent posts, shall be on probation, in the first instance, for one year.

2. Officiating Service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.

3. On the completion of the period of probation the authority competent to make appointments may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post :

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

4. Service spent on deputation in a corresponding or higher post may be allowed to count towards the period of probation, if there is a permanent vacancy against which such member can be confirmed.

Rule 9 provides for the manner of determination of the seniority inter se of the members of the service as on 1st October, 1957. In sub-rule (c) of rule 9, it is stated that the inter se seniority of any employee in the parent unit shall not be disturbed in determining his seniority in the service subject to certain exceptions. Sub-rule (2) of rule 9 provides that the seniority inter se of members of the service on their appointment to posts in the higher grades of pay shall be determined by the dates of their confirmation on such posts. Sub-rule (3) of that rule state that

notwithstanding anything contained in sub-rules (1) and (2) of the Government may decide any case of hardship, resulting from the application of rule 9, on an ad hoc basis.

8. In (1) Dharam Singh's case, A.I.R. 1966 Punjab, 468, it was decided that if the services of a teacher of a District Board School are taken over by the State under the above-said scheme of provincialisation and he continues to hold the post after the expiration of the maximum period of probation prescribed under rule 6, the termination of his services on giving him one month's notice is illegal and amounts to a punishment and is, therefore, violative of Article 311(2) of the Constitution. It was further held that in view of the provisions of sub-rule (3) of rule 6 prescribing a maximum period of probation, if a teacher is neither reverted nor his services are dispensed with at the end of three years, he should be deemed to have been confirmed in a substantive capacity. The ratio of judgment of the Court in Dharam Singh's case was followed by an other Division Bench of this Court (my Lord Capoor J. and Dua J.) in *Dev Raj v. Director of Public Instruction and others*². It was held that some effect has to be given to the provision that a total period of probation including extensions, if any, shall not exceed three years and that obviously in view of the proviso to sub-rule (3), it cannot be said that the officer concerned continued to be on probation even after the expiry of the period of the three years, nor can it be said that after the expiry of that period the officer's position becomes that of a purely temporary Government Servant, i.e. his position becomes worse.

9. The two contentions vehemently submitted by Shri Abnasha Singh at the hearing of the writ petition have to be noticed in the above setting. The first argument of the learned counsel was that rule 6 of the 1961 Rules, (by the operation of the proviso to sub-rule (3) of that rule the petitioners are deemed to have been confirmed in the S. V. Cadre) has no application to his case, as the petitioners were not merely officiating members of the Senior Service but were principally and substantively members of the service known as J.V./J. B. T. and had been confirmed in that service of the District Board prior to provincialisation. Their case, it was claimed, falls squarely under rule 5 and as such the petitioners should be deemed to have been confirmed in the Government service as from the 1st of October, 1957, only as J. V./J. B. T. teachers. The argument of the learned counsel is substantially correct to the extent to which it goes, but does not completely solve the problem faced by the petitioners. The direct. of operation of rule 5 no doubt was that as from 1-10-1957, the petitioners were confirmed J.V./J. B. T. teachers in Government service. This however, did not stand in the way of operation of rule 6 merely because they stood confirmed by the operation of rule 5 as J. V. teachers. Since they were officiating in permanent post in the S. V. Cadre, the Department was found to consider the petitioners to be on probation in the first instance for one year, in the said higher posts because of the statutory requirements of sub-rule (1) of rule 6. The officiating service in the higher Cadre had to be treated as period spent on probation on account of the operation of sub rule (3) of rule 6. Once no flaw is found with this situation, the proviso to sub-rule(3) to rule 6 bound to come into operation and in view of the law laid down by the earlier Division Bench judgments in Dharam Singh's case and Dev Raj's case, each one of the petitioners must be deemed to have been confirmed in the S. V. Cadre after the expiry of the prescribed period of three years.

10. The distinction between the facts of this case and the facts of Diagram Singh's case and Dev Raj 's case does not appear to matte any further difference than this that in the earlier cases, the incumbents did not hold any permanent posts till the expiry of the maximum period of probation, because they were not members of any service in which they might have been confirmed prior to

the provincialisation. For all practical purposes, there is no distinction between those cases and this so far as the position of the petitioners in the S. V./ S. T. Cadre is concerned. The question of lien does not present any difficulty. On October 1, 1957 the petitioners stood appointed substantively to their respective posts in the J. B. T. Cadre. The posts in the S. V. Cadre which they field in officiating capacity cannot be said to have been held by them substantively. At the same time, it has not been shown that any one was appointed substantively to the J.B.T./J.C. posts left vacant by the petitioners on their promotion to the higher Cadre in officiating capacity. Rule 3.11 of the Punjab Civil Services Rules, Volume 1, Part I, was therefore, not violated in any manner. Each of the petitioners retained his respective lien on his J. B. T./J. T. Cadre post till the date on which he is deemed to have been confirmed by operation of the proviso to sub-rule (3) of rule 6. No question of suspension of their lien in the lower post arose during that period. Rule 3.15 of the Punjab Civil Services Rules, Volume I, has not been controverted in any manner as the lien of the petitioners in the lower posts will not be deemed to have been terminated till the petitioners acquired lien in their permanent S. V. Cadre posts in which they became permanent under the law Laid down in Dharam Singh's case. None of the petitioners was, therefore, left without a lien upon a permanent post at any time after October 1, 1957. By operation of Rule 3.12 of the Punjab Civil Services Rules, the petitioners acquired lien on their respective posts in the S. V. Cadre on their becoming permanent in those posts by operation of law and thereupon, they automatically ceased to hold the lien previously acquired by them on their respective posts in the J. V. Cadre. None of the Civil Services Rules cited before us, therefore, stands in the way of the legal situation as it arose by operation of rules 5 and 6 of the 1961 Rules.

11. The second contention of Shri Abnasha Singh was that discriminatory treatment has been meted out to the petitioners as compared with their counterparts of Gurgaon district. This argument was based on memorandum dated July 27, 1962 (Annexure 'Z'). By that order the promotion of certain teachers to the Selection Grade was cancelled with effect from March 1, 1959 and in their place certain other teachers were promoted to the Selection Grade in accordance with the amended seniority list. The case of the petitioners was that those who had originally been promoted to the Selection Grade were so promoted because the names of Kanahya Ram and others had been omitted from the J. V. seniority list in spite of their being holders of permanent posts in that Cadre simply because they were officiating in the S. V. Cadre and that on the representation of Kanahya Ram and others, the seniority list was amended and the names of those persons were brought back on the list though they were officiating in the S. V. Cadre, resulting in the Selection Grade being given to them as against their junior in that Cadre. The detailed circumstances in which the order relating to Kanahya Ram and others was passed in July, 1962 are not available on the record before us. On the material placed on the record of this case it does not appear to be possible to conclude with any definiteness that Kanahya Ram and others were exactly similarly placed as the petitioners. We have, therefore, not been able to persuade ourselves to entertain the second contention of Shri Abnasha Singh.

12. For the foregoing reasons we hold that the names of the petitioners should have been retained on the J. V./J. B T. Seniority List of permanent incumbents of posts in that Cadre as on October 1, 1957 upto the date on which the petitioners were deemed to have been confirmed by operation of the proviso to sub-rule (3) of rule 6 of the 1971 Rules. The respondents having illegally omitted the names of the petitioners from the said list during the above said period, the name of the petitioners would be deemed to have remained on that list till the date of their automatic confirmation. If the petitioner would have been entitled to any benefit during that period or there

after on the basis that their names were in the said Seniority List which benefit might have been denied to them on account of their not being considered to members of J. V./J. B. T. Cadre, they would be entitled to all such relief and respondents would be bound to afford the same to them. The petitioners cannot, however, claim that their names should have been retained on the J. V./J. B. T. Seniority List and they should be allowed to get any additional benefit on that account in respect of any period or time after the date on which the petitioners are deemed to have been confirmed in the S. V. Cadre.

This writ petition is accordingly allowed to the above extent without any order as to costs.

Petition allowed.

Cases Referred.

1A.I.R. 1966 Pun 468

21967 S.L.R. 734