

# PUNJAB AND HARYANA HIGH COURT

Mangal Singh

Vs

Punjab State (P & H)

L.P.A. No. 235 of 1967, in Civil Writ No. 2235 of 1966

(Mehar Singh, C.J. and R.S. Narula, J.)

24.04.1967. 09.11.1967

## JUDGMENT

### **Mehar Singh, C.J.**

1. The appellant, Mangal Singh, in this appeal under Clause 10 of the Letters Patent from the order, dated April 24, 1967, of a learned Single Judge, was confirmed as an Assistant in a substantive capacity in the Punjab Civil Secretariat cadre of Assistants on March 2, 1956. Respondent 2, J.P. Chaudhri, and Respondent 3, Chaman Lal, were Assistants in their parent Departments at the time, of them Respondent 2 was in the Buildings and Roads Branch of the Public Works Department, and Respondent 3 was either in the same Branch of that Department or in the Irrigation or the Public Health and Electricity Branch. In his parent office Respondent No. 2 was confirmed as an Assistant on July 22, 1950 (Annexure-'R. 6' to his return), and Respondent 3 was confirmed as an Assistant on August 1, 1948. The scales of pay and the conditions of service of the two respondents in their parent Departments were identical with those of the Assistants in the Punjab Civil Secretariat cadre of Assistants. So it is apparent that in the office of an Assistant in his parent Department either of those two respondents was confirmed long before the confirmation of the appellant as an Assistant in the Punjab Civil Secretariat.

2. The office of (he Secretary incharge and of the Head of Department as Chief Engineer in the P.W.D. Irrigation Branch and Buildings and Roads Branch as also Public Health and Electricity Branch was held by the same officer before the year 1956-57, but in that year it was decided, as is apparent from Annexure-'C' with the return of the State to bifurcate the functions of the Secretary from those of the Heads of Departments in all the three Branches of the Public Works Department. This necessitated taking over in the Punjab Civil Secretariat part of the establishment of those three Branches of the Public Works Department so as to enable the office of the Secretary Incharge of those Branches of the Department to function efficiently and satisfactorily. On February 22, 1960, the State Government took a decision in this behalf and Respondents 2 and 3 were taken over in the Secretariat of the Secretary of the Public Works Department. Annexure-'C' refers to the conditions on which they, along with some others, were thus taken over in the Secretariat of the Secretary of that Department. Paragraph 2 of this annexure says that

"all the officials will be brought into the seniority list of Assistants and Clerks of the Secretariat, as the case may be, and will cease to be treated as on deputation from their parent offices to the Punjab Civil Secretariat. Such of them as are already permanent will be absorbed against permanent vacancies, to the extent available, and others will continue against temporary posts till they are confirmed in the Punjab Civil Secretariat in due course".

3. In consequence of the re-organisation of the former Punjab Pepsu States into the new Punjab State according to the provisions of the States Re-organisation Act, 1956 (Act 37 of 1956), the question of integration of the services of the two States in various Cadres was, at the time, under consideration and pending decision. Provisional seniority lists were issued from time to time and in the last provisional seniority list of the Punjab Civil Secretariat Assistants, which was finally approved by the Government of India on November 18, 1964, the seniority of the appellant was shown at No. 230. In the normal course Respondents 2 and 3 would have been integrated in their parent Departments, but change in their posting having been brought about in the year 1956-57 in the manner already referred to and they having been taken over in the Punjab Civil Secretariat cadres of Assistants, the question of their seniority, though it had nothing to do directly with the question of integration of the cadre of Assistants of the former States of Pepsu and Punjab, as such, had to be settled after the seniority list had been finalised. So by Government order, copy Annexure-'C', of February 19, 1960, the position given to Respondent 3 was shown at No. 206-A and to Respondent 2 at No. 222-A in the provisional seniority list at the time, but, as stated, the list was finally approved by the Government of India. So, in the approved list of seniority of Assistants in the Punjab Civil Secretariat, the position of the appellant came to be shown at No. 230 and that of Respondents 2 and 3 respectively at Nos. 222-A and 206-A, in other words, those two respondents became senior to the applicant. The placings of their seniority proceeded on a consideration of their past service and prospective chances of promotion in the Departments from which they came to the Punjab Civil Secretariat Assistants' cadre. It has been stated during the hearing of the appeal that their seniority was not thus settled from the dates of their confirmation as Assistants in their parent Departments but on the basis of assumed dates so that they should have future chances of promotion about the same time as they would have had, had they remained in their parent Departments. Respondents 2 and 3 were confirmed as Assistants in Punjab Civil Secretariat on December 15, 1958, and April 13, 1959, respectively. This means that if confirmation as Assistant in the Punjab Civil Secretariat is the only consideration, then those two respondent were obviously confirmed after the date of the confirmation of the appellant.

4. Respondent 4, Bhalle Pam Behmni, is a member of a Scheduled Caste. His position in the joint seniority list approved by the Government of India was shown at No. 387. So he was junior to the appellant. The State Government created seven additional temporary posts of Deputy Superintendents to give protection to the emoluments and scales of pay of seven officials, including the appellant, from May 31, 1966, till they were absorbed against regular posts of Superintendents. This was by an order of June 22, 1966. Respondent 4 was promoted as Deputy Superintendent after the promotion of the appellant apparently in consequence of the order of

June 22, 1966 but on August 27, 1966. the appellant reverted to the post of an Assistant while Respondent 4 continued in the position of Deputy Superintendent according to the policy (policy ?) of the State Government to give concessional promotion to such candidates on the ground of their being members of the Backward Classes.

5. The appellant challenged the seniority of Respondents 2 and 3 and the promotion of Respondent 4, a junior to him, while he suffered reversion as not according to the rules and thus not valid. This was by a petition under Articles 226 and 227 of the Constitution filed on September 17, 1966. With the petition of the appellant was filed a copy, Annexure-'B' of the Punjab Civil Secretariat (State Service Class III) Rules of 1952. Those rules were amended by Punjab Government Notification No. G. S. R. 346/Const./Art./368/66, on October 17, 1966 by adding this Rule 15 to the same :-

"15. Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons".

A copy of the amendment is Annexure-'R/3' to the return of the State. It appears to have been realised by the time this amendment was made that there may be some difficulty in sustaining the position of seniority of Respondents 2 and 3 under the 1952 Rules as such, may be in the wake of what was said by the appellant in his petition under Articles 226 and 227. In pursuance of this new Rule 15, the Government proceeded to make the order of which copy is Annexure-'R/4' to the return of the State on October 31, 1966, which runs thus :-

"In order to avoid undue hardship to the Assistants transferred in the public interest to the Punjab Civil Secretariat, from the Irrigation and Buildings and Roads Branches of P.W.D., the President of India, in exercise of the powers conferred by Rule 15 of the Punjab Civil Secretariat (State Service Class III) Rules, 1952, as amended, is pleased to relax the provisions of Rule 9 of the said Rules regarding determination of seniority in the Punjab Civil Secretariat, in order to safeguard their chances of promotion and to fix their seniority at the serial numbers as indicated against each in the office order dated 19 (22)-2-1960 in the joint seniority list of Punjab Civil Secretariat (Assistants to Superintendents Group) as published, vide Punjab Government Notification No. 4425-Integ-64/ 780, dated 18-11-1961."

The learned Judge has dismissed the appellant's petition under Articles 226 and 227, the appellant having prayed that the orders of the State Government placing respondents 2 and 3 as senior to him and permitting promotion of respondent 4, a junior Assistant to him, be quashed. This is an appeal against the order of the learned Single Judge by the appellant.

6. It is first urged by the learned counsel for the appellant that in view of Rule 9 of the 1952 Rules, the appellant having been confirmed much earlier to respondents 2 and 3 in the Punjab Civil Secretariat cadre of Assistants, he could not be placed junior to them in the seniority list. Rule 9, leaving out the proviso which is not material here, says; "The seniority inter se of members of the Service holding the same class of post shall be determined by the date of their

substantive appointment to such post." Obviously if when respondents 2 and 3 are stated to have been confirmed as Assistants in the Punjab Civil Secretariat, those dates are taken into consideration, the appellant having been confirmed much earlier must have his seniority according to Rule 9, if that rule applies. What is contended by the learned Advocate-General for Haryana is that those two respondents having been confirmed in their parent Departments as Assistants with equal scales of pay and conditions of service and having been in the public interest shifted from their parent Departments to the Punjab Civil Secretariat on the bifurcation of the office of the Secretary from the Heads of Department in the Public Works Department in the year 1956-57, it was in the interest of justice and fair play that the State Government brought those respondents to the Punjab Civil Secretariat with an assurance that their future chances of promotion will not, in any way, be affected. In the circumstances, he has urged that what the State Government has done is only to abide by the assurance given to those respondents. However, any such assurance given by the State Government to those respondents can have no detrimental effect on the rights of the appellant under the rules and regulations of service applicable to him. Rule 2(g) of the 1952 Rules defines the expression 'direct appointment' to mean "an appointment made otherwise than by promotion from among the members of the Service or by transfer of an official already in the service of the Government of a State or of the Union', Respondents 2 and 3 did not come to the Punjab Civil Secretariat as Assistants by promotion and they cannot be said to have come there by transfer. The reason is that according to R. 6(1)(f) the posts of Assistants can only be filled (i) by direct appointment; or (ii) by promotion of Senior Clerks; or (iii) by selection from among officials employed in departments of Government other than the Civil Secretariat. Those respondents were not directly employed nor did they come by promotion into the Punjab Civil Secretariat Assistants' posts. If they were selected according to Rule 6(1)(f)(iii), then their appointments were for the first time in the Punjab Civil Secretariat and their consequent confirmation later was subsequent to the confirmation of the appellant as an Assistant. Rule 6(1)(f) shows that in the case of Assistants there is no mode of filling of any posts of Assistants by transfer. This becomes clear from consideration of Rule 6(1)(a), (c), (i) and (k) in which filling of posts by transfer is specifically mentioned, but this manner of filling posts of Assistants is not given in Rule 6(1)(f). Consequently, those two respondents were not appointed as Assistants in the Punjab Civil Secretariat by transfer and if this appears to be the only manner in which they could be appointed under the 1952 Rules, they were appointed by selection according to Rule 6(1)(f)(iii); their confirmations under the Rules were subsequent to the confirmation of the appellant, and in consequence of Rule 9 they must rank junior to the appellant. As has been stated above, any assurance given to them by the State Government while bringing them over in the Punjab Civil Secretariat Assistants' cadre cannot adversely affect the rights of the appellant under the 1952 Rules. So on this consideration the seniority of respondents 2 and 3 as against that of the appellant could not possibly be sustained.

7. In consequence of the petition of the appellant, in all probability, it seems to have dawned upon the authorities concerned that while in the interest of justice and fair play there was no possible reason why respondents 2 and 3 should suffer in future chances of promotion by an executive action of the State Government, in bifurcating the office of the Secretary and the Heads of Departments of the Public Works Department and by taking over of those respondents into the Punjab Civil Secretariat as Assistants, protection of their rights may not be available under the prevailing rules of 1952. Hence, the amendment of those rules in 1966 by addition of Rule 15 and subsequent" order, Annexure-'R/4', pursuant to that rule, safeguarding the seniority of those

respondents so as to ensure their future chances of promotion to the same extent and manner as they would have had, had they continued as Assistants in their parent Departments. The learned counsel for the appellant contends that Rule 15 cannot be accepted as valid because it vests unfettered and unguided power in the State Government to relax the provisions of the Rules, but the learned judge very rightly points out that the Government has to give reasons in writing, for relaxation of the provisions of the Rules, and that in view of this requirement the rule cannot be struck down as invalid on this ground. Such reasons, when given, in a proper case, would obviously be open to scrutiny. So the Government cannot make an arbitrary order of relaxation of the provisions of the Rules nor can it make an order which is not supported by reasons, in writing. So that Rule 15 is not invalid on this account. The learned counsel for the appellant has then urged that the order, Annexure-'R/4', made pursuant to Rule 15, cannot be sustained and in support of this what he contends is that no real reason has been stated in it for relaxation of the provisions of the Rules except to say that it is 'in the public interest', which is a vague and incomprehensible expression. The order cannot be read in this manner and it has to be seen in the wake of the background of the facts and circumstances in which respondents 2 and 3 had been brought to the cadre of Assistants in the Punjab Civil Secretariat and the position is made clear in the State Government's order, Annexure-'C', of February 19, 1960, in which detailed reference is made in what circumstances those respondents were brought to the Assistants' cadre in the Punjab Civil Secretariat. There is specific reference to that order in the order, Annexure-'R/4', so that reference to the expression 'in the public interest' in the very beginning of the order, Annexure-'R/4' has reference to the facts and circumstances and the reasons which led to these two respondents being brought into the Assistants' cadre of the Punjab Civil Secretariat. Those provide adequate and sound reason, which has been given, in writing, in the order, Annexure-'R/4', and the provisions of Rule 15 have been in terms and substantially complied with. No argument against the validity of the order, Annexure-'R/4', is thus available to the appellant. There is no question of the order, Annexure-'R/4', operating retrospectively, for obviously it is operative from its own date of October 30, 1966. Even on that date the appellant remains junior to respondents 2 and 3, and so his position in the seniority list continues to be the same. In the circumstances the appeal of the appellant cannot possibly be accepted in so far as his grievance against the fixation of the seniority of respondents 2 and 3 is concerned.

8. There remains for consideration the argument on the side of the appellant with regard to respondent 4, and what is urged in this respect is that by an executive order or instructions members of Backward Classes, including members of Scheduled Castes, have been given certain measure of preferential way of promotion. In consequence of that, when there were sixteen vacancies of Deputy Superintendents, respondent 4 came to be promoted in the last, that is to say, the sixteenth vacancy. The argument of the learned counsel for the appellant is that by an executive order or instructions the Rules of 1952 cannot be amended or overridden, but there is no substance in this argument of the learned counsel because a Division Bench of this Court in *Hira Lal v. Chief Conservator of Forests, Punjab*<sup>1</sup>, has already overruled such an argument. The learned Judges observed at page 18 of the judgment :

"The point before us, however, is not whether any statutory Services Rules, which might be governing promotions in the various departments, are contravened by any executive instructions, but whether provision for reservation of appointment or posts in favor of any Backward Classes of citizens can, under Clause (4) of Article 16, be made by an

administrative order or whether legislation is necessary Clause (4) itself does not speak of any legislation required for the purpose and in this respect it may be contrasted with Clauses (3) and (5) of Art 16. In *M.R. Balaji v. State of Mysore*<sup>2</sup>. para. 19, it was laid down that the argument that provision under Clause (4) of Article 15 can be made by the State only by legislation must be repelled. It was observed that, under Article 12, the State includes the Government and Legislature of each of the States and so, it would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government. Besides, where the Constitution intended that a certain action should be taken by legislation and not by executive action, it has adopted suitable phraseology in that behalf, and in this connection reference was made to Clauses (3) and (5) of Article 16. In this respect Clause (4) of Article 16 stands precisely in the same position as clause (4) of Article 15."

The learned Judges, therefore, held similar executive order or instructions as valid and binding. This decision in Hira Lal's case, Civil Writ No. 271 of 1966. D/-29-11-1966 (Punj) is binding on us, apart from this that the reasoning and the approach in that case appeals to us as sound. So, there is no substance in the appeal of the appellants as regards his claim against respondent 4 either.

9. The result is that this appeal fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

Appeal dismissed.

Cases Referred.

<sup>1</sup>Civil Writ No 271 of 1966, D/-29-11-1966 (Punj)

<sup>2</sup>AIR 1963 SC 649