

PUNJAB AND HARYANA HIGH COURT

Narender Singh

Vs

State (P&H)

Civil Writ No. 100 of 1977

(S.S. Sandhwalia, Prem Chand Jain, Rajendra Nath Mittal, A.S. Bains And Harbans Lal, JJ.)

13.12.1977

JUDGMENT

Prem Chand Jain, J.

1. Shri Narender Singh Rao, District and Sessions Judge, Ambala (now posted at Hissar) has filed this petition under Articles 226 and 227 of the Constitution of India, calling in question the constitutional validity of the Punjab Superior Judicial Service (Haryana Ist Amendment) Rules, 1972 (hereinafter referred to as the Amendment Rules) (copy Annexure P. 5 to the petition), by which the Punjab Superior Judicial Service Rules, 1963 (hereinafter referred to as the Service Rules) has been amended retrospectively with effect from April 1, 1970, with a prayer that a writ in the nature of certiorari be issued quashing the order of this Court dated Nov 22, 1976 (copy Annexure P. 11 to the petition) by which the seniority of the petitioner had been changed to his detriment. A further prayer has also been made that the petitioner be declared senior to all the private respondents and be placed above Shri Jagmohan Lal Tandon respondent No. 3, in the seniority list.

2. In order to appreciate the controversy raised before us, it is necessary to recapitulate certain material facts as stated in the petition, which read as under :-

The petitioner is presently serving as a substantive permanent District and Sessions Judge in the State of Haryana. According to the Service Rules, only permanent posts of District/Additional District and Sessions Judge, and Legal Remembrancer and Secretary to the Government constitute the Superior Judicial Service as provided in Appendix 'A' to the Service Rules. Recruitment to the service is regulated by R. 8, which reads as under :-

"8- Recruitment to Service (1) Recruitment to the Service shall be made :-

(i) by promotion from the Punjab Civil Service (Judicial Branch); or

(ii) by direct recruitment.

(2) of the total number of cadre posts, two-thirds shall be manned by promoted officers

and one-third by direct recruits. Provided that nothing in this sub- rule shall prevent the officiating appointment of a member of the Provincial Civil Service (Judicial Branch) on any post which is to be filled up by direct recruitment, till a direct recruit is appointed.

3. According to the aforesaid rule, two-thirds of the posts in the Superior Judicial Service are to be filled by way of promotion and the remaining one- third by direct recruitment. On the date when the State of Haryana came into existence, i. e., Nov. 1, 1966, Superior Judicial Service, Haryana, comprised of seven permanent posts. Out of these posts, two were manned by direct recruits while the remaining five posts were held by promotees. The posts of the direct recruits remained unfilled from Aug. 21, 1969 till July 7, 1970, as the incumbents of those posts had been elevated to the Bench of this Court and on their appointment as permanent Judges, the posts became vacant.

3-A On Jan. 5, 1970, on the permanent appointment of Mr. Justice A. D. Koshal (now Hon'ble the Chief Justice) as a Judge of this Court, applications were invited for direct appointment to that permanent post of District and Sessions Judge in May, 1970. The petitioner applied and ultimately he was selected and appointed as Additional District and Sessions Judge on probation vide order dated July 1, 1970. In pursuance of that order, the petitioner took charge at Karnal on July 7, 1970, and has been serving as a member of the Superior Judicial Service since then.

4. The petitioner has traced a little history as to how some of the Judicial officers (promotees) had made effort to get the Service Rules amended as they had apprehended that the petitioner would become senior to all of them, having joined the Superior Judicial Service against a permanent post on July 7, 1970, and that these officers were ultimately successful in persuading the State Government to amend the Service Rules for their benefit and to the detriment of the petitioner. It is also stated in the petition that in spite of the opposition of the High Court, the amendments in the Service Rules were carried out by the State Government, with the result that the amendments to the Service Rules were given retrospective effect from April 1, 1970, only to harm the petitioner. Again, the petitioner has very elaborately given details as to how he was forced to file a petition when his services were terminated after taking refuge under the Amendment Rules, which writ petition was ultimately allowed by their Lordships of the Supreme Court. All the facts relating to this controversy are not at all necessary to be noticed. The ultimate result of the Amendment Rules has been that the petitioner was put below respondent No. 8 in the seniority list, when, according to him, he should have been shown senior even to respondent No. 3. The seniority below respondent No. 8 was fixed by this Court vide letter dated Nov. 22, 1976, which necessitated the filing of the present writ petition.

5. During the pendency of the writ petition, there was a change in the Government and the new Government decided to undo the amendments brought about by the Amendment Rules and ultimately, vide notification dated Sept. 2, 1977, the Punjab Superior Judicial Service (Haryana First Amendment) Rules 1977 (hereinafter referred to as the 1977 Rules) were brought into existence. After the enforcement of the 1977 Rules, the claim of the petitioner that he be declared senior to respondents Nos. 4 to 8 and the prayer that a writ in the nature of certiorari quashing the order of this Court dated Nov. 22, 1976 (Annexure p. 11) be issued, has become redundant as in consequence of the enforcement of these rules the petitioner has ipso facto become senior to all these respondents.

6. Before examining the merits of the contentions which were advanced by the learned counsel for the parties, it would be necessary for a proper understanding of the issue involved in the case, to set out briefly the relevant rules pertaining to the Superior Judicial Service, to which reference was made during the course of arguments by the learned counsel for the parties and which read under :-

"Rule 2 :- Definitions. - In these rules, unless the context otherwise requires :-

(1)

(2) 'cadre post' means a permanent post in the service ;

(3) 'direct recruit' with its grammatical variations and cognate expressions means a person :-

(a) who at the time of his appointment to the service was not already in judicial service ;
or

(b) who is appointed to the service in accordance with the provisions of rule 9;

(4) 'ex-cadre post' means a temporary post of the same rank as a cadre post ;

(5)

(6) 'member of the Service' means a person.

(a) who, immediately before the commencement of these rules, holds a cadre post, whether on permanent, temporary or officiating basis, or on probation; or

(b) who is appointed to a cadre post in accordance with the provisions of these rules ;

(7)

Rule 8 : Already reproduced to earlier part of the judgment,

Rule 12 : Seniority :- The seniority, inter se, of the substantive members of the Service, whether direct recruits or promoted officers, shall be determined with reference to the respective dates of their confirmation ;

Provided that the seniority, inter se, of substantive members of the Service having the same date of confirmation shall be determined as follows :-

(i) in the case of direct recruits, the older in age shall be senior to the younger ;

(b) in the case of promoted officers, in accordance with the seniority in the Punjab Civil Service (Judicial Branch) as it stood immediately before their confirmation ;

(ii) in the case of promoted officers and direct recruits, the older in age shall be senior to the younger."

7. The only claim that now subsists and which requires adjudication is whether the petitioner is the senior-most officer in the Superior Judicial Service?

8. Thus, the familiar question of seniority in Service, the competing person being the direct recruit and the promotee, has been raised.

9. The grievance of the petitioner is that he was senior to respondent No. 3, on the ground that the vacancy in which respondent No. 3 was appointed, was reserved for the direct recruit, that against that vacancy respondent No. 3 could not legally be confirmed, that according to the Seniority Rules, each vacancy had to be earmarked, that against the vacancy which was to be earmarked according to the quota rule for the direct recruit, a promotee could not be confirmed and that in the quota rule there was an implied rotational system by which only at the time of confirmation of the petitioner, the seniority was to be fixed in accordance with the quota. In support of the pleas raised by the petitioner, his learned counsel, Shri Kuldip Singh relied on various judicial pronouncements of their Lordships of the Supreme Court, to which I would be making reference at the relevant time.

10. On the other hand, it was submitted by Shri Chetan Dass Dewan, learned counsel, appearing for respondent No. 3, that Rules 8 and 12 were to be read independently, that the rule providing for quota has no relation to confirmation and exhausts itself at the time of recruitment, that rotational system is not provided in the rules and cannot be invoked for the determination of the question of seniority and that for the contentions raised on behalf of the petitioner no foundation has been laid in the petition.

11. After giving my thoughtful consideration to the entire matter I am of the view that the plea raised by the petitioner lacks plausibility and is without any merit.

12. At the time, when the petitioner was recruited to Superior Judicial Service, the cadre constituted of seven permanent posts. Out of these posts, five posts were to go to the promotees and two to the direct recruits. The two posts meant for the direct recruits were manned by Shri A. D. Koshal (now Hon'ble the Chief Justice) and Shri S. C. Mital (now Mr. Justice S. C. Mital). Shri A. D. Koshal (now Hon'ble the Chief Justice) was appointed as Additional Judge of this Court on 28th May, 1968 and Shri S. C. Mital (now Mr. Justice S. C. Mital) was appointed as an Additional Judge of this Court on 21st August 1969. The vacancies of the quota of direct recruits on the appointment of Shri A. D. Koshal (now Hon'ble the Chief Justice) and Shri S. C. Mital (now Mr. Justice S. C. Mital) could be filled only on their appointment as permanent Judges of this Court and that is why both these posts pertaining to the quota of direct recruits remained unfilled and there was no direct recruit in the Superior Judicial Service (Haryana) from 21st Aug. 1969, till 7th July, 1970. On 5th Jan. 1970, Mr. Justice A. D. Koshal (now Hon'ble the Chief Justice) was confirmed as a Judge of the High Court, with the result that one vacancy to be filled by the direct recruit fell vacant and it was against this vacancy that the petitioner was appointed as Additional District and Sessions Judge on 7th July, 1970.

13. As is evident from the contentions of Mr. Kuldip Singh, the basis on which the seniority is being claimed by the petitioner is that on the confirmation of Mr. Justice A. D. Koshal (now Hon'ble the Chief Justice) on 5th Jan. 1970, the vacancy could be filled only by a direct recruit and against this vacancy a promotee could not be confirmed and confirmation of any promotee after 5th Jan. 1970, in the service would be of no consequence nor would it adversely affect the

right of the petitioner to claim seniority over and above the person who was confirmed after 5th Jan. 1970. After giving my thoughtful consideration to the entire matter I find myself unable to agree with the contention raised by Mr. Kuldip Singh, learned counsel for the petitioner.

14. At the outset it may be observed that it was the admitted case of the parties that at no time the quota rule was ever violated. The effort of Mr. Kuldip Singh, learned counsel, had been to persuade us to read in the quota rule the rotational system by which the seniority of the petitioner should be fixed. This approach, on the bare reading of the relevant rules, is neither possible nor permissible, R. 8 prescribes the procedure of recruitment to Service and under sub-rule (2), it is provided that out of the total number of cadre posts, 2/3rd shall be manned by promoted officers and 1/3rd by direct recruits. under Rule 12, it is provided that the seniority inter se of the substantive members of the Service, whether direct recruits or promoted officers, shall be determined with reference to the respective dates of their confirmation. When Rules 8 and 12 are read together, it follows that the cadre posts shall be manned 2/3rd by promoted officers and 1/3rd by direct recruits and that the seniority inter se to be determined with reference to the respective dates of their confirmation. The plain reading of R. 8 shows that the intention of the framers was only to provide a quota for the direct recruits in the cadre posts and that no indication at all has been given that rotational system has to be followed at the time of confirmation or for fixing seniority. Respondent No. 3 was confirmed in the Service with effect from 17th May, 1971, against the vacancy caused on the appointment of Shri Gulshan Rai Luthra to the Delhi Superior Judicial Services. At that time, the petitioner could not be confirmed as he was still a probationer. On the confirmation of Mr. Tandon, the quota of posts to be manned by the promotees in the Service, was not exceeded. It may be that if at a given time the direct recruits are not available or the posts to be manned, under the quota, by them remain unfilled then under Rule 8 an officiating appointment of a member of the Provincial Civil Service can be made till the time a direct recruit is appointed and on the appointment of a direct recruit the officiating promotee is to revert but I have yet to hear an argument that though the direct recruit is confirmed subsequently, still he would be deemed to have been confirmed against a vacancy released by a direct recruit against which a promotee has already been confirmed earlier.

15. Further, the petitioner never challenged the order confirming respondent No. 3 with effect from May 17, 1971. As would be evident from the tenor of the averments made in the petition, the main grouse of the petitioner was that as a sequel of the promulgation of the Amendment Rules by the State of Haryana with retrospective effect, the seniority of the petitioner was brought down even below respondent No. 8. That grievance of his has been removed by the State Government itself by undoing the wrong which had been done to him on the promulgation of the Amendment Rules, Respondent No. 3 was confirmed with effect from May 17, 1971 and at the time of his confirmation the petitioner was still a probationer. R. 10 relates to probation and is in the following terms :-

"10. Probation :- (1) Direct recruits to the Service shall remain on probation for a period of two years, which may be so extended by the Governor in consultation with the High Court, as not to exceed a total period of three years.

(2) On the completion of the period of probation the Governor may, in consultation with the High Court, confirm a direct recruit on a cadre-post with effect from a date not earlier than the date on which he completes the period of probation.

(3) If the work or conduct of a direct recruit has, in the opinion of the Governor, not been satisfactory he may, at any time, during the period of probation or the extended period of probation, if any, in consultation with the High Court, and without assigning any reason, dispense with the service of such direct recruit."

16. Under sub-rule (2) of R. 10, a direct recruit is confirmed on a cadre post with effect from a date not earlier than the date on which he completes the period of probation. Under this sub-rule the petitioner, had no right to ask for confirmation with effect from May, 17, 1971, as still he was a probationer. On the satisfactory completion of the period of probation of two years, the petitioner had earned the right to get confirmed on a cadre post; even in that case direct recruit cannot, as a matter of right, ask for confirmation. In a given case the probationary period may be extended and the confirmation may take place thereafter. If the contention of the learned counsel for the petitioner is accepted then it is likely to lead to quite an anomalous and confusing result which would be evident from the example which I am going to quote. In a given case one vacancy of a direct recruit falls vacant in the year 1968 but the selection to that post is not made for one reason or the other for a period of five years. During this period of five years, some promotees in their quota get confirmed, while against the vacancy of the direct recruit officiating appointment of a promotee is made. After 5 years a direct recruit is appointed and is confirmed on the completion of the probationary period. He by no stretch of imagination can say that the vacancy of a direct recruit which fell vacant in the year 1968 and the promotee who was confirmed against that vacancy, should be deemed to be junior to him. As observed earlier, the intention of the framers of the rule was only to provide a quota in the cadre posts for the direct recruits and it was never intended that in the quota rotational system was required to be adopted. Mr. Kuldip Singh sought to argue that any interpretation other than the one he desires to be put on the rules, would result in great hardship to the direct recruits, especially when the appointment is not made the moment a vacancy of a direct recruit falls vacant. It may be so but all arguments on the hardship of a case, either on one side or the other, must be rejected when we are pronouncing what the law is, for such arguments are only quicksands in the law, and, if indulged in, will soon swallow up every principle of it.

17. Adverting to the judicial decision which supports the view I have taken and helps the respondent, reference may be made to the case of *N. K. Chauhan v. State of Gujarat*¹. In this case, seven Deputy Collectors, arriving by direct recruitment in, and after 1963, claimed to be ahead, in the gradation list, of their more numerous counterparts, former mamlatdars, whose promotional incarnation as Deputy Collectors, dated back to the years 1960-63. The title of these younger incumbents to be elder in the Civil List was primarily founded on a basic Resolution of Government of 30-7-1959 regulating recruitment to the Deputy Collector's cadre by the then Bombay State adopting a quota basis. The Gujarat State, carved out of Bombay and formed on May 1, 1960, continued the system. During 1959-62, no direct recruitments were made but many promotions of mamlatdars as Deputy Collectors were effected. Afterwards, that is, in 1963 and later, direct recruits were appointed who were not assigned any seniority over earlier promotees of 1960- 63 vintage having regard to factual position. The claim of direct recruits to be ahead, in the gradation list, of the promotees, was primarily founded on the basic resolution of the Government dated 30th July, 1959 adopting a quota basis. Irrespective of the question whether the Government order of 1959 was merely administrative or statutory, the Single Judge and the Division Bench of the High Court held that Gujarat State was bound by the resolution. The

promotees went up in appeal to the Supreme Court. While deciding the case, one of the questions formulated by their Lordships reads as under (at p. 44 of LIC) :-

"Assuming there has to be a proportion of 50:50 as above indicated, how is it to be worked out? On a rotational basis of the direct recruits inexorably getting the first, the third, the fifth and such like vacancies or as an entitlement to half the total number of vacancies arising in the cadre, in a particular year or other conventional period? Again, does it further imply an imperative obligation on the part of "Government to keep unfilled all vacancies allocable to direct recruits so that they may be available to be filled up in later years with retroactive repercussions and, if such earmarked posts are, for administrative exigencies, filled regularly, not ad hoc, in substantive vacancies, not ex-cadre posts by selection and promotion, they must be treated as provisional nationally filled by direct recruits who may arrive long later? And consequentially, in counting seniority, reckon their (i. e., direct recruits) deemed dates of entry as prior to those of actually officiating promotee deputy collectors by importing a sort of legal fiction that the direct recruits must be allowed to count service from the date when the entitled vacancy for direct recruits arose?"

After considering the entire matter, on the aforesaid question, in Para 32 (3) of the report at page 262, their Lordships observed thus (at p. 49 of Lab IC) :-

"The quota rule does not, inevitably, invoke the application of the rota rule. The impact of this position is that if sufficient number of direct recruits have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees, later direct recruits cannot claim 'deemed' dates of appointment for seniority in service with effect from the time, according to the rota or turn, the direct recruits vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier."

On the proposition whether the quota is so interlocked with rota, Krishna Iyer J., observed in Para 30 of the report as follows :-

"Here again, we are not disposed to hold, having special regard to the recent decisions of this Court cited before us, that 'quota' is so interlocked with 'rota', that where the former is expressly prescribed, the latter is impliedly inscribed. Let us logicise a little. A quota necessarily postulates more than one source of recruitment. But does it demand the manner in which each source is to be provided for after recruitment, especially in the matter of seniority? Cannot quota stand independent of rota? You may fix a quota for each category but that fixes the entry. The quota methodology may itself take many forms-vacancy-wise ratio, cadre composition-wise proportion, period-wise or number-wise regulation. Myriad ways can be conceived of. Rotational or roster system is a commonly adopted and easily understood method of figuring out the placement of

officers on entry. It is not the only mode in the code and cannot be read as an inevitable consequence. If that much is logical then what has been done here is legal. Of course, Shri Garg's criticism is that mere 'quota' is not viable without provision for seniority and, if nothing more is found in the rule, the quota itself must be understood to apply to each post as and when it falls to be filled. If exigencies of administration demand quick posting in the vacancy and one source (here, direct recruitment) has gone dry for a while, then the proper course is to wait for a direct recruit and give him notional date of entry as of the quota vacancy and manage to keep the wheels of government moving through improvised promotions, expressly stripping such adhocist of rights flowing from temporary occupancy. We have earlier dealt with the same submission in a slightly different form and rejected it. Nothing more remains to be said about it".

18. To my mind the above-mentioned case clearly goes to show that rotational system, if not provided in the rules, can not be read in the quota rule. Reliance was also placed on another decision of the Supreme Court in *A. K. Subraman v. Union of India*² by Mr. Chetan Dass Dewan in support of his contention that quota rule would be enforced at the time of initial recruitment. In Para 29 of the report, while summarising the conclusions, point No. 3 has been formulated thus :-

"(3) The quota rule will be enforced at the time of initial recruitment, in an officiating capacity, to the grade of Executive Engineer and not at the time of confirmation".

19. I may now, advert to the judgments on which reliance was placed by Mr. Kuldip Singh, learned counsel for the petitioner, which are as follows :-

(1) *S. G. Jaisinghani v. Union of India*³, (2) *Bishan Sarup Gupta v. Union of India*⁴, and (3) *Bishan Sarup Gupta v. Union of India*⁵.

20. No useful purpose would be served in discussing the aforesaid judgments individually, as in Chauhan's case (supra) their Lordships have made reference to all these judgments and distinguished them.

21. The other two decisions to which our attention was drawn are one of the Karnataka High Court in *V. B. Badami v. State of Mysore*⁶, and the other of this Court in *Shri Baljit Singh Sandhu v. Shri Gurdip Singh*⁷, Again these decisions are of no assistance in arriving at a conclusion that rotational system should impliedly be read in the quota rule.

22. In the light of the aforesaid discussion, I hold that rules 8 and 12 are independent of each other, that rotational system cannot impliedly be read in the quota rule provided under Rule 8 of the Rules and that a member of the Superior Judicial Service is entitled to claim seniority strictly in accordance with the provisions of R. 12.

23. For the reasons recorded above this petition fails and is dismissed but without any order as to costs.

S.S. Sandhawalia, J. :- I agree.

B.N. Mtttal, J. :- I also agree.

A.S. Bains, J. :- I agree.

Harbans Lal, J. :- I agree.

Petition dismissed.

Cases Referred.

1AIR 1977 SC 251

2AIR 1975 SC 483

3AIR 1967 SC 1427

4 (1973) 1 Serv LR 115: AIR 1972 SC 2627

5(1974) 2 Serv LR 136 : 1974 Lab IC 1090

6(1975) 2 Serv LR 295 (Kant)

7Letters Patent Appeal No. 560 of 1974, decided on 3rd Nov. 1976 : (reported in 1977 SLWR 334) (Punj)