
(1968) 07 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2669 of 1967

Brij Mohan Singh Chopra

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 19-07-1968

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227

Punjab Industries Service (State Service Class I) Rules, 1966 — Rule 1, 1(1), 11, 19, 2

Citation : (1969) 2 ILR (P&H) 87

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; H.L. Sibal, General, S.K. Jain and M.R. Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The fate of this petition under Articles 226 and 227 of the Constitution depends on the true construction and proper interpretation of Rule 9(b) of the Punjab Industries Service (State Service, Class I) Rules, 1966 (hereinafter referred to as "State Rules"). The circumstances which have led to the filing of this petition may first be noticed briefly. The Petitioner was appointed as a Deputy Director (Class I) on an ad hoc basis, with effect from February 20, 1963. The post against which the Petitioner was working on such basis was advertised for being filled in by selection by the State Public Service Commission in December, 1963. The Petitioner was one of the Applicants for the post. He was selected by the Commission. Shri R.L. Malhotra (Respondent No. 3) was already working in the Department, in a lower post and was promoted as Deputy Director (Class I), with effect from November 25, 1965. Respondent No. 3, was, however; never confirmed as such. The Petitioner, on the other hand, was confirmed as Deputy Director (Tech.) (Class I), with effect from October 12, 1966, by order; dated October 27, in that year. On October 31, 1966, the State Rules were notified and were ultimately published in the Official Gazette*, dated December 2, 1966, and came into force from that date. This is the common case of both

sides that the Petitioner as well as Respondent No. 3, were, in the matter in dispute, governed by the State Rules.

2. In November, 1966 the post of Additional Controller of Stores, which is equivalent to that of Joint Director of Industries, fell vacant. The post had to be filled by promotion under Rule 9(b). The Petitioner submitted his application, dated June 20, 1967 (copy Annexure "B", to the petition), for the same wherein he submitted that he was entitled to be considered for the said higher post and the proposal of the Department for promotion of Respondent No 3 as Joint Director of Industries/Additional Controller of Stores was not justified as this would amount to supersession of the Petitioner by Respondent No. 3, who was junior to the Petitioner. It was further stated that Respondent No. 3 had been appointed as a Deputy Director long after the Petitioner and had not even been confirmed till then. It was also pointed out that the Petitioner was drawing higher emoluments and there was no justification for recommending the name of Respondent No. 3, without considering the name of the Petitioner at all. It is unnecessary to go into the subsequent representations (copies Annexures "C and "D" to the petition) submitted by the Petitioner in view of the admitted fact that the Government refused to consider the Petitioner at all for the higher post on the ground that he was not eligible for the same according to the rules and the Government appointed Respondent No 3 to the said post, with effect from July 25, 1967. After making further representations the Petitioner served notice of demand on October 21, 1967, on the Government and followed it up by this writ petition on November 25. 1967.

3. In order to appreciate the rival contentions of the parties Rules 1, 2(c), 3, 9(a), (b) and (g) and Note (2) below Rule 9 are relevant and are quoted below:

Rule 1(1) These rules may be called the Punjab Industries Service (State Service, Class I), Rules; 1966.

(2) They shall come into force at once.

Rule 2(c) "Government" means Punjab Government in the Administrative Department.

Rule 3. There shall be constituted a service to be known the Punjab Industries Service (State Service, Class I), consisting of persons recruited to the Service under Rule 9 after the commencement of these rules:

Provided that the persons holding the posts specified in Appendix "A" to these rules immediately before such commencement shall be deemed to be appointed to the Service in accordance with the provisions of these rules on the designations, grades and pay laid down in Appendix "A" to these rules.

Rules 9(a) In the case of Deputy Directors of Industries by promotion from amongst the Deputy Director (Class II)/Community Project Officer (Industry)/Project Officer (Industry)/Marketing Officer, Emporia Organisation having at least 10 years experience in Class II.

(b) In the case of Joint Director, Additional Controller of Stores, by promotion from amongst the Deputy Directs (Class I), having at least 5 years service as such.

(g) In the case of Technical Expert (Production Engineering), Technical Expert (Chemical Engineering), Technical Expert (Mechanical Engineering). Senior Technical Officer. Government Testing and Finishing Centre. Deputy Director (Technical), State Handloom Officer, Superintendent; Government Development and Testing Centre for Sound Products, Textile Officer (Designs), by direct appointment.

Note (2) below Rule 9. All promotions, whether from one grade to another or from one class of service to another shall be made by selection based on merit and taking into consideration seniority and seniority alone shall not give any right of appointment.

4. In Appendix "A" referred to in the proviso to Rule 3, the posts at Nos. 1, 2 and 12 alone need be referred to and an extract from the said Appendix referring to the said three posts alone is given below:

Appendix "A"

Serial No.

Description of posts

No. of posts

Scale of pay

1.

Joint Director/Additional Controller of Stores

3

Rs. 1,250-50--1,500

2.

Deputy Director (industries)

4

Rs. 500--25--600/40--800/ 500-1,000

12

Deputy Director (Technical)

1

Rs. 625--40--825/40-1.025

5. The only ground on which the Petitioner claims that he was entitled as of right

to be considered for the higher post is that he was one of the Deputy Directors (Class I), and since Rule 9(b) states that Joint Director and Additional Controller of Stores must be appointed only "by promotion from amongst the Deputy Directors (Class I)" the Government could not exclude the Petitioner from consideration. Out of the two necessary qualifications which a person must possess before he can be considered for promotion as Joint Director or as Additional Controller of Stores, the one relating to five years service is not relevant in this case as neither the Petitioner nor Respondent No. 3 had at the relevant time completed five years service as Deputy Director (Class I) and though the time put in by Respondent No. 3 as Deputy Director (Class I) was much less than the time during which the Petitioner had served as such, the Government admittedly has the power under Rule 19 to relax the relevant rule in that respect. In fact it is admitted that the rule as to five years service was relaxed in favour of Respondent No. 3 before he was appointed to the higher post in dispute. In the written statement filed on behalf of the State as well as in that of Respondent No. 3, the only ground on which the action of the Government excluding the Petitioner from consideration is sought to be justified is that Government wants to read into Rule 9(b) after the words "Deputy Directors (Class I)" the words "appointed under Sub-rule (a) of Rule 9 of the said rules and not appointed under Sub-rule (g) of Rule 9". If Rule 9(b) can be read in a manner so as to import therein the words suggested by the learned Advocate-General as being implied in the rule, the Petitioner must fail. If, however, there is no justification for the innovation suggested by the learned Advocate-General, the Petitioner, it is conceded, must succeed. In fact it has been specifically stated in the return of the State inter alia as follows:

(Paragraph 4) "I admit that the post of Deputy Director (Technical) held by the Petitioner is filled by "direct appointment" under Rule 9(g) of PIS (State Service, Class I), Rules, 1966, while the two posts of Deputy Directors (Class I) in the scale of Rs. 500--1,000 are filled by promotion from amongst the Deputy Directors (Class II) under Rule 9(a) of the said Rules.

(From paragraph 9) "These two types of posts do not belong to the "same class of posts" and their inter se seniority cannot be fixed in view of the provisions of Rule 11 of the said Rules which restricts inter se seniority to the "same class of posts". The request of the Petitioner for promotion was considered but he was found to be ineligible for promotion as he held the post of Deputy Director (Technical) which was one of the several other isolated technical posts grouped in Sub-rule (g) of Rule 9 of the said Rules."

(From paragraph 12) "These representations (the representations of the Petitioner) were duly considered in detail and it was found that promotion to the post of Additional Controller of Stores was to be made under Rule 9(b) of P.I.S. (State Service Class I) Rules, 1966, by promotion from amongst Deputy Directors (Class I) appointed under Sub-rule (a) of Rule 9 of the said Rules. The appointment of Shri R.L. Malhotra to the post of Additional Controller of Stores

was made as he was the senior of the two Deputy Directors (Class I) appointed under Sub-rule (a) of Rule 9 of the said Rules."

(From paragraph 13) "These two types of posts do not belong to the "same class of posts" and their inter se. seniority cannot be fixed in view of the provisions of Rule 11 of the said Rules which restricts inter se seniority to the-same class of posts."

(From paragraph 14) "The post of Deputy Director (Class I) held by Shri R.L. Malhotra carried the scale of Rs. 500--1,000, while the post of Deputy Director (Technical) held by Shri B.M.S. Chopra carried the scale of Rs. 625--1,275.

6. As already stated, the short question for decision is as to whether there is any justification at all for excluding Deputy Director (Technical), who is admittedly one of the Deputy Directors (Class I), from consideration for promotion to the post of Joint Director/Additional Controller of Stores under Rule 9(b) of the State Rules by adding words in that sub-rule which do not exist there, that is by qualifying the class of Government servants described as "Deputy Directors (Class I)" as "Deputy Directors (Class I) other than Deputy Director (Technical)". After a careful consideration of the entire set of rules and of the submissions made before me I do not find any warrant or justification for reading into a rule something which does not exist therein and which has the effect of prejudicially affecting a member or members of the Service occupying one particular post which otherwise admittedly falls within the category of Deputy Directors (Class I). The language of the rule is plain. There is no ambiguity in the relevant rule. In such a situation there can never be any question of reading into the rule something which does not exist there. Shri H.L. Sibal, the learned Advocate-General for the State, submitted that the intention of the rule-making authority was to exclude Deputy Director (Technical) from being considered for appointment to the post of the Joint Director, as the emoluments of the Deputy Director (Technical) are from the very beginning higher than those of the other Deputy Directors (Class I) and as the Deputy Director (Technical) is recruited by direct appointment under Rule 9(g) whereas the other Deputy Directors are appointed by promotion from Class II, posts under Rule 9(a). The intention of the Government in making the alleged distinction, according to the learned Advocate-General, is that the Deputy Directors (Class I) other than the Deputy Director (Technical) rise from very much lower rungs in the service and become Deputy Directors (Class I) at such a late stage as to be left with hardly a year or so's service and it is to benefit them that the Deputy Director (Technical), who must always be comparatively younger on direct appointment, has been excluded. It is settled rule of law that the question of intention of the Legislature or of the rule-making authorities is wholly immaterial in construing a statutory provision. The function of the Courts is confined to interpreting and construing the plain and unambiguous phraseology of the relevant statutory provision without bothering about the intention behind it. It may be, that in a case where the language is not clear or is ambiguous, the legislative intent might help in the construction of the

provision, but that is plainly not the case here. The learned Advocate-General did not contest that if the additional words sought to be read by him into Rule 9(b) are not read into it, the State cannot succeed. On the merits of the contention of Mr. Sibal regarding the intention of the rule-making authority two things bear relevancy. Firstly, if the interpretation canvassed by the State were to prevail, the directly recruited Deputy Director (Class I) will admittedly have no avenue of promotion to any higher post and must either retire from the post to which he is initially appointed or leave it to find a higher one. On the other hand, all Deputy Directors (Class I) have equal chances of promotion to higher posts if Rule 9(b) is ascribed its natural and plain meaning. Moreover a Deputy Director (Class I) promoted from Class II need not always be about to retire, as is being presumed by Mr. Sibal without hardly any basis. Secondly, it is significant that the higher posts in the Department, i.e., the posts of Joint Director and Additional Controller of Stores, being selection posts, must in the nature of things be filled by men of comparatively outstanding merit and normally considerations of the kind Mr. Sibal wishes to press into service are wholly out of place in such selections.

7. The only other argument of Mr. Sibal was that Rule 11 shows that the seniority of Deputy Directors (Class I) other than the Deputy Director (Technical) is fixed separately and that shows that the incumbents of the two sets of posts fall into two separate "Classes". This appears to me to amount to arguing in a circle. The learned Advocate-General could not produce before me any official seniority list of the service in question for any period subsequent to the reorganisation of the State and the coming into force of the State Rules. But even if it could be assumed that a separate seniority list is being maintained of Deputy Directors (Industries) falling under serial No. 2 of Appendix "A" to the State Rules and a separate one for the incumbent of the post described at serial No. 12 in the said Appendix, i.e post of Deputy Director (Technical), and even if it could possibly be argued that the two posts fall in two different classes, the argument cannot in my opinion be extended beyond the provisions of Rule 11 and cannot be utilised for reading into Rule 9(b) what is not there. Clause (a) of the second proviso to Rule 11 requires that a member recruited by direct appointment shall be senior to a member recruited otherwise. This clause would be meaningless if the two posts in question are expected to fall in two different classes of posts, as Deputy Directors (Class I) other than Deputy Director (Technical) cannot possibly be recruited by direct appointment and must be appointed by promotion under Rule 9(a). Clause (a) of the second proviso to Rule 11 clearly envisages that Deputy Directors (Class I), including Deputy Director (Technical), fall in the same class of posts and Deputy Director (Technical), who is recruited directly, would always rank senior to other Deputy Directors (Class I) who were already in service at the time of his appointment. In any case it is unnecessary to finally pronounce on the manner of fixation of seniority because it is irrelevant in construing Clause (b) of Rule 9. Seniority is merely one of the considerations for making appointment by promotion to the post of Joint Director and even if the Petitioner was not the senior-most he was surely entitled to be considered for the higher

post as much as any other Deputy Director (Class I) was entitled to be considered under Rule 9(b).

8. In these circumstances, I would hold that the expression "Deputy Directors (Class I)" in Rule 9(b) of the State Rules includes all such officers in the service in question who fall in the said category, including Deputy Directors (Class I) recruited under Clause (g) of Rule 9 and not only those promoted from Class II under Rule 9(a). The refusal of the Government to consider the Petitioner at all amounts to denial of equal opportunity in the matter of one of his most important service conditions, i.e. for promotion to the higher post, which fundamental right is guaranteed to every citizen under Article 16 of the Constitution. The impugned orders of the Government expressly refusing to consider the Petitioner for promotion to the post of Additional Controller of Stores along with other eligible Deputy Directors (Class I) amounts to clear infringement of Article 16 of the Constitution. The appointment of Respondent No. 3 to the said higher post without considering the claim of the Petitioner is also illegal and contrary to Rule 9(b). There is an apparent and glaring error of law in the wholly misconceived and almost impossible construction of Rule 9(b) which found favour with the State.

9. For the foregoing reasons this writ petition is allowed, the order of promotion of Respondent No. 3 to the post of Additional Controller of Stores without considering the case of the Petitioner is set aside and it is directed that the State shall now fill up the post in question after considering the rival merits-cum-seniority of the Petitioner and Respondent No. 3. The other Deputy Directors (Class I) have already been considered and excluded in favour of Respondent No. 3. The Petitioner shall be entitled to recover his costs incurred in this case from Respondent No. 1.