

**(1964) 09 P&H CK 0043**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ No's. 1088, 1089, 1090, 1091, 1092, 1093, 1114 and 1115 of 1962

Brijlal Goswami

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 11-09-1964

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Punjab Services Integration Rules, 1957 — Rule 16

**Citation :** AIR 1965 P&H 401

**Hon'ble Judges :** S.B. Capoor, J;I.D. Dua, J;H.R. Khanna, J

**Bench :** Full Bench

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**Judgement**

H.R. Khanna, J.—In the present and seven connected petitions Nos. 1089, 1090, 1091, 1092, 1093, 1114 and 1115 of 1962 under Article 226 of the Constitutions of India the Division Bench, consisting of Mehar Singh J. and myself, referred the following two questions for decision obey a larger Bench:

"(1) Whether the order of the Punjab Government dated 29th September 1961 bifurcating the P. E. S. (Class II) into school and Collage Cadres is violative in whole or in part of the principle of preserving inter seniority embodied in rule 16 of the Punjab Services Integration Rule 1957?

(2) Are the promotions to P. E. S. (Class I), in the wake of the aforesaid bifurcation of the respondents who were originally junior to the petitioners in the joint P. E. S. (Class II) list in preference to the petitioners on the sole ground of the nature of the said Rule and Article 16 of the Constitution.

(2) The petitioners filed these petitions on the allegations that there were two classes of gazetted officers in the Education Department in the Punjab before the merger of Pepsu and Punjab States. The P. E. S. (Class I) comprised all officers at the head quarters, Principals of Colleges, Professors and Divisional Inspectors of Schools. In P. E. S. (Class II) there were included all the senior Lecturers, Deputy and District Inspectors of Schools and those Headmasters who were

holding gazetted posts. The normal rule of promotion from Class II to Class I was that senior-most person in Class II was promoted to Class I, and it made no difference whether, at the time he was promoted, he held the post either of a senior Lecturer or a post which had something to do with the Schools. The position was, however different in Pepsu State and there was in that State one cadre for Schools and another cadre for colleges in P. E. S. (Class II). When the question of merger of Pepsu with Punjab came up, one of the matters that needed determination was the seniority of the persons working in P. E. S. (Class I) and P. E. S. (Class II) in Punjab and Pepsu after their merger. On 29th September 1961 the Governor of Punjab ordered the bifurcation of the Punjab Educational Service (Class II) into two cadres, i. e., (1) College Cadre and (2) School and Inspection Cadre (hereinafter referred to as the School Cadre) with effect from 1st November, 1956, as per order reproduced below:

Punjab Government

Education Department.

Notification.

Dated Chandigarh, the 29-9-1961.

No. 7687-EDI-61/22306. The Governor of Punjab is pleased to order the bifurcation of the Punjab Educational Service (Class II) into two cadres, Viz. (1) College Cadre and (2) School and Inspection Cadre with effect from the 1st November 1956."

The method adopted for bifurcation was that if a person was working on 1st November 1956 on the School and Inspection side P. E. S. (Class II), he was placed in the School Cadre of P. E. S. (Class II), but if he was working on that date in a college he was placed in the college Cadre of P. E. S. (Class II). Separate lists of School cadre and College Cadre in P. E. S. (Class II) were, accordingly, prepared. The petitioners, who were the members of P. E. S. (Class II) and were working in colleges on 1st November 1956 were shown in College Cadre, while the names of respondent other than respondent No. 1 (which is the State of Punjab) in the various petitions were included in the list of School Cadre of P. E. S. (Class II) because those respondents were on that date working on the school and Inspection side. Actually the Punjab Government started implementing the order dated 29th September 1961 long before that order was issued. It may be added that the petitioners as well as the respondents (other than respondent No. 1, which is the Punjab Govt. ) were members of the P. E. S. (Class II) in the Punjab before its merger with Pepsu.

(3) The name of Brij Lal Goswami petitioner in petition No. 1088 of 1962 was in order of seniority at No 35 in the joint seniority list of P. E. S. (Class II) before bifurcation, while those of respondents Nos. 2 to 7 were at Nos. 37, 50, 63, 65, 69, and 70 in that list,. Respondents Nos. 2 to 7 were after bifurcation promoted to P. E. S. (Class I) on various dates from 28th October, 1959 till 26th September

1961, while the petitioner has not been promoted.

(4) In Petition No. 1089 of 1962 the name of V. P. Bansal petitioner in the joint seniority list of P. E. S. (Class II) before bifurcation was at No. 68 while those of respondents Nos. 69 and 70 Respondents Nos. 2 and 3 were promoted to P. E. S. (Class I) on 19th September 1960 and 26th September 1961, while the petitioner has not been promoted.

(5) In petition No. 1090 of 1962 the name of Dipak Nath, petitioner in the joint seniority list before bifurcation was at No. 66, while those of respondent Nos. 2 and 3 were at Nos. 69 and 70. Respondent Nos. 2 and 3 were promoted to P. E. S (Class I) on 12th September 1960 and 26th September 1961, while the petitioner has not been promoted.

(6) In Petition No. 1091 of 1962 J. D. Verma petitioner's name was at No. 29 in the joint seniority list before bifurcation, while those of respondents 2 and 3 were at Nos. 37 and 50. Respondents Nos. 2 and 3 were promoted to P. E. S. (Class I) on 28th October 1959, while the petitioner was promoted to that service after respondents Nos. 2 and 3 on 3rd November, 1959.

(7) In Petition No. 1092 of 1962 the name of H. D. Bhagat petitioner in the joint seniority list before bifurcation was at No. 67, while those of respondents Nos. 2 and 3 were Nos. 69 and 70. These two respondents were promoted to P. E. S. (Class I) on 19th September 1960 and 26th September 1961, while the petitioner has not been promoted.

(8) In Petition No. 1093 of 1962 the name of Rulia Ram Sharma petitioner was in the joint seniority list before bifurcation at No. 55, while those of respondents Nos. 2 to 5 in that list were at Nos. 63, 65, 69 and 70. These respondents were promoted to P. E. S. (Class I) on 12th September 1960, 16th September 1960, 19th September 1960 and 26th September 1961 respectively, while the petitioner was not promoted to P. E. S. Class I) till the filing of the petition. It is, however, stated that during the pendency of this petition in 1962 he too has been promoted to P. E. S. (Class I).

(9) In petition No. 1114 of 1962 the name of Hans Raj petitioner in the joint seniority list before bifurcation was at No. 60, while those respondents Nos. 2 to 5 were at Nos. 63, 65, 69, and 70. These respondents are the same as those in Petition No. 1093 of 1962 and were promoted on the dates mentioned above, while the petitioner has not been promoted.

(10) In Petition No. 1115 of 1962 the name of Nand Lal Dosajh petitioner in the joint seniority list before bifurcation was at No. 32, while those of respondents Nos. 2 to 4 were at Nos. 37, 50 and 63, Respondents Nos. 2 and 3 were promoted to P. E. S. (Class I) on 28th October 1959, while respondent No. 4 was promoted to that service on 12th September 1960. After that, the petitioner was promoted to P. E. S. (Class I) on 16th September 1960.

(11) According to the petitioners respondents other than respondent No. 1, who

were junior to the petitioners, were promoted to P. E. S. (Class I) in preference to the petitioners because of the bifurcation of P. E. S. (Class I) service into School and College Cadres. The only basis for these promotions. It is stated, was the bifurcation of P. E. S. (Class I) into School and College Cadres. The bifurcation is thus stated to have adversely affected the career and further chances of promotion of the petitioners as well as their emoluments and pensions. The method adopted by the State of Punjab in this respect is described to be mala fide, arbitrary and to have resulted in grave prejudice to the petitioners. The order of bifurcation, in the circumstances, is stated to offend the principle about the preservation of inter separate seniority which was embodied in rule 16 of the Punjab Services Integration Rules, 1957 (hereinafter referred to as the Rules) which reads as under:

"16. Inter seniority of any employee in the parent State shall not be disturbed in determine his seniority in the State of Punjab under these rules."

The petitioners have, accordingly prayed for the issuance of suitable writs for:

"(a) quashing the bifurcated lists of School and College Cadres in P. E. S. (Class II) and quashing the order of the Punjab Government dated 29-9-1961.

(b) Ordering the Punjab State to determine the seniority of the petitioners and respondents other than respondent No. I as also of other according to Punjab Services Integration Rules, 1957."

(12) The petitions have been resisted on the grounds that the matters relating to seniority and promotion are not justiciable and that there has been no violation of any mandatory statutory provisions. According to the respondents the inter seniority was not disturbed as a result of the bifurcation of P. E. S. (Class II) service into School and College Cadres. Regarding the promotion to P. E. S. (Class II). it is stated that the old seniority lists lost all force with effect from 1st November 1956 and thereafter promotions were made keeping in view the nature of vacancies in P. E. S. (Class I). The respondents have denied that the method of determining seniority was arbitrary, mala fide or against the integration Rules.

(13) When the petitions came up for hearing before the Division Bench, it was conceded on behalf of the respondents that the petitioners were not considered for promotion for the posts in P. E. S. (Class I) to which the respondents were promoted not because there was anything against the petitioners but because the petitioners belonged to the College Cadre and the aforesaid respondents belonged to the School Cadre as a result of bifurcation. It was, however, urged that in making the promotion to P. E. S. (Class I) the nature of the vacancy was looked at and if the vacancy was of such a nature for which a person from the School Cadre was considered to be more suitable, in that event no name from College Cadre was considered.

(14) In view of the considerable importance of the matter, which affected a large

number of officers of the Education Department, the 0 questions reproduced above were referred for decision to the Full Bench.

(15) Mr. Sibbal, on behalf of the petitioners, has argued, as he did before the Division Bench, that though R. 16 provided that the inter seniority of the employees in the parent State should not be disturbed as a result of the integration of the States, the order about the bifurcation of P. E. S. (Class II) service of the State of Punjab into School and College Cadres has had the effect of actually disturbing that seniority. It is pointed out that but for that bifurcation the respondents other than Respondent No. 1 would not have been promoted to P. E. S. (Class I) in preference to the petitioners because they were in the original list junior to the petitioners. Emphasis has been laid upon the fact that if there had prevailed some other consideration of merit in the promotion of the aforesaid respondents to P. E. S. (Class I) in preference to the petitioners, the position might have been different but, as things stand, the only basis of promotion was that the aforesaid respondents belong to the School Cadre, while the petitioners had been put in the College Cadre.

The order about the bifurcation of the P. E. S. (Class II) service into school and college cadres and about the promotion of the respondents in preference to the petitioners is further stated to offend the mandatory provisions of class. (1) and (2) of Art. 16 of the Constitution, which read as under:--

"(1) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religions, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

(16) Mr. Punnu, on behalf of respondents, has not denied that the petitioners were senior to the respondents concerned in the joint seniority list of P. E. S. (Class II) and that the aforesaid respondents have been promoted to P. E. S. (Class I), while some of the petitioners have not been promoted and others have been promoted subsequent to the respondents. It is, however, contended that in making the promotion to P. E. S. (Class I) the Government looked to the nature of vacancy and if the vacancy was found to be of such a type for which a person from the School Cadre was deemed to be more suitable, in that case no name from the College Cadre was considered. It is further urged that the Government, which is carrying on the administration, has necessarily to have a choice in the constitution of the services to man the administration and the limitations imposed by the constitution are not such as to preclude the creation of such services. argument have also been advanced that the petitioners had no claim as of right to be promoted to Class I which essentially is a matter of selection. Reliance in this connection is placed by Mr. Punnu on R. 7 of the Punjab Educational service ( class I) Rules, 1931 which reads as under:--

"7. Appointments to the Service under clause (a) of R. 6 shall be made by strict

selection and not officer shall have any claim to such appointment as or right."

(17) I have given the matter my consideration and am of the view that the bifurcation of the P. E. S. (Class II) of the Punjab into School and College Cadres has had the effects of adversely disturbing the seniority of the petitioners, the preservation of which was guaranteed by R. 16. As would appear from the resume of facts given above, the petitioners in each petition were senior to the respondents concerned by many positions and yet as a result of the bifurcation those respondents were promoted to Class I, while the petitioners were either not promoted or were promoted much later. The claims of the petitioners in spite of their seniority were not even considered for promotion to those posts in the P. E. S. (Class I) not because there was anything adverse against the petitioners but because they happened to be in the College Cadre and the vacancy was considered to be more suitable for the School Cadre. The College and School Cadres had no existence P. E. S. (Class II) before the bifurcation but came into being as a result of bifurcation and in the circumstances, the promotion of the respondents concerned to the P. E. S. (Class I) in preference to the petitioners can be traced directly to the bifurcation which was effected by the impugned order.

In para 8 of the petitions the petitioners have stated that besides direct appointment to Class I of the Provincial Educational Service, promotions used to be made from P. E. S. (Class II) to P. E. S. (Class I), the Government, while making the promotions, ignored the Punjab Services Integration Rules and effected promotions in such a manner that persons, who were junior to the petitioners in the joint seniority list in Punjab before merger, were considered senior because of the bifurcation of P. E. S. (Class II) into School and College Cadres. In reply to Para. 8 of the petitions, the respondents have stated that with effect from 1st November, 1956 the parent State Seniority Lists of P. E. S. (Class II) lost all force and from the date onwards the officers working on the School and Inspection Cadre and Officers working on College Cadre enjoyed separate seniority in their respective Cadre. Promotions to P. E. S. (Class I) were made from the two cadres in P. E. S. (Class II) keeping in view the nature of vacancies in P. E. S. (Class I). In view of the unequivocal stand of the respondents that with effect from 1st November, 1956 the original seniority list Class II, according to which the petitioners were senior to the respondents concerned, lost all force as well as the other circumstances of the case, I have no doubt in my mind that the bifurcation of the P. E. S. (Class II) into School and College Cadres which was effected by order dated 29th September, 1961 has had the result of disturbing the seniority of the petitioners vis-a-vis the respondent concerned and as such is violative of R. 16.

(18) Although the material on record is silent on this point, Mr. Punnu has pointed out that the respondents concerned were initially promoted in an officiating capacity and only a few of them have so far been confirmed. This fact would, however, not make any material difference because, according to R. 10 of

the Punjab Educational Service (Class I) Rules 1931, the seniority of members of P. E. S. (Class I) service in the case of members appointed under sub-clause (I) of Clause (a) of R. 6 of those Rules, which deals inter alia with the selection of P. E. S. (Class II) to P. E. S. (Class I) shall, in the case of persons who have officiated continuously in any of the posts specified in Appendix "A" be from the date a person begins to officiate. It would, therefore, follow that even if some of the petitioners are subsequently promoted to P. E. S. (Class I) they would not regain their old seniority, but would remain junior to the respondents concerned. The position in the case of those petitioners, who are not promoted because of lack of vacancy in P. E. S. (Class I) would obviously be still worse.

(19) It would also follow from the above that the promotion of the respondents to P. E. S. (Class I) in preference to the petitioners on the sole ground of the nature of vacancy, was the direct consequence of the bifurcation, which has been found to be violative of R. 16. As such the promotion of the respondents concerned in preference to the petitioners should be deemed to impinge upon the provisions of R. 16.

(20) Question then arises whether the promotions of the respondents concerned violate Cls. (1) and (2) of Art. 16 of the Constitution which have been reproduced in the earlier part of this judgment. In this respect I find that the proposition is fairly well settled that the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State is confined not only to the initial appointments but includes also the terms and conditions of service as well as promotion to selection posts, and the reason for that is obvious. If the equality of opportunity mentioned in Art. 16 was confined only to the initial appointments and not to subsequent promotions and conditions of service, the equality guaranteed by that Article would in actual practice in a large number of cases become illusory and lose all effectiveness, because after initial appointments as a result of differential treatment in the matter of promotions and conditions of service of various candidates selected at the same time, the object of securing fairplay in the services may be set at naught. Inroads would thus be made into the very conception of equality of opportunity in public services and thus open the way for worst kind of favoritism and nepotism.

The matter came up before their Lordships of the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*. That case arose from certain directions which had been issued by the Railway Board ordering reservation of selection posts in Class III of the railway service in favour of the members of the Scheduled Castes and Scheduled Tribes and in particular the reservation of selection posts among the Court Inspectors. One of the questions, which arose for determination in that case, was whether Cls. (1) and (2) of Art. 16 of the Constitution referred to the promotions, or whether they were confined to the initial appointments to any post in civil service. Both the appellants and the respondent conceded before the Supreme Court that cases of promotion also fell within the above two clauses. As neither party was interested in contending that

the guarantee afforded by Cls. (1) and (2) of Art. 16 was confined to only initial appointment and did not extend to promotion, notice was issued to the Attorney-General. In response to the notice the Attorney-General was represented by Mr. Sen and he also took the same stand as had been taken by the appellants and the respondents that Cls. (1) and (2) of Article 16 covered within their ambit promotion also. Gajendragadkar J., as he then was who spoke for the majority, after reproducing clause (1) of the Article observed as under:--

" In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way., If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment cannot be confined, only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment in Article 16(1)."

It was further observed-

"This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 (1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provisions as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity" but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service."

Laying emphasis on the necessity of avoiding narrow construction the learned Judge observed-

"If the narrow construction of the expression matters relating to employment" is accepted, it would make the fundamental right guaranteed by Article 16(1) illusory. In that case it would be open to the State to comply with the formal requirements of Article 16(1) by affording equality of opportunity to all citizens in the matter of initial employment and then to defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their

employment, would it, for instance, be open to the State to prescribe different scale of salary for the same or similar posts, different terms of leave or superannuation for the same or similar posts? On the narrow construction of Article 16(1), even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16(1). Such a result could not obviously have been intended by the Constitution. In this connection it may be relevant to remember that Article 16 (1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment."

It was accordingly held that the words "in respect of employment" included all matters relating to employment including promotion. The view, that words of Article 16(1) were wide enough to include words of promotion was again expressed in *Kishori Mohanlal Bakshi Vs. Union of India*, and it was observed that inequality of opportunity for promotion as between citizens holding different posts in the same grade would be an infringement of Article 16. The position would however, be different for persons holding posts in different grades.

(21) The petitioners, as stated earlier, as a result of bifurcation were not even considered for promotion for the post to which the respondents concerned were promoted in P. E. S. (Class I) and this course was adopted in spite of the admitted seniority of the petitioners in the original joint list. In the circumstances I am of the view that the promotion of the respondents in preference to the petitioners was violative of clauses (1) and (2) of Art. 16.

(22) So far as respondents' reliance upon R. 7 of the Punjab Educational Service (Class I) Rules, 1931 which provides for promotion by strict selection and rules out claim as of right to such promotion, is concerned, I am of the view that if the claims of the petitioners had been considered and then on merits they had been passed over, the petitioners would have no grievance which can be sustained in law. Where, however, the claims of the petitioners, as in the present case, were not even taken into consideration in spite of their admitted seniority, and the respondents who were junior to the petitioners, were promoted, R. 7, in my opinion, would not stand in the way of the petitioners getting relief. The rule has to be harmonized with Art. 16 of the Constitution and is not to be constructed in such a way as to make it inconsistent or violate of that Article because the inevitable effect of that would be to strike down the rule.

(23) As regard the contention on behalf of the respondent that the Government which is carrying on the administration has necessarily to have a choice in the Constitution of the services to man the administration and the limitations

imposed by the Constitution are not such as preclude the creation of such services, I may say that the proposition as stated is unexceptionable. It does not however a way as to disturb seniority of the member of that services so as to give a chance of promotion to the junior man without considering the claim of the senior man.

Mr. Punnu has referred to case State of Punjab Vs. Joginder Singh, In that case the Education Department of the Punjab Government took over by an executive order the schools run by the Municipal Boards and District Boards in the Ambala and Jullundur Divisions. The order were called provincialised teachers, would be given the same grade of pay and other allowances as were given to their counterparts in Government service. On 13th February 1961 the Punjab Government promulgated certain rules with retrospective effect from 1st October, 1957, the effect of which was that the provincialised teachers were treated as falling under a cadre separate and distinct from the teachers in the State Cadre. As a result of those rules a members of State Cadre stood a better chance of promotion than it brought about a division in the basis of no intelligible differentia. This contention was repelled by the majority of Judges and it was held that there had been no integration of the two Cadres with effect from October 1957. The two services were found to have started as independent services the qualification prescribed for entry into each were different; the method of recruitment and the machinery for the same were also different and the general qualification possessed by and larger by the members of each class were two distinct services there was no question inter separate seniority between the members of the two services and as such no argument could be based upon Art. 16. The respondent in my opinion can derive no assistance from the observations in the above case because unlike the cited case the present case relates to the bifurcation of what was originally only one service namely, P. E. s. (Class II) in the Punjab.

(24) Another case referred to by Ram Sharan Vs. The Deputy Inspector General of Police, Ajmer Range and Others, This was a case of a petitioner who was head constable in the former State of Ajmer. The petitioners was included in the approved list of head-constables to be promoted to the rank of Sub-Inspectors of Police in 1955 and was appointed as officiating Sub-Inspector in July 1956, In November 1956 the former State of Ajmer merged into Rajasthan, and the petitioners was absorbed in the police service of Rajasthan.. The police force of that State was under the administrative control of the Inspector General of Police, who was assisted by six Deputy Inspectors General of Police, each Deputy Inspector General of Police being in--charge of one of the six ranges in which the whole State had been divided for administrative convenience. The petitioners was reverted in April 1957 when a permanent Sub-Inspector returned to the range as he was the junior most head-constable in the Ajmer range, though in other ranges there were many approved head-constables who were junior to him but they continued to officiate as sub-Inspector. The petitioners claimed that there were frequent transfers of Sub-Inspector and head-constables from one range to

the other. His grievance, accordingly, was that if the whole State were treated as one unit for purpose of promotion to and reversion from the rank of Sub-Inspectors, the petitioner would not have been reverted. The State of Rajasthan denied that there were frequent transfers and averred that sometimes on account of exigencies of service transfers were made but they were rare. Wanchoo, J., who spoke for the Court, referred to the various factors and observed that balancing the various considerations it seemed that the system in force in Rajasthan had been for the efficiency of the police as well as for administrative convenience, and it could not be said to deny equality before the law or equality in the matter of employment in police force. Warning was also administered that the system of promotion of head-constables to Sub-Inspectors within a range could be rationally supported on the basis that interrange transfers of Sub-Inspectors would be a matter of rare occurrence. It would thus appear that the aforesaid case was decided on its own circumstances which have no parallel in the present case.

(25) *G. S. Ramaswamy V. Inspector General of Police, Mysore State*, Civil Appeals Nos. 972 to 977 of 1963 decided by the Supreme Court on 21st January 1964(SC) has also been referred to by Mr. Punnu. The petitioners in that case were appointed Sub-Inspectors in the former Hyderabad State, According to the Hyderabad District Police Manual, posts of Circle inspectors were to be filled in from the rank of Sub-Inspectors for this purpose an approved list (Called eligibility list) of Sub-Inspectors fit for promotion was prepared. On coming into force of the States Reorganisation Act, certain areas of Hyderabad State were formed part of new State of Mysore. The petitioners whose names were on the eligibility list, were promoted as circle Inspectors but were subsequently reverted when certain confirmed Circle Inspectors returned to the New State. The petitioners thereupon filed writ petitions stating that they were entitled as of right to promotion as Circle Inspectors and to continue as such. The Supreme Court, after referring to the various rules of the Hyderabad District Police Manual, held that the fact that the petitioners names had been put in the eligibility lists, did not give them an indefeasible right to promotion or to continue in the post of Circle Inspectors. Reference was made on behalf of the petitioners to rule 2 (c) of the Mysore Seniority Rules according to which seniority of persons appointed on permanent basis was to be determined by the dates of their continuous officiating. It was observed that the aforesaid rule provided for seniority and was not an express rule as to the manner of reversion. The Court then took into consideration the peculiar circumstances which came into existence because of integration and held that as the integration of the different services had to take time ad hoc promotions were made. Subsequently in 1958 a provisional list of Sub-Inspectors was prepared. It was then found that the promotions which had till then been made out of the eligibility list were not in accordance with the provisional list and it so happened in many cases that Sub-Inspectors, who were senior in provisional list and who were in the eligibility list of the various States, were promoted after Sub-Inspector who were junior in the provisional list,

though they were also in the eligibility list. It was because of these special circumstances that reversions had to be made. This case, as would appear from the narration of facts given above, was decided on its peculiar facts and as such the respondents can derive no help from it. It is however, significant that in the above case also it was observed.-

"Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion, the junior-most person reverted is usually the person promoted last. This state of affairs prevails ordinarily unless there are extraordinary circumstances, as in the present case."

(26) Mr. Punnu has also argued that Rule 16 is directory and not mandatory, and the claim based on that rule is not justiciable. As against the above, Mr. Sibbal has argued that Rule 16 is mandatory and an infraction of that rule would be justifiable. He has referred in this connection to Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, wherein relief was given to a petitioners on the ground that the order terminating his service was contrary to the Blue Order and Regulations issued under the Life Insurance Corporation Act. The above matter is, however, outside the scope of reference to the Full Bench and in the circumstances it is not necessary to express any opinion,. The respondents. If so advised, may agitate the matter before the Division Bench at the further hearing of the petitions.

(27) As a result of the above I would answer the first question in the affirmative and hold that the order of the Punjab Government dated 29th September 1961 bifurcating the P. E. S. (Class II) into School and College Cadres is violative of the principle of preserving inter separate seniority embodied in Rule 16 of the Punjab Services Integration Rules, 1957 in so far as it has affected the seniority of the petitioners vis-a-vis the respondents concerned. The second question referred to the Full Bench is also answered in the affirmative. The petitions may now go back to the Division Bench for disposal.

Inder Dev Dua, J.

(28) I agree.

S.B. Capoor, J.

(29) I also agree.

ORDER OF THE DIVISION BENCH.

(30) (D/- 21-12-1964) In view of the decision of the Full Bench in Civil Writ No. 1088 of 1962 decided on 11th of September 1964 the petition is allowed and the impugned order is hereby quashed and it is directed that seniority be determined according to the law laid down by the Full Bench. No order as to costs.

(31) Petitions allowed.