

(1990) 08 P&H CK 0112
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 366 of 1990

Charan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-08-1990

Acts Referred:

Languages Department (State Service Class II) Rules, 1965 — Rule 8
Punjab Financial Commissioners Office (State Service Class III) Rules, 1957 — Rule 10, 2, 4, 6, 7
Punjab General Clauses Act, 1898 — Section 11
Punjab State Assistants Grade Examination Rules, 1984 — Rule 12, 22, 4
States Reorganisation Act, 1956 — Section 115(7)

Citation : (1991) 2 ILR (P&H) 4

Hon'ble Judges : I.S. Tiwana, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : J.N. Kaushal and A.K. Chopra, for the Appellant; Ashok Sharma, H.S. Riar, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—What is the true import of the exemption granted under Rule 12 of the Punjab State Assistant Grade Examination Rules, 1984 (for short, the 1984 Rules), is the primary question that comes to the fore in these two Civil Writ Petitions Nos. 366 and 335 of 1990. The learned Counsel for the parties are, however, agreed that for determining this question the facts of either of these two petitions may be noticed. We have, therefore, chosen to refer to the records of CWP No. 366. The relevant facts are as follows.

2. The Petitioners joined the service of the State Government as Clerks some time after 1st November, 1956 and at that time they were concededly governed by the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957 (hereinafter referred to as the 1957 Rules). Rules 6(f) and 7(1) (e) (i) of these rules made it incumbent on these employees to qualify the test prescribed therein before they could be promoted to the next higher post of Assistant. The

vires of these rules were challenged by some of the employees of the erstwhile Pepsu Government who had come over to the Punjab State Government after the merger of the two States, i.e., Pepsu and Punjab with effect from November 1, 1956, as a result of the State Reorganisation Act, 1956. The challenge was on the ground that these rules were violative of the proviso to Section 115(7) of the Act which laid down that conditions of service applicable immediately before the appointed day to the case of any person allotted to the new State shall not be varied to his disadvantage except with the; previous approval of the Central Government. A Division Bench of this Court upheld this challenge and ruled that the said rules were invalid as these had been made effective in contravention of the statutory protection afforded to the employees of the erstwhile State of Pepsu by the proviso to Sub-section (7) of Section 115 of the Act. See *Sat Pal Sharma and Anr. v. State of Punjab and Ors.* 1968 (2) S.L.R. 484. This judgment was pronounced on March 22; 1968. But for Petitioner No. 11, Surjit Singh Bhatti, all the other ten Petitioners were promoted as Assistants during the interregnum June 3. 1968 to January 1, 1976. i.e., after the pronouncement of the above noted judgment. Though all the eleven promotions of the Petitioners were made against the quota reserved for Scheduled Castes and Backward Classes, yet these were made on provisional basis as they had not passed the qualifying test prescribed in the 1957 Rules. by and by, some of the Petitioners were even promoted as Superintendents Grade II, Grade I or even as Under Secretaries by the time the 1957 Rules were overridden by the 1984 Rules, i.e., with effect from April 12, 1984. Some of these promotions were later challenged, -vide C.W.P. No. 963 of 1975 (*Kundan Singh and Ors. v. State of Punjab and Ors.*) but the same was dismissed on February 17, 1983 with the observation that the provisional promotions- granted to the Respondents (now Petitioners) could not justifiably be questioned on the ground of their not having passed the prescribed test. These latter rules once again laid down -vide Rule 4 that no person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant, he qualifies the test. The third proviso to Sub-rule (1) of this rule further laid down that a person who had been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of these rules, shall be required to qualify the test within a period of three years from such commencement and failure to qualify the test within the specified period shall result in reversion of such person to the post of Clerk, or to the post by whatever designation called from which he was appointed by promotion to the post of Assistant on provisional basis. Certain categories of persons were, however, exempted from qualifying this test. but in these cases we are not concerned with those categories of employees. The vires of this rule were challenged by some of the Petitioners and other similarly situated persons, -vide C.W.P. Nos. 2490, 3067, 3069 and 3181 of 1984 on a wide variety of grounds, Before these petitions could, however, be disposed of on merits, the State Government passed an order on May 2, 1985 (Annexure P-2) in exercise of its powers under Rule 12 referred to above. The operative part of

this, order reads that "the President of India is pleased to exempt from qualifying the Assistant Grade Test, all such persons who had, prior to the coming into force of the aforesaid Rules (1984 Rules), been appointed by promotion on provisional basis to the post of Assistant or to any higher post as defined in Rule 2(e) and Rule 2(d) respectively of the Rules *ibid*." This exemption was, however, made subject to any order passed by the Judicial "Courts in the cases decided or pending, pertaining to different departments. As a result of this order of the State Government, the above noted writ petitions challenging the vires of 1984 Rules Were dismissed by this Court on May 7, 1985, as infructuos, Still later,-vide Annexure P. 4, dated October 8, 1987, it was notified by the Financial Commissioner that the exemption granted to 195 persons including the Petitioners,-vide Annexure P.2, was to be operative with effect from May 2, 1985, i.e., the date on which the order Annexure P.2 was passed. As per the stand of the Petitioners, this order Annexure P.4 is totally illegal and ineffective as according to them the exemption granted to each one of them became operative with effect from their respective dates of promotion as Assistants, it deserves to be noticed here that somewhere in the year 1987, one Avtar Singh, who had qualified the test prescribed m Rules 6(i) end 7(l)(e)(i) of the 1957 Rules, and had been promoted as Assistant with effect from September 30, 1964 challenged the seniority list of the Assistants issued,-vide order dated January 30, 1981 on the ground that the seniority of all the employees including the Assistants of the erstwhile State of Pepsu could not be clubbed together. In other words, the seniority of the persons who had been appointed as Assistants prior to the framing of the 1951 Rules, could not be determined under the later mentioned Rules. The Court, after noticing the judgment in Sat Pal Sharma's case (*supra*) came to the conclusion that the said judgment did not invalidate Rules 6 and 7 of the 1957 Rules and the only import of the said judgment was that the said Rules were not to govern the service conditions of the employees who had been appointed as Assistants prior to the coming into force of those Rules. Therefore, the impugned seniority list was quashed. This judgment has concededly been upheld upto the Supreme Court. As a result of this judgment, a fresh tentative seniority list of Assistants including the Petitioners was prepared treating the Petitioners to have been regularly appointed to the posts of Assistants with effect from May 2, 1985. Some of the Petitioners as also some others filed objections to this list on the plea that exemption granted to them,-vide Annexure P.2 could not be limited or applied with effect from May 2, 1985 only. Rather it has to be taken as operative and effective from the very date they had been promoted as Assistants. However, this plea of theirs was not accepted by the State authorities and,-vide order dated December 21, 1989 (Annexure P.5) the seniority of the Petitioners was made final, i.e. treating them to have been promoted as Assistants with effect from May 2, 1985. As a result of this fixation of seniority, the Respondent authorities have passed the impugned orders, Annexures P.6 to P.8, reverting some of the Petitioners to the lower posts.

3. As is well indicated by the above narration of facts, the total claim of the

Petitioners is that the exemption granted to them,-vide Annexure P.2 is to be operative with effect from their respective dates of promotions (though provisional) as Assistants and it cannot be taken to be operative only with effect from May 2, 1985 as is sought to be done by the Respondent authorities. As against this the firm stand of the Respondent authorities is that since Rules 6(f) and 7(l)(e)(i) of the 1957 Rules which laid- down the qualifying of the test as a condition precedent for promotion to the post of Assistant, were held to be ineffective in Sat Pal Sharma's case (supra) only qua the employees who had entered the service prior to the enforcement of the State Reorganisation Act, 1956 and were not declared to be void or unconstitutional in any other manner, these rules continued to be operative and effective quo those employees who like the Petitioners joined service after the enforcement of the 1957 Rules. It was in the light of these rules that the Petitioners were granted provisional promotions only without conferring any right of seniority or any other right for future promotion, etc. As a matter of fact it was so stated in the promotion order of" each one of the Petitioners and at the time of granting subsequent further promotions to different posts. With the, enforcement of, the 1984 Rules, it was imperative for the Petitioners in the light of Rule 4 thereof to qualify the test as they had been promoted as Assistants on provisional basis only. The exemption granted to the Petitioners, as done,-vide Annexure P. 2, dated May 2, 1985 could only be granted prospectively as envisaged by Rule 12 of the 1984 Rules. They cannot possibly claim the benefit of this exemption with effect from their respective provisional promotions as Assistants which on the face of it would tantamount to granting them exemptions retrospectively and this is not permissible under the Rules. It is further pointed out by these authorities that in pursuance of the ratio of the judgment in CWP No. 6169 of 1987 (Avtar Singh v. The State of Punjab and Ors.), decided by this Court on June 1, 1989, a tentative seniority list of the Assistants was circulated on August 29, 1989 and only Petitioners No. 3 and 4 had filed objections to the same. Since the objections were devoid of any merit, the same were rejected and the final seniority list was issued on December 21, 1989 (Annexure P.5). " According to these authorities, in view of the clear language of Rule 12 of the 1984 Rules the exemption granted,-vide order dated May 2,-1985, has to be made effective prospectively. Therefore, the Petitioners have tightly been treated to have been promoted as Assistants on regular basis with effect from May 2, 1985. In the light of this: fixation of "their seniority, the consequential reversions of some of the. Petitioners were unavoidable and have been so ordered.

4. In the light of the respective pleas of the two sides as noticed above, it is abundantly clear that the question noticed in the opening part of the judgment is pristinely legal and deserves to be answered in the light of the plain language of the rule, i.e., Rule 22 of the 1984 Rules. This Rule reads as follows:

12. Power to grant exemption.-Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, or reasons to be recorded, in writing, exempt any class or category of persons from the operation of these

rules and such exemption shall operate prospectively.

(Emphasis supplied).

It is not in dispute before us in the light of Rules 2(d)(e)(g), 4 and 10 of the 1984 Rules that the Petitioners, in the absence of the exemption granted to them, were liable to qualify the test prescribed for appointment by promotion to the posts of Assistants within a period of three years from the commencement of the Rules and in case of their failure to do so, they having been promoted on provisional basis only, were liable to be reverted from the posts from which they had been so promoted. In other words, the Petitioners were within the operational sphere of the Rules. However, to sustain his plea that the exemption granted to the Petitioners became operative and effective from their respective dates of promotion their learned Counsel, Mr. J.N. Kaushal, raised a multi-facet argument:

(i) Grant of exemption under Rule 12 of the 1984 Rules takes the grantees completely out of the operation of this set of rules. In other words, once the exemption under this rule is granted, no rule out of these rules or a part thereof can be made operative against such an employee. Therefore, according to the learned Counsel that part of Rule 4 which lays down that non-qualification in the test by an Assistant who had been promoted on provisional basis "shall result in reversion of that person to the post of a Clerk! or to the post by whatever designation called, from which he was appointed by promotion to the post of Assistant on provisional basis", cannot be made operative against the Petitioners. According to him, the Petitioners cannot be reverted to the lower posts in the light of this latter quoted part of Rule 4.

(ii) If the stand of the Respondent authorities that the exemption granted to the Petitioners is operative with effect from the date it was granted, i.e., 2nd of May, 1985, is to be upheld it would amount to "giving by one hand and taking away by the other". The learned Counsel maintains that if this stand of the authorities is correct, then the exemption granted to the Petitioners does not virtually give any benefit to them.

(iii) As it is not disputed by the Respondents that since the pronouncement in Sat Pal Sharma's case (March 22, 1968), no test as envisaged by the 1957 Rules was ever held till the promulgation of the 1984 Rules (April 12, 1984), the Petitioners cannot be held guilty of not having qualified the test.

(iv) In any case, the 1984 Rules operate very harshly against the Petitioners and, therefore, in order to do substantial justice to them, the exemption order, Annexure P2, has to be made operative with effect from the dates the Petitioners were granted their respective promotions.

5. Besides this he relies on certain observations made in the following three judgments:

(1) Shivnarayan Kabra Vs. The State of Madras, .

(2) The State of Maharashtra and Anr. v. Chandrakant Anant Kulkarni and Ors. 1981 (3) S.L.R. 326, and

(3) Gurdev Singh v. The State of Punjab and Ors. 1984 (2) SLR. 215.

6. Having given our thoughtful consideration to these submissions of the learned Counsel, we however, find it difficult to grant them the relief prayed for.

7. So far as the submission of Mr. Kaushal at (i) is concerned, even if fee same is accepted as correct, though Mr. Riar, fee learned Senior Deputy Advocate General, appearing for the Respondents has a lot to submit in the light of Section 11 of the Punjab General Clauses Act, for argument's sake, still they do not become entitled ;to the relief prayed for as the reversions of the Petitioners and the exemptees like them are not ordered under Rule 4 of the 1984 Rules; rather these are the necessary consequence or outcome of the re-fixation of their seniorities on the basis of their promotions on regular basis with effect from May 2, 1985. In other words, these reversions are independent of the 1984 Rules.

8. The submission of Mr. Kaushal at (ii) does not appear to be very apt. In the absence of exemption,-vide Annexure P.2, and the failure of the Petitioners to qualify the test as prescribed in Rule 4, the consequences would have been their reversions to the posts of Clerks. They could not even stay as Assistants as is now the net result of grant of this exemption. They have been treated to be duly or regularly promoted as Assistants with effect from May 2, 1985.

9. So far as the submissions at (iii) and (iv) are concerned, no doubt it is true that no test has been held in terms of the 1957 Rules during the period March 22, 1968 to April 12, 1984, yet it again remains a fact that none of the Petitioners offered himself for taking the test which he was obliged to take in view of the 1957 Rules. May be the Petitioners and the Governmental authorities in all probability remained under the belief in the light of the judgment of this Court in Sat Pal Sharma's case (supra) that Rules 6(f) and 7(l)(e)(i) of the 1957 Rules were not operative after the pronouncement of that judgment. But this position was clarified and made explicit by this Court in Avtar Singh's case (supra) wherein it was ruled that Rules 6 and 7 of the 1957 Rules were not to govern the service conditions of the persons who had been appointed as Assistants prior to the coming into force of the rules or who had come over to the State of Punjab as a result of the merger of the erstwhile State of Pepsu on promulgation of the States Reorganisation Act, 1956. Further the mere non-holding of the test for whatever reasons could not possibly take the Petitioners outside the ambit of 1984 Rules. Similarly the alleged harshness of these rules cannot possibly .be the sole ground for nullifying or declaring these rules to be unconstitutional. As a matter of fact no such challenge has been laid In this petition. On the contrary, the earlier challenge to these rules on that ground,-vide different writ petitions referred to above was withdrawn when the same were dismissed on May 7, 1985 as infructuous. Therefore, we hardly find any merit in any of these submissions of the learned Counsel for the Petitioners.

10. Similarly reliance on the above noted three judgments appears to be futile. All that has been referred to from Shivanarayan Kabra's case (supra) is certain principles pertaining to the interpretation of statutes. It has been emphasised in the light of the same that one of the sound rules of interpretation is that the statute should be so construed as to prevent the mischief and to advance the remedy according to the, true intention of the makers of the statute. There can hardly be any dispute with regard to this legal proposition. But how the applicability of this rule advances the case of the Petitioners is not very clearly explained by the learned: counsel. Neither the intention of the rule, i.e., Rule 12 nor that of the order Annexure P. 2, when read with order Annexure P.4, is obscure or indefinite. In the absence of any vagueness in the language of the rule or the order, the plain language thereof cannot possibly be given a go-by on the basis of some presumptive intention of the makers of the same. The last part of Rule 12, as already indicated, clearly lays down that the exemption granted thereunder shall operate prospectively. This intention is made more than clear in the impugned orders, Annexures P.2 and P.4 wherein the authority passing the same says that the exemption granted to the Petitioners and others of their category shall be effective with effect from the date of the order Annexure P. 2, i.e., May 2, 1985.

11. Next, certain observations made in paragraph 10 of the judgment in Chandrakant's case (supra) have been relied upon by the learned Counsel to emphasise that where under the relevant rules no examination is held within the stipulated time there can "be no question of reversion of the persons who were required to qualify that examination. What has been said in that paragraph has to be read in the context of the facts of that case and the statute or the law under which the relief was sought to be granted to the Petitioners. That was a case dealing with the integration of Assistant Sales Tax Officers of different or merging States of Madhya Pradesh and Hyderabad, as a result of their allocation to the State of Bombay. It was Clause (b) of Sub-section (5) of Section 115 of the States Re-organisation Act, 1956, which" Was brought into service to grant relief to the Petitioners. The relevant part of that Sub-section lays down That the Central Government may, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to ensuring of a fair and equitable treatment to all persons effected by the provisions of this section and the proper consideration of any representations made by such persons. No such situation either on facts or in law exists in the Instant case.

12. Lastly Gurdev Singh's case (supra) is a case where the Petitioner who was a Clerk in the Department of Languages of the State of Punjab was initially promoted as an Assistant without qualifying the test prescribed in the Languages Department (State Service Class II) Rules, 1965 and was later on promoted to the post of Head Assistant in the light of Rule 8(k) of the said Rules on the basis of his experience as an Assistant. At a later stage he was sought to be reverted from the post of Head Assistant to that of a Clerk on the ground that he had failed to qualify the test prescribed in the rules for purposes of his promotion to

fee post of Assistant. This action of the authorities concerned was nullified with the following observations:

Strange as it may look even as a result of the impugned order dated 5th March, 1980 the Petitioner has been allowed to continue on the post of Assistant for promotion to which post the passing of a Departmental test in terms of Rule 8(k) of the Rules is a pre-condition. For the promotion to the post of Head Assistant the rules do not envisage the passing of any test by a person to be promoted to that post. Thus, the net result of the order dated. March 5, 1980 is that the Petitioner has been allowed to man the post for which he is not eligible according to the authorities and has been reverted from the post for which his eligibility cannot possibly be doubted. The only 1 pre-condition for promotion to the post of Head Assistant is five years" experience as an Assistant which he duly fulfilled. Thus, to revert the Petitioner from the post of the Head Assistant to that of Assistant on the basis that he had not qualified the test prescribed for the latter post is without justification.

In the instant case, on the contrary, the Petitioners had not only been promoted to the posts of Assistants on provisional basis but even their later promotions too were on provisional basis. Therefore, the observations made in this judgment cannot any way help them.

13. It was only with a view to save the Petitioners from the rigour of the 1984 Rules that the State Government thought it -advisable or expedient to exempt them or their class or category of persons and passed the exemption order Annexure P.2. The latter part of the rule clearly lays down feat such an exemption "shall operate prospectively". It is so in spite of the fact that the order of exemption, is silent about the date of its effectiveness. It is because of the reason that the rule itself lays down that any exemption granted under this rule shall operate prospectively. In case the Stand of the learned Counsel for the Petitioners is to be accepted that the exemption to them,-vide Annexure P.2 is to be operative with effect from the respective dates of their promotions or, in other words, retrospectively, It will not only be contrary to the clear language of the rule but will also, render the last words "shall operate prospectively" as totally superfluous and redundant It is one of the established principles of interpretation of statutes that no word of a statute can possibly be treated as superfluous or devoid of any meaning. Therefore, the stand of the learned Counsel for the Petitioners cannot possibly be accepted. The exemption granted to the Petitioners,-vide Annexure P.2 has to operate prospectively, i.e., with effect from the date the order was passed i.e., May; 2, 1985. With the rejection of this, stand, of the Petitioners, there is hardly any other argument on their behalf which needs to be met to uphold the consequential impugned orders or the action of the State Government. With this conclusion of ours, we also do not feel called upon to go into some of the technical matters raised on behalf of the Respondents with regard to the non-impleading of the necessary of proper parties etc,

14. For the reasons recorded above, we find no merit in either of these two petitions. The same are thus dismissed but with no order as to costs.