

(1994) 11 SC CK 0099
In the Supreme Court Of India
Case No : Civil Appeal No. 788 Of 1991

Charan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:

Citation : (1995) 3 SCC 107 Supp

Hon'ble Judges : S. P. Bharucha, J; J. S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellants are aggrieved by the judgment dated 10/8/1990 of the Punjab and Haryana High court dismissing their Civil Writ Petition No. 366 of 1990 wherein a challenge had been made to the re-fixation of their seniority and consequent reversions made to the lower post. The appellants had joined the service in the State of Punjab as Clerks. The next higher post for promotion of a Clerk was that of an Assistant. In the hierarchy, the posts for further promotions were those of Superintendent Grade II, Superintendent Grade I, Assistant secretary, and Under secretary. It appears that a Clerk was required to qualify in a test for promotion to the post of an Assistant. During the period between 1964 to 1984, for some reason no such tests were held by the State government. The appellants were provisionally promoted from the posts of Clerks to those of Assistants from 1966 to 1975 and then were granted further provisional promotions to the next higher posts above that of the Assistants.

2. The Rules applicable earlier were Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957. It was the effect of Rules 6(f) and 7(I)(c) of those Rules which required a Clerk to qualify in the test for promotion to the post of Assistant. Thereafter the Punjab State Assistant Grade Examination Rules, 1984 made under the proviso to Article 309 came into force with effect from 11/4/1984. It is primarily the provisions in the 1984 Rules which are material for deciding the controversy in this appeal.

3. EVEN though the appeal has to be decided essentially with reference to the provisions of 1984 Rules, yet a passing reference to some earlier history may be made. One Satpal Sharma, an employee of the erstwhile State of Pepsu which had merged in the State of Punjab with effect from 1/11/1956 on the reorganisation of the States, had challenged the requirement in the 1957 Rules of qualifying in the test for promotion from the post of Clerk to that of Assistant, in Writ Petition No. 1055 of 1966 filed in the Punjab High court. The High court by its judgment dated 22/3/1968 held the aforesaid Rules 6(f) and 7(1)(e) of the 1957 Rules to be void. It is likely that as a result of this decision of the High court no qualifying test was held thereafter till 1984. The next litigation was Writ Petition No. 963 of 1975 filed by one Kundan Singh, challenging the promotion of Appellant II. Surjeet Singh Bhatti as Superintendent, Grade II. This writ petition was dismissed by the High court on 17/2/1983. The High court while dismissing that writ petition held that the provisional promotion of Surjeet Singh Bhatti to the post of Assistant could not be questioned on the ground that he had not qualified in the prescribed test. Thereafter Writ Petition No. 6169 of 1987 was filed in the High court by one Avtar Singh who had qualified in the test and was promoted as Assistant in 1964. challenging the seniority list. The High court held in that case that Rules 6(/) and 7(l)(e) of the 1957 Rules were held ultra vires only in relation to employees who had joined service prior to the coming into force of the 1957 Rules. It may, however, be observed that the effect and scope of the decision in the writ petition filed by Satpal Sharma is to be determined with reference to the order made therein and not with reference to the manner in which it was read subsequently in another matter by the High court.

4. AFTER the enforcement of the 1984 Rules, refixation of the seniority was made and certain reversions effected which were to the prejudice of the present appellants and this led to the filing of Writ Petitions Nos. 2490, 3057, 3069 and 3187 of 1984. However, during the pendency of these writ petitions the State government issued an order dated 2/5/1985 under Rule 12 of the 1984 Rules granting exemption from qualifying the Assistant Grade test to such persons who had prior to the coming into force of the aforesaid Rules been appointed by promotion on provisional basis to the post of Assistant or to any higher post as defined in Rule 7(e) and Rule 2(d). Pursuant to this order of the State government, an order dated 12/10/1987 was issued by the Financial Commissioner of Punjab implementing the grant of exemption with effect from 2/3/1985 to 195 persons named therein. In view of the State government's order dated 2/5/1985. these writ petitions were dismissed on 17/5/1985 as infructuous. As a result of implementation of the order of exemption in this manner, certain reversions were made on the basis of seniority revised in that manner. Aggrieved by this action and such implementation of the order of exemption. Writ Petition No. 366 of 1990 was filed by the appellants challenging the effect given to the exemption in this manner. The High court by the impugned order has dismissed the writ petition taking the view that Rule 12 of the 1984 Rules permits grant of exemption only prospectively and, therefore, the

manner in which the grant of exemption has been understood does not suffer from any infirmity. Hence this appeal by special leave.

5. The real question for decision is whether the grant of exemption prospectively as provided in Rule 12 of 1984 Rules has been correctly understood and applied in the facts of this case. In order to appreciate the real controversy, reference must be made at this stage to the relevant provisions of 1984 Rules, as under:

"2. Definitions.- In these rules, unless the context otherwise requires- (g) "provisional appointment" basis means an appointment by promotion of a person to the post of Assistant before qualifying the test prescribed in the relevant service rules or in these rules, as the case may be, with or without a condition of qualifying the test imposed in the order of appointment; and (h) "test" means a written qualifying examination conducted by the Board under these rules. 3. Extent of application. These rules shall apply to all the posts of Assistants except those in the Punjab Vidhan Sabha Secretariat. 4. Eligibility for promotion to the post of Assistant.- (1) 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: Provided that a person who has already qualified the Assistant Grade Examination inter alia in terms of Punjab government Circular No. 4809-GII-57/21176 dated 23/10/1957, or who was holding on regular basis the post of Assistant on 23/10/1957, shall not be required to qualify the test: Provided further that if a person holding the post of Assistant or a higher post, on provisional basis, on the commencement of these rules is of the age of fifty years or more, he shall also not be required to qualify the test: Provided further that a person who has 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, (2 Notwithstanding anything contained in sub-rule (1, where no person, who has qualified the test, is available for promotion to the post of Assistant in a Service, the appointing authority may appoint a person by promotion to the post of Assistant on provisional basis till a person who has so qualified the test becomes available in that Service. 7. Persons eligible to sit in the test. All persons holding the post of Clerks or other posts, by whatever designation called from which they could be appointed by promotion to the post of Assistant, shall be eligible to sit in the test. 10. Saving of Seniority.- (1 Where a person who was promoted as Assistant before the commencement of these rules on provisional basis subject to his qualifying the test shall be liable to reversion to the post from which he was promoted if he fails to qualify the test within a period of three years as specified in the third proviso to Rule 4 and in case such a person qualifies the test within that period his seniority shall be determined with reference to his date of promotion to the post of Assistant on

provisional basis. (2 Notwithstanding anything contained in these rules, if a person holding the post of a clerk or any other post by whatever designation called from which he could be appointed by promotion to the post of an Assistant qualifies the test within the first two four chances available to him after his appointment to such post, he shall, on his promotion to the post of an Assistant, be assigned seniority in the cadre of Assistant in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant: Provided that if such a person fails to qualify the test within the aforesaid first two four chances, he shall, on his promotion to the post of Assistant, be assigned seniority in the cadre of Assistant from the day he is promoted as such. 11. Overriding effect. The provisions of these rules shall have effect notwithstanding anything inconsistent therewith contained in any other rules governing the appointment and other conditions of service for the time being in force. 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, for 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."

6. The real controversy in the present case is about the meaning of grant of exemption with effect from 2/5/1985, the date on which the order granting exemption under Rule 12 was made by the State government. The submission of learned counsel for the appellants is that it merely means that the protection which was granted to the provisional promotees under the 1984 Rules and was available to them on 2/5/1985 when the exemption was made continued to enure to their benefit; and, therefore, protection of their promotions and status in the higher offices they held by virtue of provisional promotions given to them earlier had become final. On the other hand, it is contended by the learned counsel appearing for some of the private respondents, as well as Respondent 22 who appeared in person, that the meaning of prospective operation of the exemption has to be understood only in the manner indicated in the High court's judgment and not as suggested by the learned counsel for the appellants. On this basis, it was urged on behalf of these respondents that the revised seniority and the consequent reversions made are correct.

7. RULE 4 prescribes the eligibility to the post of Assistant. Clause (1 of Rule 4 provides for a qualifying test as a condition of eligibility for promotion. The first proviso to clause (1 exempts from that requirement persons who had already qualified in the test or those who were holding on regular basis the post of Assistant on 23/10/1957. The second proviso then exempts from that requirement a person holding the post of Assistant or a higher post on provisional basis on the commencement of these Rules i.e. on 11/4/1984, if he was of the age of 50 years or more. The third proviso is the one material for the present purpose. It lays down that a person who has 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 the period of three years from such commencement. The further part of

the third proviso mentions the consequence of failure to qualify in the test within the specified period of three years. It is this provision which gives to any person appointed to the post of Assistant or any higher post on provisional basis before the commencement of the Rules and continuing on that basis three years to qualify in the test to retain permanently the benefit of the earlier provisional promotion given to him. It is only on his failure to qualify the test within the prescribed period of three years i.e. till 11/4/1987 that he was liable to be reverted to his earlier rank. Rule 10 relates to saving of seniority. Clause (1) of Rule 10 has to be read along with Rule 4. This clarifies the consequence of failure of such a provisional promotee to qualify the test within the specified period of three years i.e. up to 11/4/1987 rendering him liable for reversion.

8. IT follows that the question of reversion of any such provisional promotee and consequent adverse effect on his seniority would not arise under the Rules till the expiry of the period of three years from the date of commencement of Rules i.e. till 11/4/1987; and that too only in the event of failure of such provisional promotee to qualify in that test. It was during this period available to the provisional promotees to qualify the test and thereby gain permanent benefit of the promotion under the third proviso to clause (1) of Rule 4 that the State government exercised its power to grant exemption conferred by Rule 12, on 2/5/1985. The effect of the exemption so granted on 2/5/1985 by the State government was that the requirement of qualifying the test prescribed by the third proviso to clause (1) of Rule 4 became inoperative, insofar as it related to the provisional promotees who had till then not obtained that qualification. The logical consequence thereof was that all such exempted promotees were on a par with those who had already qualified, by virtue of the exemption so granted under Rule 12. This was the effect of the exemption operating prospectively W.e.f. 2/5/1985 and there was no need to give any retrospective benefit of the exemption to any of these provisional promotees, for this purpose. The requirement of Rule 4 of qualifying the test in the case of any such provisional promotees was fully met with the grant of this exemption within the period specified. In this situation the view taken by the High court that to bring about this result in the case of provisional promotees, the grant of exemption had to be retrospective results from a misconstruction of Rule 12 and its effect.

9. The submission made on behalf of some of the respondents that the initial promotion given provisionally being contrary to the 1957 Rules was invalid, does not merit any serious consideration. The matter is governed squarely by the 1984 Rules which clearly provide for the provisional promotees because of their failure to qualify in the prescribed test earlier. The need for making such a provision arose only because of this reason and, therefore, this argument really is of no legal consequence. We may also mention that Rule 11 of the 1984 Rules clearly provides that the 1984 Rules have an overriding effect over any other Rules governing the appointment and other conditions of service for the time being in force.

10. IT follows that the seniority of these persons has to be reckoned on the above basis, protecting the provisional promotions in view of the exemption granted by the State government under Rule 12 of the 1984 Rules. The consequent promotions also have to be considered in that light. The refixation of seniority and any reversions made contrary to this principle have to be corrected accordingly.

11. CONSEQUENTLY, the appeal is allowed and the impugned judgment of the High court is set aside. No costs.