

(1970) 09 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3195 of 1969

Devindra Bahadur and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 22-09-1970

Acts Referred:

States Reorganisation Act, 1956 — Section 115(5)

Citation : AIR 1971 P&H 348

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : M.R. Agnihotri, for the Appellant; B.S. Khoji and S.P. Goyal for A.G., for the Respondent

Judgement

1. The petitioners were appointed officiating inspectors, co-operative societies, in the erstwhile State of Pepsu on October 20, 1956. and after the merger of the States of Punjab and Pepsu they were integrated with the inspectors, co-operative societies. Punjab . By order dated February 26, 1957, seven officiating inspectors, including the petitioners, were reverted as sub-inspectors in order to accommodate the block level officers who had completed their training at Ladda under the belief that there were no existing vacancies against which they could be appointed. The reversion orders were passed because it was on of the conditions of promotion of the petitioner from th post of sub-inspector to that of inspector in Pepsu that they would be liable to reversion in order to accommodate the block level officers who were then receiving training. Later, it was found that there were enough vacancies to accommodate the reverted inspectors, including the petitioners as well as the Block Level Officers, with the result that all of them were reappointed as officiating inspectors by the order of the registrar, co-operative societies, dated April 6, 1957. The petitioners remained reverted from march 1, 1957. On may 4, 1957, the deputy registrar. Co-operative societies. Patiala, wrote a letter to the registrar, co-operative societies, Punjab, Jullundur, requesting that the government might be moved to permit that the service rendered by the reverted inspectors from march 1, 1957, to April 10,

1957, as sub-inspectors be treated as service rendered as inspectors for the purpose of determining their seniority amongst the officiating inspectors.

2. Bishan Chand petitioner was again reverted to his substantive post of Sub-Inspector in Patiala Division by an order of the Registrar, Co-operative Societies, Punjab, dated December 30, 1958. Against that order Bishan Chand filed an appeal which was accepted by the Government and the order was communicated to the Registrar, Co-operative Societies, Punjab, on October 27, 1959. It was directed that Bishan Chand should be promoted as officiating Inspector, Co-operative Societies, immediately against an existing vacancy in the grade of an Inspector. In case there was no vacancy, the junior-most person promoted after November 1, 1956, other than Sarvshri Naurata Ram, Om Parkash and Surjit Singh, who may not be holding the post of Inspector in a permanent or a quasi-permanent capacity, may be reverted to make room for him. Along with the appeal of Bishan Chand, the appeals of Ram Parshad and Ruldu Ram were also accepted and similar directions were issued qua them. The Under-Secretary to Government Punjab, Co-operation Department, informed the Registrar, Co-operative Societies, Punjab, Jullunder, by memorandum No. 13957-Coop; IV-60/6985 dated November, 28, 1960, that "Government have decided that as a result of the acceptance of the appeals against their reversions Sarvshri Ram Parshad, Bishan Chand and Ruldu Ram, officiating Inspectors, Co-operative Societies should be given the benefit of seniority which they had earned before 1st November, 1956." This memorandum was written in reply to Registrar's memorandum No. B III/55/16771-E, dated November 14, 1960, on the subject of determination seniority as Inspectors, Co-operative Societies.

From this memorandum it is clear that the break in service of the petitioners on account of their revision from the post of officiating Inspector to that of Sub-Inspector from March 1, 1957 to April 10, 1957, was condoned and their seniority, as existing prior to November 1, 1956, was restored. The result follows from the fact that Bishan Chand was the junior-most amongst the petitioners and then he was restored his seniority, it necessarily meant the restoration of seniority of all the petitioners as their inter se seniority in the State of Pepsu could not be disturbed. This order was not given effect to by the Registrar, Co-operative Societies.

3. On February 11, 1966 the joint seniority list of Services consisting of Deputy Registrar, Assistant Registrar Probationary Assistant Registrar, Inspector and Sub-Inspector of the Co-operative Department was issued which was published in the Punjab Government Gazette dated March 11, 1966. This Governor of Punjab in exercise of the powers conferred on him by the proviso to Art. 309 of the Constitution of India and in accordance with the decision of the Government of India under the provisions of Section 115(5) of the States Reorganisation Act, 1956. Before the publication of this final list, yearly lists were being published in which the petitioners were shown junior to respondents 3 to 31 in spite of the order of the State Government communicated to the Registrar on November 28,

1960, referred above. After the publication of the final gradation list dated February 11, 1966, the Registrar, Co-operative Societies, published a seniority list of Inspectors, co-operative Societies, Punjab, as on March 1, 1969, and in this list showed respondents 3 to 31 at Nos. 60 to 88, while the petitioners were shown at Nos. 90, 91, 92, 96 and 97. This seniority list was issued in June, 1969, and the petitioners submitted representations against the same to respondent 2. Since those representations were not decided, the petitioners filed the present petition praying that the seniority list of Inspectors, Co-operative Societies, as on March 1, 1969, issued in June, 1969 should be quashed and the promotion of respondent 5, Shri Jagdev Singh, as Assistant Registrar, Co-operative Societies, made vide order dated November 4, 1969 should be set aside. The returns to the writ petition have been filed by respondent 2 and some of the other affected respondents.

4. At the hearing, the learned counsel for the petitioners has confined his attack to the society list which has been impugned in the petitioner and his argument, in a nut-shell, is that the petitioners had been shown senior to respondents 3 to 5 in the final gradation list as on November 1, 1956, published by the Governor of Punjab vide Notification dated February 11, 1966, in the Punjab Government Gazette dated March 11, 1966, and that respondents 3 to 31 could not be placed above them especially when respondents 6 to 31, had been appointed after November 1, 1956. Jagdev Singh, respondent 5, had been appointed as Inspector Co-operative Societies, in the erstwhile Pepsu State on October 31, 1956, and none of the petitioners was reverted as Sub-Inspector which showed that there was a vacancy to accommodate respondent 5.

5. The plea of the respondents, on the other hand, is that there was a break in service of the petitioners as officiating Inspectors from March, 1, 1957, to April 10, 1957 and therefore their continuous service as officiating Inspectors could be considered only from April 10, 1957, and on that basis they were rightly made junior to respondents 3 to 31. It is further submitted that the petitioners could be reverted to their substantive post of Sub-Inspector because they were officiating as Inspectors.

6. There is no force in the submissions of the respondents in view of the order of the Government conveyed to the Registrar, Co-operative Societies, by memorandum dated November 28, 1960, referred to above. That memorandum clearly showed that the break in service on account of reversion was condoned and, therefore, the petitioners were to be deemed to have continued in the posts of officiating Inspectors with effect from October 20, 1956. Respondents 3 to 31 had, therefore, to be shown junior to them in the seniority lists, more particularly because of the final gradation list published under Art. 309 of the Constitution by the Governor which showed by the order of the seniority as on November 1, 1956. This order of seniority could not be changed thereafter. It was pointed out by the Deputy Registrar, Co-operative Societies, in his letter dated May 4, 1957, that the reversion of the petitioners and two other officiating Inspectors had

been made under a misapprehension as there were enough vacancies to accommodate all the Block Level Officers who had returned after completing their training and, for this reason their reversion was unjustified.

7. What is surprising in this case is that for a period of ten years the Government has not been able to have its order complied with by the Registrar, Co-operative Societies. No written statement has been filed to this petition on behalf of the State, probably because of the reason that according to the orders of the Punjab State the petitioners have to be ranked senior to respondents 3 to 31. On a decision taken on the representation on Shri Bishan Chand, Inspector, against seniority, the Under Secretary Co-operation, Punjab, wrote a D. O. letter to the Registrar, Co-operative Societies, Punjab Chandigarh, on April 8, 1969, with reference to his memorandum No. Admn/EA/1-II-53/528, dated January 14, 1969, that "the circumstances explained in your various references to the Government in this case have all along been considered and rejected by the Government in consultation with the Legal Remembrancer. I, therefore request you kindly to implement the Government orders in this case without any further delay. "In spite of this D. O. letter, the Registrar did not implement the Government orders which were the same as were communicated to the Registrar in the memorandum dated November 28, 1960. I am constrained to remark that the defiance of the orders of the Government by the Registrar, Co-operative Societies, depicts a sorry state of affairs and an administrative chaos in the Department. For ten years, there has been a conflict between the State Government and the Registrar, Co-operative Societies, with the result that the petitioners have been the victims of injustice. The State Government should not feel so helpless in getting its orders implemented if proper discipline is to be maintained in the administration under its charge. The Registrar cannot defy the orders of the State government for such a long time if his point of view has not been repeatedly accepted by the State Government. This was a case in which the Government should have shown strength and should have compelled strength and should have compelled the Registrar to implement its orders. In case of disobedience, some action against him or the guilty Officers should have been taken.

8. Another curious thing in this case is that one of the notes appended to the seniority list of Inspectors, Co-operative Societies, Punjab, as it stood on March ,1, 1969, which has been impugned in this petition, is "the position of Inspectors in the integrated seniority list of erstwhile Punjab and Pepsu employees as on November 1, 1956, has been kept intact." This note is evidently wrong as that list has not been kept intact, as has been shown above.

9. For the reasons given above, this petition is accepted with costs and respondents 1 and 2 are directed to prepare the seniority list of the Inspectors of Co-operative Societies afresh in accordance with the observations made above without disturbing the seniority as determined in the final gradation list dated February 11, 1966, and published in Punjab Government Gazette dated March

11, 1966. The costs shall be paid by respondents 1 and 2 only. Counsel's fee for Rs. 200/-.

10. Petition allowed.