

(1955) 07 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No's. 1, 2 and 27 of 1955

Gurbachan Singh and Others

APPELLANT

Vs

State of Pepsu and Others

RESPONDENT

Date of Decision : 15-07-1955

Acts Referred:

Constitution of India, 1950 — Article 10(2), 16(1), 226, 310, 311
Pepsu Administration Ordinance, 2005 — Section 3, 3(1)

Citation : AIR 1956 P&H 26

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : M.R. Sharma, for the Appellant; Chetan Dass Dewan, D.A.G., for the Respondent

Judgement

Chopra, J.—Certain identical questions are involved in the above-noted petitions under Article 226 of the Constitution. They have, therefore, been heard together and are disposed of by this order.

2. The Petitioners were posted as Head masters (Gazetted) of High Schools at the time of formation of the Patiala and East Punjab States Union on 18-8-1948; Gurbachan Singh and Baldev Singh were employees of the erstwhile Faridkot State and Jai Bhagwan of the Jind State.

On the formation of the Union, the Petitioners were integrated as Headmasters in the Pepsu Educational Service. By its resolution No. 52, dated 21-12-1950, the State Government decided upon a general formula and laid down principles to be followed for preparation of seniority lists, of the officers integrated in various departments of the State.

The Government Resolution was duly published in the Official Gazette dated 14-1-1951. On the basis of the formula so laid down, the Pepsu Educational Service Integration Committee drew up a provisional seniority list of the officers integrated in PUES Class I and II. A copy of it was sent to each of the officers

concerned, including the Petitioners, with the endorsement that objections, if any, to the position assigned to him in the list may be submitted within a period of fifteen days.

The Petitioners took objections to the list and submitted their representations. The final list of the officers integrated in different classes of Educational Service, with effect from 1-9-1948, showing the order of their seniority, was prepared on 23-9-1954 and was duly published. Gurbachan Singh, Baldev Singh and Jai Bhagwan Petitioners were placed at Nos. 19, 20 and 23 respectively in the list of officers in PUES Class II, in grade 200-400. A note was appended to this list saying that "since the number of posts in this cadre falls short of the number of persons integrated, the junior-most will be placed in the non-gazette grade of 150-220". As the number of posts in this cadre was only sixteen, the Government, vide its order dated 24-9-1954, prepared a list of these officers in the order of their seniority as on 1-9-1954.

Names of the Petitioners, who were junior in position, did not appear in this list, with the result that they were placed in the non-gazetted grade of 150-220. They made representations to the Government but failed. In these petitions under Article 226 of the Constitution, the Petitioners pray for the issue of a writ of mandamus, or any other appropriate writ or order, directing the Respondents (i) to accept the Petitioners as Gazetted Headmasters in PUES Class II, and (ii) "to fix the Petitioners' seniority in accordance with the mandatory provisions of Ijlas-i-Khas Order No. 58 and the principles of natural justice."

3. Ijlas-i-khas Order No. 58 was issued by His Highness the Maharajadhiraj of the erstwhile Patiala State on 18-2-1946, with a view "to prescribe a general set of rules for regulating seniority of State servants inter se in the different grades, cadres and classes of State service." The word "State" in this Order stands for the State of Patiala, and the rules laid down by the Order, which need not be reproduced, were apply to the Patiala State services.

Reliance is next placed on Section 3 of the Pepsu General. Provisions (Administration) Ordinance, 2005 Bk., promulgated by the Rajpramukh of Pepsu in exercise of the powers conferred by Article 10(2) of the Covenant. The section relates to enforcement of the laws of Patiala State in the State of Pepsu, and its relevant portion reads as follows:

3. (1). As from the appointed day, all laws and rules, regulations, bye-laws and notifications made there under, and all other provisions having the force of law, in Patiala State on the said day shall apply, mutatis mutandis, to the territories of the State and all laws in force in the other Covenanting States immediately before that day shall cease to have effect:

The "appointed day" means the fifth day of Bhadon, 2005 BK (18th August, 1948).

4. The Petitioners case is: The Ijlas-i-khas Order had the force of law in Patiala

State: the rules laid down by the Order became law for the State of Pepsu by virtue of Section 3(1) of the Ordinance: these rules could only be altered by legislature of the State of Pepsu and not by its executive and, therefore, the Petitioners' seniority should have been determined in accordance with those rules and not under the rules subsequently framed by the State Government.

The contention is that if those rules had been observed, their (Petitioners') positions in the seniority-list would have been much higher than those allotted to them, and they would have been, in that case, entitled to the higher grade. In the alternative, it is urged that even according to the new rules they ought to have been shown senior to some of those placed above them.

5. The position of the Respondents is that Ijlas-i-khas Order No. 58 was intended to be a guide for determining inter se seniority of the officers of erstwhile Patiala State. On the formation of the Union, the Government was confronted with the problem of integrating numerous employees of the various Covenanted States.

The Government of necessity had to evolve some new formula or principles in this connection, and that the Government did by its Resolution No. 52 dated 21-12-1950.

One of the principles so laid down is that the inter se seniority of the Government servants belonging to the Covenanted States will not be disturbed. The other provides that the inter se seniority of Government servants of different Covenanted States will be fixed in accordance with the total length of service in the various equivalent posts which will be equated in consideration of responsibilities, grades of pay, etc.

The inter se seniority of the officers coming from each Covenanted State was determined according to the principles laid down in the Ijlas-i-khas Order No. 58, and the same was not disturbed. But Resolution No. 52 formed the basis of settling the inter se seniority of the officers -integrated in the Pepsu State Service.

These principles, it is alleged, have been strictly observed in the Petitioner's case and they have been assigned the places they actually deserved. It is further contended that the decision of the Government in this behalf being purely executive, the matter is not justifiable and: no writ can be issued.

6. The argument of Shri M.R. Sharma, learned Counsel for the Petitioners, that the Ijlas-i-Khas Order was a law in Patiala State and, therefore, it became the law for the State of Pepsu has no force. It was merely an executive order issued by the Executive Head of the State with a view to lay down certain guiding principles in the matter of determining seniority of its subordinate officers.

The mere fact that the Executive Head also enjoyed legislative powers for the State does not lead to the conclusion that every order passed by him, in whatever capacity, would have the status of "law" or "a provision having the

force of law". It is the nature of the order that would determine its source and the capacity in which it was made. The name assigned to it may not be very much material, but the purpose for which the Order was made may be regarded as one of the decisive factors.

Whatever might have been its significance in the primitive legal systems, in the modern developed system of societies, the "law" is of statutory origin and is embodied in special enactments. In my judgment, it is not possible to give this status to the Order in question. The order itself makes it abundantly clear. The opening part of the Order preceding the rules laid down for guidance of the executive, says:

Whereas it is expedient to prescribe a general set" of rules for regulating seniority of State servants inter se in the different grades, cadres and classes of State Service:

Now, therefore, we are hereby pleased to lay down the following rules for the aforesaid purpose, subject, of course, to any specific departmental rules, or orders on the subject:

Rules and regulations for guidance of its officers in administrative matters are generally framed by the State executive, and the present does not appear to be any exception. Determination of inter se seniority of State servants, as an administrative measure, is primarily the function of the Government on its executive side. The order expressly makes the Rules subject "to any specific departmental rules, or orders on the subject", which indicates that these Rules were meant to be of the nature of, and were framed in addition to, the then extant departmental rules or orders on the subject.

Admittedly the Rules were not framed under any law then in force. It is correct that the order had a binding force on all concerned, but that does not lead to the inference that it amounted to or was meant to be a law for the State. In my opinion, therefore, the Order or the Rules framed by it did neither amount to "law", or "Rules framed there under" nor "a provision having the force of law". It was merely an executive Order and hence Section 3(1), quoted above, would have no application.

Under the circumstances, the Rules could at any time be amended, superseded or annulled as the exigency demanded, by the Rajpramukh, the Executive Head of the Pepsu State. The Petitioners' contention that it was only for the legislature of the State to alter or amend those rules must, therefore, be repelled.

(7-8) Moreover, the Rules framed by the Order could be the guiding basis only for settling inter se seniority of officers of Patiala State or at the most each one of the Covenanted States. Mr. Sharma frankly concedes that the Petitioners' seniority vis-à-vis the officers of their (Petitioners') respective states was determined according to the principles laid down by the IJlaskhas Order, and that it was not disturbed in the final integrated list.

His grievance, however, is that even after the integration their seniority should have been settled on the basis of those very Rules. This was hardly practicable. Different circumstances and conditions prevailed in different Covenanting States. Different posts, or the same posts with different responsibilities or grades of pay etc., in the various States had "to be equated for the purpose of integration, and for this some new formula had necessarily to be evolved. Resolution No. 52 of 21-12-1950 laid down the principles according to which inter se seniority lists of officers integrated in the various services of the Union were to be formulated.

9. The alternative position that the Petitioners have not been rightly placed in the list of seniority, even according to the new formula contained in Resolution No. 52, was not taken up in the petitions. Mr. Sharma has not been able to point out anything on the record in support of the allegation. On the other hand, we have an affidavit affirmed by Shri C.L. Kapur, Joint Secretary, Education, that the formula laid down in Resolution No. 52, was in no way departed from in the Petitioners' case and that their seniority was settled according to the principles contained in the Resolution.

10. Even if it be assumed that the old Rules were to be followed or that the new Rules have been violated in determining the Petitioners' seniority, the question still remains whether the matter is justifiable and a writ can be issued to correct the error. Article 310 of the Constitution lays down that persons employed in a State hold their employment at the pleasure of the Governor or the Rajpramukh, as the case may be, of the State. They can be dismissed, removed or reduced in rank at the pleasure of this authority subject to the limitations imposed by Article 311.

Article 311 creates certain guarantees in favour of the State servants in the matter of their dismissal, removal, or reduction in rank and imposes corresponding obligations on the State Government in those matters. Further restrictions or fetters at the pleasure of the Governor or the Rajpramukh may also be placed by an appropriate legislation.

A Government servant is no doubt entitled to relief, like any other person, in the ordinary law in case of disregard of the constitutional guarantees or breach of the statutory obligations. But mere infringement of certain rules, framed by the Government for guidance of its subordinates, would not afford a cause of action to the person concerned. Relief in such a case is to be sought from the Government of the State and not through its municipal Courts. The rules, as in the present case, may, only be directory and they can at any time be changed.

11. In AIR 1937 31 (Privy Council) on facts, it was found that there was a serious and complete failure to adhere to certain important and fundamental rules. In spite of it, their Lordships strongly repelled the contention that redress in the case was obtainable from the Courts by an action.

12. In "Dalmer Singh v. State of Pepsu AIR 1955 Pepsu 97 (B), the order of the Petitioner's dismissal based on the result of a departmental inquiry was

questioned before me, inter alia, on the ground of certain irregularities in the inquiry" proceedings and violation of the relevant rules. Dealing with the objection, I observed:

The fact that certain rules have been framed to safeguard the rights of civil servants in matters of disciplinary action does not mean that this Court has jurisdiction to quash the order of dismissal simply because the provisions of one or the other of those rules have not been strictly observed. So far as there is no contravention of Article 311 of the Constitution this Court would have no jurisdiction to quash an order of dismissal.

13. The right of the Government to regulate or determine inter se seniority of its employees is implicit in the theory that the civil servants of a State hold office at the pleasure of the Governor or the Rajpramukh, as the case may be. So long as any statutory inhibition is not shown to be contravened, the Petitioners cannot complain before a Court or claim any relief on the basis of the Government's failure or refusal to assign them their proper position in the seniority list. The case may be a hard one for the Petitioners, but the redress lies with the Government and not by an action in Court.

14. Mr. Sharma next contended that there has been a violation of the fundamental right guaranteed by Article 16(1) of the Constitution inasmuch as some of the juniors were selected for the higher grade and placed above the Petitioners in the seniority list. The article has no application to the present case. Article 16(1) says:

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

The object of the article is to ensure equality of opportunity for all citizens in matters relating to appointment to public offices. When the same set of rules or principles are equally applied in any process of selection or grading there is no discrimination in favour of those who have been selected. The discrimination between persons who are accepted and those who are rejected is inevitable in every selection for an employment or appointment, and there can be nothing wrong in such a discrimination.

The principle of equality" of opportunity enunciated in Clause (1) of Article 16 cannot be regarded as violated where a selection is made according to the merits of candidates and all are subjected. to the same rules and tests. The seniority list in the present case was prepared according to the rules laid down for the purpose, and these rules were equally applied to all the officers concerned.

15. In the case of Shri Jai Bhagwan Petitioners it is further urged that on 23-12-1953 he was promoted as Gazetted Headmaster in the grade of 200-400 and that his non-selection for that grade in the final list amounts to "reduction in rank", which is hit by Article 311(2) of the Constitution. In paras 2 and 19 of his petition. Shri Jai Bhagwan admits that this appointment of his was "on officiating

and provisional basis pending final integration".

As the number of posts in that cadre was limited and the Petitioner did not fall within that number in the seniority list, he had to be reverted to his substantive grade. Reversion of the Petitioner from the grade he was temporarily holding, was thus purely on administrative grounds and, therefore, the provisions of Article 311(2) of the Constitution are not attracted.

16. In the result, the petitions are dismissed, No order is made as to costs.