
(2013) 08 P&H CK 0476
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7778 of 2011

Inspector Gurpreet Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 1 SCT 145

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.K. Malik and Ms. Kiran Rathee, for the Appellant; Sudeepti Sharma, D.A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The challenge in this writ petition is to the report furnished by the Officers Committee at Annexure P4 duly approved by the Director General of Police, Punjab on 3.2.2011, as also to the action of the official respondents in having acted upon the recommendations contained in such impugned report whereby the private respondents have been declared senior to the petitioners. Brief facts of the case are that the petitioners were directly recruited as Assistant Sub Inspectors in the Punjab Police and joined as such on different dates in the month of January/February, 1990. The petitioners were thereafter promoted as Sub Inspectors on 28.9.2001, 11.3.1995 and 1.2.2001 respectively, and further promoted as Inspectors on 1.1.2010, 30.6.2005 and 1.1.2010. The private respondents were, initially, recruited to the police service as Constables and further promoted as Head Constables. They were promoted as officiating Assistant Sub Inspectors in April/May, 1990.

2. An Officers Committee was constituted by this Court on 13.10.2010 in the case of Inspector Pritam Singh who had filed Civil Writ Petition No. 5077 of 2010. The recommendations of the Officers Committee were to the effect that all promotees would be deemed to have been confirmed two years after they were

promoted as Assistant Sub Inspectors unless their probation period was specifically extended in the light of Rule 13.18 of Punjab Police Rules, 1934. Likewise, all direct recruit probationer Assistant Sub Inspectors would be deemed to be confirmed three years after their appointment unless their period of probation was specifically extended as per Rule 12.8 of 1934 Rules. Such recommendations were to apply in respect of appointments made upto 4.5.1994 (whether by direct recruitment or by promotion) i.e. the date the Punjab (General and Common Conditions of Service) Rules, 1994 (for short "1994 Rules") were promulgated. Such recommendations having been approved by the Director General of Police resulted in the issuance of a tentative seniority list whereby the petitioners were shown junior to the private respondents. The petitioners filed objections against such tentative seniority list but the same were rejected vide memo dated 18.4.2011 at Annexure P6. It is against such brief factual backdrop that the instant writ petition has been filed.

3. Learned Senior counsel would assail the recommendations made by the Officers Committee in the report at Annexure P4 and the consequential determination of seniority of the petitioners to a position inferior to the private respondents primarily raising the following submissions:

i) The petitioners were appointed as Assistant Sub Inspectors by way of direct recruitment at a point of time when the private respondents were working as Head Constable i.e. a feeder post for promotion to the post of Assistant Sub Inspector. As such, it has been argued that such Head Constables who were promoted as Assistant Sub Inspectors after the appointment of the petitioners cannot steal a march as regards seniority over and above the petitioners.

ii) It has been strenuously argued that the private respondents were promoted as Assistant Sub Inspectors only on an officiating basis and were never promoted as such on a regular basis and, accordingly, the confirmation of the private respondents on completion of two years service cannot sustain as it is only a regular employee who can be confirmed.

iii) Learned Senior counsel would further argue that even though all direct recruit Assistant Sub Inspectors have been confirmed after three years of their appointment and all promotee Assistant Sub Inspectors have been confirmed after two years of their promotion, yet the Officers Committee has overlooked a vital issue that under the 1934 Rules, there is no bar for the confirmation of a direct recruit after completion of three years probation period to relate back to the initial date of appointment. Likewise, learned counsel would submit that even in the case of promotee Assistant Sub Inspectors, the confirmation after successful negotiation of two years probation period could relate back to the date of promotion.

iv) Even a plea of discrimination and violation of Articles 14 and 16 of the Constitution of India has been raised in terms of adverting to the report of the Officers Committee at Annexure P4 wherein it had been held that the criteria

would apply as regards determination of seniority qua all personnel from the rank of Assistant Sub Inspector upwards. It has been contended that the recommendations have been applied only qua Assistant Sub Inspectors of Police and the criteria has not been applied to the cadre of Inspectors.

v) A further submission has been raised that the instructions dated 8.4.1991, Annexure P2, issued by the Government of Punjab, Department of Personnel and Administrative Reforms on the subject of de-linking of confirmation from the availability of permanent post would not have retrospective operation as the petitioners as also the private respondents were directly recruited/promoted as Assistant Sub Inspectors prior to the date of issuance of such instructions dated 8.4.1991. The precise argument raised is that confirmation necessarily has to relate to the availability of a permanent post, be it in the quota of direct recruits or promotees.

4. Learned counsel appearing for the State would, however, justify the recommendations contained in the report furnished by the Officers Committee as also the State action in having accepted and acted upon the same on the strength of the statutory provisions contained in the 1934 Rules. It has been stated on behalf of the State that the recommendations contained in the impugned report as also the determination of seniority inter se the petitioners and the private respondents is strictly in conformity with Rules 12.2(3), 12.8 and 13.18 of the 1934 Rules. Learned State counsel would further refer to the averments made in para 7 of the written statement filed on behalf of respondents No. 1 to 3 to submit that the instructions dated 8.2.1991 de-linking confirmation from availability of permanent post had come up for consideration before a Division Bench of this Court in Civil Writ Petition No. 7821 of 2003 titled as "ASI Niranjn Singh No. 278/JRT and others v. State of Punjab" and the following directions have been passed:

For the reasons aforesaid, we see no reason to take any view different than what has been taken by the benches in the case of ASI Sarbjit Singh and ASI Baldev Singh Brar (*supra*). Consequently, we allow this writ petition and direct the respondents to consider the case of the petitioners for confirmation in their respective posts in accordance with rules and instructions dated 8.04.91 as expeditiously as possible so as to avoid any prejudice to their deployment to the Upper School Course where their juniors have already been deployed.

5. It is further submitted that SLP(C) No. 21225 of 2003 filed by the State against the order dated 20.5.2003 was dismissed as withdrawn and even a review application filed by the State in this Court was dismissed on 3.12.2004. Learned State counsel has further contended that even though the promotions of the private respondents as Assistant Sub Inspectors was on an officiating basis, yet under Rule 13.18 of 1934 Rules, period of officiating appointment to the service can be reckoned as period spent on probation. State counsel would also contend that even the petitioners were initially recruited as temporary Assistant Sub Inspectors of Police by direct recruitment against temporary posts.

6. Learned counsel for the parties have been heard at length.

7. For the adjudication of the controversy raised in the instant writ petition, it would be apposite to refer to the relevant statutory provisions. The 1994 Rules were promulgated on 4.5.1994 and in the light of Rule 8 thereof, it was stipulated that seniority in each cadre of service shall be determined by the length of continuous service in such post in that cadre. Rule 20 carried a mandate that the provisions of the 1994 Rules were to have effect notwithstanding anything contrary contained in any Rules for the time being in force for regulating recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. The formal amendment in the 1934 Rules was made vide notification dated 28.2.2003 in terms of which the criteria for seniority was changed from the date of confirmation to length of continuous service. In the facts of the present case, it is the unamended provisions of 1934 Rules that would hold the field. Rules 12.2(3), 12.8 and 13.18 of 1934 Rules would be relevant and are re-produced hereunder:

12.2. Seniority and probation:- (1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

Seniority in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-a-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.

Provided that in the case of officers recruited direct after 23rd December, 1958, as a result of the same examination or selection, their inter-se-seniority shall be reckoned.

(a) by the order of merit fixed by the selection body, and

(b) when there is no such order by merit indicated, by the age of the candidate, i.e., the oldest being placed the senior-most and the youngest the junior-most.

12.8. Probationary nature of appointments.--(1) Inspectors, Sergeants, Sub-

Inspectors and Assistant Sub-Inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examinations including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police. A probationary inspector shall be discharged by the Inspector General and all other Upper Subordinates by Range Deputy Inspector-General and Assistant Inspector-General, Government Railway Police, Assistant Inspector-General, Provincial Additional Police (designated as Commandant, Provincial Additional Police) and Assistant Inspector-General of Police (Traffic). No appeal lies against an order of discharge.

(2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub-Inspector is shown in Appendix 10.64, Table A.

13.18. Probationary period of promotion. - All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit period of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4.

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules 13.5 and 13.14.

8. A conjoint reading of the relevant Rules would clearly indicate that in the case of upper subordinates, seniority is to be finally settled by the dates of confirmation. Under Rule 12.8, Inspectors, Sub Inspectors and Assistant Sub Inspectors who were directly appointed, would be on probation for a period of three years and are liable to be discharged at any time during or on the expiry of such period if they fail to pass the prescribed examinations or are guilty of grave misconduct, or for sufficient reasons are found to be unsuitable for service in the police. As per Rule 13.18, all police officers promoted in rank shall be on probation for two years. Upon the conclusion of the probationary period, the competent authority is either to pass an order of confirmation of the officer concerned or to revert him. Under no circumstances is such period of probation in the case of a promotee to be extended beyond two years. Rule 13.18 further envisages and permits the period of officiating service to count towards period of probation.

9. This Court is of the considered view that the recommendations of the Officers Committee contained in the report at Annexure P4 is in complete conformity with

the afore reproduced statutory provisions. The confirmation of the directly recruited petitioners as Assistant Sub Inspectors has been done on completion of the three years period of probation prescribed under Rule 12.8 of 1934 Rules and likewise, the confirmation of the private respondents has been done upon successful negotiation of the two years period of probation after their promotion as Assistant Sub Inspectors. The period of officiation to count towards period of probation would also fall within the ambit and scope of Rule 13.18 of the 1934 Rules. Contention raised by learned Senior counsel for confirmation to relate back to the date of initial appointment if accepted would amount to reading something alien into the Rules. It is by now well settled that if the language of the statutory provision is clear and unambiguous, it would not be open for the Courts to add any word thereto and evolve a legislative intent not found in the provision.

10. The instructions dated 8.4.1991 issued by the State Government, Department of Personnel and Administrative Reforms, Annexure P2, on the subject of de-linking of confirmation from the availability of permanent post clarified that confirmation is to be made once in the service of an official i.e. at the entry grade and confirmation is de-linked from the availability of permanent vacancy in the grade, in other words, upon successful completion of the period of probation, the Officer is liable to be confirmed.

11. Learned Senior counsel has not been able to refer to any provision in the 1934 Rules whereby confirmation is to be accorded only upon availability of a permanent post in the cadre. In the absence of any such provision under the statutory Rules, the instructions dated 8.4.1991, Annexure P2, would hold the field. Since on the date of issuance of such instructions dated 8.4.1991, the direct recruits i.e. the petitioners as also the promotees i.e. the private respondents were still undergoing the period of probation, as such, the instructions would even be applicable qua them.

12. Even the plea of discrimination raised on behalf of the petitioners in having applied the recommendations of the Officers Committee contained in the report at Annexure P4 exclusively qua Assistant Sub Inspectors and having not accepted such recommendations qua the cadre of Inspectors stands effectively demolished in the light of averments contained in para 9 sub-para (iii) of the written statement which reads in the following terms:

That in reply to sub para iii of para 9 it is submitted that the Officers Committee Report has also been applied quo Inspectors. The seniority in the rank of Inspectors was also prepared on the basis of Officers Committee Report and thereafter promotions in the rank of D.S.Ps. were made. It is denied that the officers Committee Report was only applied quo ASI and not accepted qua Inspectors.

13. Such factual assertion has not met with any rebuttal at the hands of the petitioners.

14. For the reasons recorded above, I find no infirmity in the action of the respondent-authorities in having accepted the recommendations of the Officers Committee contained in the report at Annexure P4 and having acted upon the same leading to the determination of seniority inter se the petitioners and private respondents. Writ petition, accordingly, is dismissed.