
(1982) 12 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 123 of 1981

Iqbal Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 06-12-1982

Acts Referred:

Citation : (1982) 12 P&H CK 0006

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : J.L. Gupta, for the Appellant; P.S. Kang with Mr. K.P.S. Sandhu, Addl. A.G. Punjab and Mr. B.R. Premi for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—The admitted position is that the petitioner and respondent No 3 have been promoted from the post of Statistician/Statistical Officer to that of Joint Director, Statistics and Agriculture Census vide the same order, Annexure P-6. Though, this order was passed during the pendency of this petition yet the prayer of the petitioner to amend the same was granted by me vide my order dated October, 25, 1982.

2. The petitioner firstly impugns the promotion of this respondent on the plea that his service record did not justify that and secondly, claims that in spite of this promotion on the basis of the reservation made by the State Government in favour of the members of the Scheduled Castes (to which Caste admittedly respondent No. 3 belongs) he does not steal a march over him in the matter of seniority. According to him, Rule 13, proviso (c) of the Punjab Agricultural Service (Class I) Rules, 1974 (for short, the Rules) determines their inter se seniority and it reads as follows :--

13 The seniority inter se of members of the Service shall be determined by the length of continuous service on a post in each cadre of the Service separately :--

... ..

Provided further that in the case of two members appointed on the same date, their seniority shall be determined as follows :--

... ..

(c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred, and

... ..

I see no merit in the first contention raised on behalf of the petitioner. He having been promoted to the post of Joint Director, cannot make any grouse of the promotion of respondent No. 3 to a similar post as that promotion has not affected any of his rights.

3. So far as the determination of his seniority in the promoted cadre is concerned, I find that the submission is not devoid of merit. Rule 13(c) which has already been reproduced above, clearly lays down that in filing the seniority of the promoted officers their inter se seniority in the appointments from which they have been promoted, would be reflected. In the face of this rule and his admitted seniority on the lower post the petitioner obviously, is senior to respondent No 3, Mr. Premi, learned counsel for respondent No 3, however, points out that this rule 13(c) is not applicable to the facts of this case as according to him the word "inter se" in the opening part of the rule has a reference to the method or mode of recruitment as provided for in Rule 8 of the Rules He explains that unless the two members of the Service whose seniority is sought to be determined above entered the service through different modes of entry, that is, promotion, transfer or direct recruitment, there is no question of determination of their seniority inter se. I, however, see no merit in this submission The word "inter se" has obviously reference to the members of service vis-a-vis each other, from whichever source whatever manner the members of the service might have entered a particular cadre In case the argument of the learned counsel is accepted to be valid, then clauses (a), (b) and (d) of this rule are completely rendered nugatory or superfluous because the contingency of which the learned counsel is talking of, that is when two members of the service enter through two different modes or methods of recruitment, then undisputably these clauses determine the inter se seniority.

4. Faced with this situation the learned counsel beats a tectical retreat and maintains that in spite of Rule 13(c), the seniority of these two contestants is to be determined in accordance with the instructions of the Government dated May 4, 1974 (Annexure P 3) which, according to him, lay down that a Scheduled Caste member who has to be promoted to the first vacancy has to be treated senior in all cases to a member belonging to the general category. Precisely it is paragraph 2 of these instructions on which the learned counsel bases his argument. Vide these instructions, 16% of the posts to be filled by promotion to or within Class I or Class II service of the State Government have been reserved

for members of the Scheduled Castes and Backward Classes and paragraph 2 of these instructions reads as follows:--

In a lot of 100 vacancies occurring from time to time these falling at serial numbers mentioned below should be treated as reserved for the members of Scheduled Castes.

1.7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, 94 and so on. Vacancies falling at serial numbers 26 and 76 should be treated as reserved for the members of Backward Classes.

He also seeks support for this stand of his from a Division Bench judgment of this Court in Hari Singh v. Tilak Raj and another L.P.A. 97 of 1974 decided on April 18, 1974. Having gone through this judgment I find that a reference to the same is as irrelevant as to the instruction-noted above Vide this judgment the validity of these instructions (Annexures P-3) has been upheld. This judgment does not even remotely discuss or decide the question of determination of seniority between the members of the Scheduled Castes on the one hand and members of the general category on the other. Thus I find that neither there are any instructions--other than Annexure P-3 have brought to my notice--of the Government which specifically provide, for determination of seniority inter se between the members of the I Scheduled Castes and members of the general category nor to my mind any amount of instructions by the Government can override a 1 specific rule which deals with a specific situation, may be relating to the determination of seniority. Here in this case, Rule 13 being the rule which governs the question of determination of seniority of the members of the service, no instructions of the Government can possibly wash it off.

5. Mr. Premi then states that till now the Government has not determined the inter se seniority of these two contestants and in view of that no cause of action has accrued to the petitioner to seek such a declaration it is true that no order has so far been passed by the Government determining the inter se seniority of these two contestants yet the fact remains that an affidavit has been sworn (by Banarsi Dass Thakur, Under Secretary to Government, Punjab, Development Department) on behalf of respondent No. 1, wherein the Government has accepted this rule as the criteria for the determination of the seniority. Mr. Kang appearing for respondent No. 1 points out that the Government is yet to determine the seniority of the petitioner on the basis of the representation which he has already filed, and therefore, at this stage the petitioner need not be (sic) senior to respondent No. 3. I again see no merit in this submission for the short reason that the Government has already given out its mind in its affidavit wherein it is clearly stated that in view of the provisions of Rule 13(c) the petitioner would be senior to respondent No. 3. In the light of this the petitioner, to my mind, is entitled to the above noted declaration and I grant the same.

6. For the reasons recorded above this petition is allowed to the extent indicated above with no order as to costs.