

(1996) 01 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9758 of 1987

Iqbal Singh Sufi

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 113 PLR 62

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Atul Sharma, for the Appellant; C.P. Sapra and J.S. Chahal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the proviso to Rule 1.9(b) of the Punjab State Federation of Co-operative Sugar Mills Service (Common Cadre) Rules, 1981, which provides that persons working on posts in a higher scale shall be deemed to be senior to those in lower scales of pay, ultra vires of Articles 14 and 16 of the Constitution?. This is the short question which falls for the consideration. A few facts may be noticed.

2. The petitioner was appointed as a "Manufacturing Chemist Grade-B" in the Co-operative Sugar Mills Limited, Batala, on November 17, 1965. In 1980, an apex society namely the Punjab State Federation of Co-operative Sugar Mills (for short the "Sugar Fed") was constituted. In 1981, the Common Cadre Rules were promulgated. Rule 1.9(b) related to the determination of seniority. In pursuance to the Rules, a tentative seniority list was circulated on March 31, 1985. The petitioner's name appeared at serial No. 1 in this list. However, after some time a revised seniority list was issued. The petitioner was placed at Sr. No. 15. On the basis of inter se position as reflected in the revised seniority list, certain persons were promoted. Aggrieved by the revision of the seniority and the promotion of respondents 3 to 5, the petitioner has approached this Court

through the present writ petition. He alleges that the inter se seniority of all the Chemists borne on the cadre has to be determined on the basis of continuous length of service. The fact that some were working in a higher scale of pay which was commonly known as Grade A-1 while others like the petitioners were working in lower scale of pay which was commonly known as Grade-B, was of no consequence. The two cadres having been merged, they should be deemed to be at par and no differential treatment should have been accorded to the incumbents of the two cadres on the basis of the pay scale alone. On this basis, the petitioner prays that respondents. 3 to 5 be declared junior to him and the orders of their promotion be set aside.

3. A written statement has been filed on behalf of respondent No. 2 only. It has been inter alia pleaded that the Sugar Wage Board had examined the matter and prescribed different scales of pay. These were co-related to the qualifications which a person possessed. Persons, who possessed qualification of Degree in Science with Physics, Chemistry, Mathematics and were also Associate Members of the National Sugar Institute, Kanpur, were eligible to be appointed to Grade A1. The petitioner is merely a Matriculate. He was rightly appointed to Grade-B. The persons appointed in lower scale of pay cannot claim parity with those in higher sale of pay. Accordingly, it has been provided in the Rules that the employees "working in higher grade just before the enforcement of these Rules shall be deemed to be senior to the employees working in lower grade in the same cadre".

4. Counsel for the parties have been heard. The short question, as already noticed, relates to the validity of the proviso to Rule 1.9(b). It is useful to extract the relevant provision. It reads as under:-

"1.9(b) The seniority of employees who are taken on common Cadre under the provisions of these rules shall be determined in a particular category on the basis of their qualified length of service on the post held at the time of enforcement of these, rules.

Provided that the employees working in higher grade just before the enforcement of those rules shall be deemed to be senior to the employees working in lower grade in the same category. The qualified length of service shall include the continuous officiating period of service on the post in the category".

5. A perusal of the above rule shows that the inter se seniority of the employees, who were borne on the common cadre, has to be primarily determined on the basis of their "qualified length" of service. Even the period of officiation has to be counted. However, an exception to the general rule has been provided where the employees working in a higher grade before the enforcement of the Rules are treated as senior to those in a lower grade.

6. Admittedly, the Second Wage Board had prescribed different scales of pay as also the qualifications which were required to a person so as to be eligible for appointment to that grade. Differential treatment of employees in the matter of

grant of pay scales on the basis of academic and professional qualifications as also the experience is permissible. While constituting the common cadre, a provision has been made that those working in a higher scale of pay shall enbloc rank senior to those in the lower scale of pay. The inter se seniority of persons in the given scale of pay has to be determined on the basis of the qualifying service in the scale. This provision only recognizes the difference between the two categories that had existed prior to the constitution of the common cadre. The rule is neither unjust nor arbitrary. It only recognizes the merit of those working in the higher scale of pay and the qualifications possessed by them. The equals are not being treated unequally so as to create an invalid or illegal classification. On the contrary, those with higher qualifications and higher pay are being treated as senior to those in a lower scale of pay. This is not violative of Articles 14 and 16 of the Constitution of India.

7. Mr. Atul Sharma, counsel for the petitioner, submits that persons working in Grade A-1 and B having been merged, they have lost their identity and have a right to be treated as equals. Learned Counsel is perfectly right in his assumption that from the year 1981 when the Rules were enforced, the distinction between the persons working in Grades A-1 and B respectively has been removed. From that day onwards, they form a common cadre of "Chemists". However, the proviso recognises the pre-existing distinction inasmuch as it postulates that their inter se seniority in the common cadre of Chemists shall be determined on the basis of the pay scales in which they were working. Those in Grade A-1 would enbloc rank senior to others who were working in Grade-B prior to the enforcement of the rules. Once the inter-se seniority is determined, they would form a common cadre on Chemists.

8. Counsel for the petitioner has placed reliance on the two decision of this Court. He has referred to K.C. Gupta, Block Development and Panchayat Officer and Ors. v. Union of India and other 1967 S.L.R. 863 and Sadhu Singh Gill, Deputy Director Panchayats v. The State of Punjab and Ors. 1986(1) S.L.R. 629 to contend that once the persons working in different scales of pay are brought to a common cadre, the inter se seniority has to be determined on the basis of the date of continuous length of service. There is no quarrel with the proposition. Only the factual position in the present and the aforementioned cases is different.

9. Accordingly, there is no merit in this writ petition. It is dismissed. In the circumstances, of the case, there will be no order as to costs.