

(1971) 12 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 1039 of 1971

Jagtar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-12-1971

Acts Referred:

States Reorganisation Act, 1956 — Section 117

Citation : AIR 1972 SC 586 : (1973) LabIC 477 : (1972) 1 LLJ 530 : (1972) 1 SCC 171 : (1972) 4 UJ 313

Hon'ble Judges : K. K. Mathew, J; C. A. Vaidyalingam, J

Bench : Division Bench

Advocate : V.C. Mahajan, Urmila Kapoor, Kamlesh Bansal and M. R. Agnihotri, for the Appellant; Harbans Singh, R.N. Sachthey, S.C. Agrawala, R.K. Garg, V.J. Francis, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—This is an appeal, by special leave, from the judgment of the High Court of Punjab and Haryana dismissing Civil Writ No. 3321/1970 filed by the appellants praying for a direction to implement Clause 4. of the Directive of the Union Government dated April 18, 1965, issued u/s 117 of the States Reorganisation Act and allowing the writ petitions filed by the third respondent and others praying for an order quashing the final integrated gradation list published on March 11, 1966, in so far as it concerned Clerks and that March 20, 1970, in so far as it concerned Assistant/Head Clerk of the Co-operative Department of the State of Punjab.

2. In view of the impending merger of the two states of Punjab and Pepsu with effect from November 1, 1956, it was decided on October 26, 1956, by the Joint Integration Council, that the offices of the Deputy Registrars of Co-operative Societies, Pepsu area, will form a separate division on the basis of the pattern obtaining in Punjab, In the erstwhile Punjab State, the staff of the Senior and Junior Clerks in the Offices of the Deputy Registrars and Assistant Registrars

including Camp Clerks to Inspectors and Sub-Inspectors were placed on divisional cadre in December, 1949, by an order of the Governor of Punjab and there were two such divisions in Punjab viz., Ambala and Jullundur and the rules applicable to the service were the Punjab Co-operative Subordinate Service Rules, 1936. The result was that after the appointed day i.e. November 1, 1956, the staff of Junior and Senior Clerks of each of the three divisions of the composite state of Punjab continued to be organised as a separate cadre and the officers serving in the office of the Registrar of Co-operative Societies formed a different cadre. In the light of certain observations of the Sub-ordinate Judge, Jullundur, in the Judgment dated August 2, 1957, on the basis of a suit filed by some of the Clerk of the Office of the Registrar of Co-operative Societies, the Government of Punjab decided ;

(i) that a joint seniority list must be prepared on State-wise basis instead of divisional basis, in accordance with the Punjab Services Integration Rules, 1957 ; and

(ii) that pending preparation of Joint Seniority list, promotions to the posts of Inspectors should be provisional.

On Oct. 13, 1962, the Registrar of Co-operative Societies, Punjab, apparently with the approval of the Government, issued a directive to all gazetted officers in the Co-operation Deptt with regard to the procedure to be followed for promotion of Clerks to the post of Assistants/Head Clerks on the basis of the State wise joint seniority list. A joint seniority list was drawn up on 1-3 63, The list was passed on the Services Integration Deptt. as it involved the integration of the services of the Co-operative Deptts. of the erstwhile states of Punjab & Pepsu. The Integration Department issued a provisional joint seniority list on March 9, 1964, which was circulated to all the members of the staff and representations were invited. After considering the representations received, the final gradation list was drawn up ; it was approved by the Central Government and was issued by the Governor of Punjab by the notification dated February 11, 1966. The notification was published in the Punjab Gazette on March 11, 1966. In the meanwhile, the Government of India issued a directive dated April 18, 1965, to the Punjab Government u/s 117 of the States Re-organisation Act, 1956. The terms of the directive were :

1 Promotions made before 27th February, 1961, on the basis of the Provisional Gradation Lists shall not be disturbed. Provided that the claims of officers for future promotions on the basis of seniority determined in accordance with the principles set out here after shall not be prejudiced.

2. Promotions made after 27th February, 1961, on the basis of the Provisional Gradation Lists shall be reviewed to the extent necessary to give effect to the claims of officers who are senior in the Final Gradation Lists to the Officers who have been promoted.

3. The seniority (of an officer who would have been promoted if the Final

Gradation Lists had been available on 1st November, 1956) should be counted from the date on which an officer junior to him has started continuous officers in the higher post because of his promotion under the Provisional Gradation Lists.

4. The pay of an officer whose promotion and seniority is determined in accordance with Clauses (2) and (3) shall be fixed at a stage which he would have attained in the time scale of the higher post had he been promoted to that post on the date set out in Clause (3);

Provided that he shall not be entitled to arrears of pay for the period prior to the date of his actual promotion.

Action as aforesaid may be taken without prejudice to the principles of promotion on merit whenever applicable.

3. The final integrated gradation list published on March 11, 1966, showed the ranks of all personnel from Clerks to Superintendents as on 1-11-1956. Soon after, a joint seniority list of Assistants/Head Clerks as on March 1, 1966, depicting the position in the promoted rank, was issued by the Government of Punjab on May 20, 1966. The correctness of this list was challenged in C.W. No. 1821/1966 before the High Court : the prayer in the writ petition was for an order or direction to implement the directive of the Government of India dated April 18, 1965. On the basis of the concession by the Registrar of Cooperative Societies, Punjab, that the Seniority will be modified in accordance with final gradation list, the writ petition was disposed of. Thereafter a tentative joint seniority list of Head Clerks and Assistants was circulated for objections. After considering the objections, the final joint seniority list was issued in the writ petition.

4. The prayer of the appellants in the writ petition filed by them was that the Government of Punjab should be directed to implement Clause 4 of the directive of the Central Government. The third respondent in his writ petition, on the other hand, contended that the final, gradation list published on March 11, 1966, as well as the one published on March 20, 1970, should be quashed as they were not drawn up in accordance with the provisions of the Punjab Services Integration Rules, 1957, and the directive of the Registrar of

5. As already indicated; High Court dismissed the writ petition filed by the appellants and allowed the writ petition filed by the third respondent and quashed the list published on March 11, 1966, and also that published on March 20, 1970. The High Court found that the directive issued by the Central Government on April 18, 1965, was not applicable as the integration of the services had become complete even before the issue of the directive, and also for the reason that Clauses 1 and 2 of the directive will apply only to promotions made on the basis of provisional gradation lists and that no persons were promoted on the basis of any provisional gradation list. The Court said that there was no necessity of integrating the cadres of Junior and Senior Clerks in all the three divisions as on the date of merger of the erstwhile states of Punjab and

Pepsu, namely on November 1, 1956, and after referring to Rules 3, 14, 15, and 16 of the Punjab Services Integration Rules, 1957, held that the Junior and Senior Clerks in Pepsu could be left out as they were not required to be integrated into one group, particularly in view of the fact that this group of service was being maintained on divisional basis, and not on State-wise basis, and therefore, no provisional joint seniority list was required to be drawn up soon after the merger. The High Court also held that the decision to constitute a single cadre of Junior and Senior Clerks in Divisional Offices as well as of the Registrar of Cooperative Societies was taken only in 1962, and that the decision was not taken under the provisions of Punjab Services Integration Rules, 1957, nor under the provisions of the States Re-organisation Act, 1956, but by way of re-organisation of the clerical services of the Department as an administrative measure. The High Court said that the basis on which the Punjab Government draw up the Seniority List was that promotions of Clerks as Assistants up to 12-4-1962 in officiating arrangements on 'he basis of separate cadres of Head Office and Sub-Offices will remain undisturbed subject to the condition that all unqualified Assistants will have to reveit, that the joint State-wise seniority list was to be given affect from April 12, 1962, and that there was no necessity for issuing a joint seniority list as on November 1, 1956.

6. We think that the approach of the High Court to the question was totally misconceived. There was no integration of the services by the creation of divisional cadre of junior and senior Clerks in the Pepsu area or by the continuance of the Divisional pattern in the two integrating units after November 1, 1956. The High Court went wrong in assuming that the decision of the Government to constitute a single cadre of Junior and Senior Clerks in divisional offices as well as in the Office of the Registrar of Co-operative Societies was not taken under the Punjab Services Integration Rules, 1957, and under the States Re-organisation Act, but by way of re-organisation of the clerical services of the department as an administrative measure. If this argument is correct, it is difficult to understand why the Joint Seniority List issued on March 1, 1963, in pursuance of the directive of the Registrar of Co-operative Societies dated Oct. 13, 1962, was passed on to the Services Integration Department. The fact of the matter is that there was no integration by reason of the creation of the Divisional Cadre of Clerks and Head Clerks in the Pepsu State or by the continuance of the Divisional pattern in the two integrating units after November 1, 1956. The integration of the services in question of the two States was attempted to be effected only by drawing up the joint seniority list issued on March 1, 1963. Approved the joint seniority list prepared on March 1, 1963, the High Court it self has said in narrating the facts of the case:

Thereafter a joint seniority list seems to have been prepared and passed on to the Services Integration Department because of the reason that its involved the integration of the services of the erstwhile States of Punjab and Pepsu. This point has been made clear by four letters, issued by the Integration Department to the Cooperation Department, which are dated July 20, 1963, august 24, 1963,

February 21, 1964, and February 25, 1964.

This is also made clear by the fact that appeals and representations against the list were directed to be made to the Integration Council.

7. It was argued on behalf of the third respondent that the State of Punjab and concurrent authority with the Central Government to integrate the two services, and that when by the Punjab Services Integration Rules, 1957, which had been approved by the Central Government, integration had already been effected on the lines laid down in the directive of the Registrar of Co-operative Societies dated October 13, 1962, followed up by the joint seniority list as published on March 1, 1963, the Central Government had no authority to issue the directive so as to effect the list already drawn up or the principles on which it was drawn up. Counsel for the third respondent referred to the decisions in *A.]-Patel and Ors. v. State of Gujarat and Ors.* AIR 1965 Guj 23. *Gupta and Ors. v. Union of India*, AIR 1969 Punjab and Haryana in support of the contention that the State Government had concurrent power to integrate the services of the two States. In *MA. Jaleel and Ors. v. The State of Mysore and Ors.* AIR 1961 Mys 23 the High Court of Mysore took the view that the Central Government alone has authority to integrate the services of States on their re-organisation under the States Re-organisation Act, 1956. This Court, after noting the conflict of opinion on the point among the High Courts in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, left open the question. We do not think that on the facts of this case it is necessary to resolve the conflict, as the State Government had no case that they were not bound by the directive of the Central Government in the matter of the integration of services here. Counsel for the State of Punjab brought to our attention the contents of the return filed by the State in Civil Writ 2896/1965 where the Punjab Services Integration Rules, 1957, were challenged as recited in the judgment of the Punjab High Court in *K.C. Gupta and Ors. v. Union of India and Ors.* There the State of Punjab contended that these rules were made in accordance with the advice of the Central Government and that in applying the Rules the State Government was subject to the directions which the Government of India might issue u/s 117 of the Act. Quite apart from this, Section 117 of the States Re-organisation Act, 1956, Seems to us to be quite clear. The section reads:

117. Power of Central Government to give directions : The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to this the Foregoing provisions of this Part and the State Government shall comply with such directions.

In *N. Desai and Others Vs. Government of Andhra Pradesh and Others*, it was held that the direction given by the Central Government u/s 117 of the States Reorganisation Act was binding on the State Government in the matter of integration of services. See also *Roshan Lal Sharma v. Union of India and Ors.* AIR 1968 Pun 47 where the same view was taken. So we held that the directive

of the Central Government was binding on the State Government in the matter of integrating the two services and the State of Punjab or the Registrar of Cooperative Societies of that State could not have said that they will not review the promotions made before 12th April, 1962, as the directive of the Central Government required that all promotions after February 27, 1961, should be reviewed.

8. The third respondent who complained that he was shown as junior to the appellants in the lists published on 11-3-1966 and 20-3-1970 whereas as a matter of fact he was senior to them, never filed any objection or representation to the provisional gradation list issued by the Services Integration Department on 9-3-1964. The explanation given by him for not filing any objection to the List, namely, that the Registrar of Cooperative Societies in his communication dated 7-12-64 did not insist upon objections being filed to the list, does not carry conviction as by the communication dated 9-3-1964, the Registrar had required that representations should be filed within one month of the publication of the Provisional Gradation List. That time had already expired when the Registrar issued the communication dated 7-12-1964. In these circumstances we do not think the High Court was justified in quashing the lists published on 11-3-196D and 20-3-1970 on the basis of the provisional integrated gradation list published by the Integration Department on 9-3-1964.

9. The appellants' prayer in their writ petition was for a direction to the State of Punjab and the Registrar of Cooperative Societies, Respondents 1 and 2, to implement Clause 4 of the directive of the Central Government issued on April 18, 1965. In effect their prayer was that their pay should be fixed at the stage which they would have attained in the time scale of higher posts had they been promoted to those posts on the date set out in Clause 3 of the directive; Clause 3 stated that their seniority should be counted from the date on which their juniors stated continuous officiation in the higher posts because of their promotive under provisional gradation lists. As already stated, the High Court had no occasion to consider the question whether this prayer could be granted, as it held that the directive of the Central Government had no controlling operation in respect of the integration of the services in question. We see no reason to deny the appellants the benefit of Clause 4 of the directive. But we have no material before us to show when the third respondent or the other juniors of the appellants were promoted on the basis of provisional gradation list. We would, in the circumstances, direct the 1st respondent, the State of Punjab, to implement Clause 4 of the directive of the Central Govern-merit dated April 18, 1965, after considering the factual position of each of the appellants whether he was qualified in the benefit of the clause. The Judgment of the High Court is set aside and the appeal allowed. In the circumstances we make no order as to costs.