

(1989) 07 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1052 of 1976

Joginder Singh Rajput and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 2 ILR (P&H) 296 : (1990) 97 PLR 465

Hon'ble Judges : Ujagar Singh, J;M.M. Punchhi, J;A.P. Chowdhri, J

Bench : Full Bench

Advocate : J.L. Gupta, Rajiv Atma Ram and Arun Kathpalia, for the Appellant;
Gopi Chand, for A.G. and R.S. Mongia Rosy A. Singh, S.C. Sharma and Jaishree Anand, for the Respondent

Judgement

M.M. Punchhi, J.—We had heard these two cross petitions being C.W.P. Nos. 1052 of 1976 and 2317 of 1986, some time back and had reserved judgment. Having pondered over the matter all this while, we have decided to remit these cases back for decision by the Division Bench for reasons mentioned hereafter.

2. The parties in these two petitions were all clerks working as such in the respective offices of the Financial Commissioner of Punjab and the Financial Commissioner of Pepsu (Patiala and East Punjab States Union). On the merger of Pepsu and Punjab with effect from November 1, 1956, under the States Reorganisation Act, 1956, their services were integrated. Prior to such integration, the conditions of service of the Punjab clerks were governed by the rules called the Financial Commissioner (Punjab) Subordinate Service Rules, 1943 and the conditions of service of the Pepsu clerks were governed by the rules called the Pepsu Secretariat Service, Recruitment, Promotion, Punishment and Seniority Rules. 1952. Both these rules had made diverse provisions for filling by promotion from amongst the clerks the posts of assistants as also of stenographers. In neither of these rules was a departmental test a condition precedent for promotion from the post of clerk to that of an assistant or

stenographer. Clerks who stood appointed prior to November 1, 1959, form one group. Clerks who were appointed thereafter till February 28, 1957, form a second group. On this date the Governor of Punjab under Article 309 of the Constitution of India framed Punjab Financial Commissioner's Office (State Service) (Class III) Rules, 1957, whereunder such a departmental test was prescribed. The clerks appointed thereafter under the aforesaid rules from February 28, 1957 onwards form a third group.

3. Under Rules ((f) and 7 (I)(e)(i) of the 1957 Rules a Clerk could be promoted to the post of an assistant if he had adequate knowledge of the relevant rules and had qualified in the departmental test prescribed for promotion to that post. A clerk till he had qualified in the departmental test prescribed for the purpose could not become eligible for promotion. It was the conceded case of the parties that in compliance of the 1957 Rules, periodic departmental tests for the purpose took place as regulated by some departmental instructions where under six chances were given to each clerk to pass such test and in case of his failure to do so, after lapse of some time, another six chances were again given to him. It is also the admitted case of the parties that all of them passed departmental tests at one time or the other and did become assistants. The dispute herein is how to settle their promotional seniority *Inter se*, when statelily the Rules could not prescribe such a departmental test.

4. Joginder Singh Rajput and a few others on the one side filed CWP No. 1052 of 1976 in this Court raising a seniority dispute which on March 12, 1976, was admitted to a Division Bench and was ordered to be heard with LPA No. 520 of 1975. When the matter was posted for final hearing on August 18, 1980, learned counsel representing the private respondents therein slated at the bar that a new seniority list prepared in the interregnum had been challenged (by some of the said respondents) in a petition filed under Article 32 of the Constitution before the Supreme Court. For that reason the case was adjourned initially to October 6, 1980, and later it was adjourned sine die in order to await the Supreme Court decision in Writ No. 2502 of 1908. The writ petitioners before the Supreme Court were Gurbachan Singh Waraich and a few others. The Supreme Court on April 25, 1986, held that Writ No. 2582 of 1980 could not be entertained under Article 32 of the Constitution, leaving it open to the writ petitioners approach the High Court under Article 226 of the Constitution, if so advised.

5. Gurbachan Singh Waraich and others, on the other hand, then filed CWP No. 2317 of 1986, as advised by the Supreme Court. This petition was admitted and ordered to be heard with CWP No. 1052 of 1976 filed by Joginder Singh Rajput and others. This is how these two petitions got crossed together.

6. Finally when the matter was placed before the Division Bench on August 18, 1987, the following order was passed :-

"Learned counsel for the parties are agreed that in order to decide the petition, it would be necessary to resolve the conflict in the two decisions of this Court in

Sat Pal Sharma and Anr. v. State of Punjab through Chief Secretary and Ors. (1968) 70 P.L.R. 484 and The State of Punjab and Ors. v. Aman Chand 1977 S. L. R. 310. We accordingly refer this petition for decision by a Full Bench.

Having regard to the nature of the controversy involved as also the interests of a large number of persons, the case be listed for hearing before the Full Bench in early October, 1987."

It is furtherance thereof that these matters were placed before this Bench.

7. At the outset, learned counsel for the parties could not convince us if there is a conflict between Sat Pal Sharma's case (supra) and Amar Chand's case (supra) and even if there was any, would it be necessary for us to resolve the conflict. Section 115(7) of the Act is the basis of the dispute and it reads as follows : -

"(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

8. Sat Pal Sharma's case (supra) was a case of two clerks who were in Pepsu Service in the Financial Commissioner's office and on integration were absorbed in the service of the reorganised Punjab with effect from November 1, 1956. Rules 6(f) and 7(J) (e) (i) of the 1957 Rules, whereunder the department test was prescribed, were impugned in that case and were held ultra vires Section 115(7) of the States Reorganisation Act, on the ground that those rules were framed on February 28, 1957, long before the relied upon approval of the Central Government came contained in its communication, dated March 27, 1957. A general approval was accorded in the said communication by the Central Government permitting change of service conditions regarding promotion etc. In these circumstances, the Division Bench comprising of Mehar Singh, C.J. and R. S. Narula, J. ruled that the rules were invalid as those had been framed and made effective in contravention of the statutory protection afforded under proviso to Sub-Section 7) of Section 115 of the States Reorganisation Act. With regard to the objection of delay, laches and bar of limitation, it was ruled by the Division Bench that since the impugned rules had been framed in utter disregard of and in direct violation of a statutory provision, they were absolutely void and of no effect and, therefore, the question of laches, delay or bar of limitation would not arise. Yet in interpreting the law in this manner and holding the aforesaid rules as void and ineffective, the Bench granted restricted relief to those two writ-petitioners holding that the effect to their order would be given to such an extent by which any person who had not been impleaded as a

respondent in the writ petition would not be affected. Civil Appeal No. 2247 of 1968 against the decision in Satpal Sharma's case (supra) preferred by the State of Punjab was dismissed as withdrawn on the basis of the decision of that Court in State of Haryana, Vs. Shamsheer Jang Bahadur, etc. etc., . It is claimed by one set of parties that Sat Pal Sharma's case (supra) governs the field.

9. On the other hand, in Amar Nath's case (supra) a Division Bench comprising of R. S. Narula, C. J. and P. C. Jain, J., while dealing with a case of another service in the context of the States Reorganisation Act and further in the context of Punjab Reorganisation Act negated the contention of the writ-petitioner when it was successfully pointed out to the Bench that there existed a general approval which had been granted by the Central Government to the reorganized states in changing the conditions of service of their employees in the matter of pro- motions,

10. As is evident, both these cases are cases on their own facts We see no conflict as such. The ratio in Sat Pal Sharma's case (supra) has arisen because factually the rules were framed earlier and the general approval came later. In Amar Chand's case (supra) the general approval was already existing and the questioned amendment to the rules came in its presence. So merely because parties' counsel agreed before the Bench to have the so called conflict resolved by a Full Bench would not oblige us to decide this petition in this manner, even if the nature of the controversy is such or the interest of a large number of persons is involved. What may require culling out in the instant cases is the method to determine promotional seniority and which would be dependent on a variety of factors as can be conceived.

11. Some of the persons in the first group cling to the promotional rules as were existent in their respective parent States and ask for the maintenance of those rules despite integration. Others in that group say to the contrary Learned counsel for the parties could not take any positive stand in that regard In the second group of people again there are two strains. On behalf of some of them it has been contended that since they were appointed in the United Punjab, their conditions of service would be governed by the Financial Commissioner (Punjab) Subordinates Service Rules, 1943 Others in that group dispute that claim These were appointed after the reorganisation, and so the protection u/s 115(7) of the States Reorganisation Act prima facie is not available to them. Yet some of them cling on to the said protection on the basis of equality before law. In both groups some are for the test and others against it as in suiting their convenience The third group of clerks are those who were appointed after February 28, 1957, under the 1957 Rules. Therein also are two groups, one holding the view that the relevant rule prescribing a departmental test for promotion to the post of assistant was void ab initio as per Sat Pal Sharma's case (supra) and even though the relief in that petition was confined restrictedly to the writ petitioners, the law laid down therein is meant for all The others dispute this proposition and say that in Sat Pal Sharma's case (supra) only the law has been interpreted inter

parties and not declared as such, for that is the function of the Supreme Court. They claim that being not parties to Sat Pal Sharma's case (supra) they are not bound by such interpretation.

12. Leaving everything aside, in Shamsker Jang Shukla's case (supra) it has authoritatively been settled by the Supreme Court way back in 1972 that the Government is not competent to alter by means of administrative instructions the conditions of service prescribed by the rules, and further if the approval of the Central Government is not obtained for issuing those instructions, the instructions would be invalid as violative of Section 115(7) of the States Reorganisation Act.

13. Shamsher Jang Shukla's case arose under the Punjab Civil Secretariat (State Service Class-III) Rules, 1952, whereunder by means of departmental instructions the condition of passing a departmental test was prescribed and the government claimed before the Supreme Court, though unsuccessfully that it had attempted to fill up the gaps and supplant the rules. More on point to the cases in hand is State of Punjab Vs. Madan Singh and Others, , which arose under the Punjab Financial Commissioner's Subordinate Service Rules, 1943, to which, by means of executive instructions, a similar test was introduced. The Supreme Court struck down those executive instructions. Even with regard to the amendment of rules, the position would be the same as held by the Supreme Court in the State of Mysore and Anr. v. R. Basappa and Ors. 1980 (1) S. L. R. 847. The law in that regard as declared by the Supreme Court under Article 141 of the Constitution is binding on the nation whether anyone was a party or not a party to those cases. Such law was settled in, the year 1972 when Shamsher Jang Shukla's case (supra) and Madan Singh's case (supra) were decided on April 19, 1972. It is significant to note that one of the instant cross petitions was filed in the year 1976 and the other in the year 1986, but the intervening period has been sought to be justified on account of the pendency of the writ petition in the Supreme Court afore-referred to.

14. It may be mentioned that this Court faced in one form or the other; many a writ petition after the decision of the Supreme Court aforementioned claiming benefit of those decisions. In the meantime, the composite State of Punjab approached the Central Government for the grant of retrospective approval to the Rules regarding qualifying test by clerks before being eligible for promotion to the post of assistant. Obviously this approach was made in view of the provisions of Section 115(7) of the State Reorganisation Act, 1956, as evidently the rules regarding qualifying test had been framed without such approval. Request of the State Government was declined. A Full Bench of this Court then in Jagjit Rai Vohra v. State of Haryana 1974 (2) S. L. R. 27, taking stock of the entire case law, authoritatively settled that the correct view seems to be that in the matter of granting or refusing relief to the writ-petitioners, the question of laches cannot be overlooked and each case will have to be examined to see whether a particular petitioner is or is not entitled to the relief available to him in

view of the Supreme Court decision in Shamsheer Jang Shukla's case (Supra). Further, it took the view that in giving relief to the petitioners laches could stand in their way unless they could satisfactorily explain the delay in moving the Court, Thus, individually for each writ-petitioner in these two cross-cases not only the delay part but other factors like vagueness in the petition etc., would have to be seen and these can be left to be decided by the Division Bench. Accordingly, we send the cases back to the Division Bench for disposal

15. Before parting with his order, we regret to mention that despite Jagjit Rai Vohra's case (supra) being available as a guiding factor to dispose of these writ petitions, learned counsel for the parties still by an agreed order ventured to have these cases referred to a Full Bench and employ this Court's time for no useful purpose. This time could well have been saved and employed otherwise usefully.