

(2018) 07 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16073, 15572 Of 2016

Kuljit Paul Singh Mahi And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 — Rule 7, 8, 18, 21, 20

Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 — Rule 18, 21

Citation : (2019) 1 SCT 440

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Gurminder Singh, Harpriya Khaneka, Sumeet Mahajan, Ramneeq Kaur Jawanda, Aman Arora, R.K. Malik, Anupam Gupta,

Final Decision : Dismissed

Judgement

By this judgment of mine, two petitions bearing Civil Writ Petition No.16073 of 2016 and Civil Writ Petition No.15572 of 2016 shall be disposed of as common question of law and facts are involved. However, for the sake of convenience, the facts are being derived from Civil Writ Petition No.16073 of 2016.

Petitioners have approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of seniority list dated 24.06.2016 (Annexure P-10), which has been prepared without adhering to the provisions under Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 (here-in-after called as the 'Rules, 1976'). A further prayer has also been made for issuance of a writ in the nature of mandamus directing the respondents to forward the names of the eligible officers for selection and promotion to the Indian Administrative Service in accordance with the seniority fixed as per 'the Rules 1976' and the law laid down by Hon'ble the Apex Court in case Arvinder Singh Bains and others vs State of Punjab and others 2006(6) SCC 673.

As per case of the petitioners, they are senior most officers in the Punjab Civil Services (Executive Branch) and are eligible for promotion to the Indian Administrative Services. They are aggrieved by action of the respondents in overruling the seniority fixed as per the Rules, 1976 in the year 2007. The impugned seniority list dated 24.06.2016 has been prepared in complete contravention of the Rules, 1976. Petitioners are further aggrieved by the impugned seniority list which has been prepared in violation of law laid down by Hon'ble the Apex Court in Arvinder Singh Bains's case (supra). It is also their grievance that the petitioners are not being considered for promotion to the Indian Administrative Services as Service Rules, 1976 regarding 'rota and quota' principle have been interpreted.

Mr. Gurminder Singh, learned senior counsel appearing for the petitioners in CWP No.16073 of 2016 as well as Mr. Sumeet Mahajan, learned senior counsel appearing in CWP No.15572 of 2016 submit that the seniority of the officers from various Registers has been re-determined by applying the provisions of Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (here-in-after referred to as 'the Rules 1994'), which provides that the seniority of the officers is to be considered on the basis of continuous length of service. Learned counsel also submit that the seniority of the petitioners has been determined by taking into consideration the date of appointment/joining and not as per roster prescribed under Rule 18 read with Rule 21 which is stated to be the correct method for deciding inter-se seniority of the officers belonging to different Registers. It is also the argument of learned counsel for the petitioners that the seniority of the petitioners, in both the cases, has been fixed on the lower points, whereas, they are entitled to be placed in their respective Registers and thereafter to appoint as per roster under Rule 18. Learned counsel further submit that a joint reading of Rules 7, 8 and 18 clearly reflects that the appointments are to be made only after entering their names into their respective Registers as "accepted candidates" and thereafter by making actual appointment in accordance with Rule 18. Meaning thereby, every alternative vacancy is to be filled up by Register 'B' candidates. Learned senior counsel further submit that the first officer to be appointed must be a direct recruit duly entered as accepted candidate in Register 'B' and thereafter, the officers are to be appointed in accordance with the roster as provided under Rule 18. If the appointments are deferred of a particular Register then the seniority is to be fixed as per Rule 18 read with Rule 21. Learned counsel also submits that petitioners No.1 and 2 were deferred on account of recruitment scam during the tenure of Sh. Ravinder Pal Singh Sidhu. The requisition was of the year 1996 but the petitioners were appointed in the year 2004 and 2005 due to that scam. As per provisions of Rule 18, the appointments of the petitioners are to be made at the Roster Point against which the appointments have taken place in the selection process of 1996 and thereafter, the seniority was fixed. It has also been submitted by learned senior counsel for the petitioners that after conjoint reading of Rule 18 read with Rule 21, the inter se seniority is to be determined.

The seniority list has been finalized and has been given effect upto serial No.205. On the basis of that seniority, the officers were promoted to the cadre of I.A.S and some of them have even retired. The officers from serial Nos.206 to 247 have also been given the benefit of their seniority. Learned senior counsel also submits that the tentative seniority list was circulated on 03.07.2013 and objections were invited from the affected officers. The objections filed by the petitioners were not considered and without considering their objections in violation of law laid down by Hon'ble the Apex Court in Arvinder Singh Bains's case (supra), the seniority of the petitioners has been re-determined by considering the date of appointment which is contrary to 'rota and quota' principle. At the end, learned counsel for the petitioners submits that the petitioners belong to the process of 1996 and their appointments should have considered as per roster points as provided under Rule 18 of the Rules, 1976 and not as per dates of their appointments.

Learned senior counsel for the petitioners has relied upon the judgments of Hon'ble the Apex Court in cases Arvinder Singh Bains vs State of Punjab and others 2006(6) SCC 673, Sanjay K. Sinha II and others vs State of Bihar and others 2004(10) SCC 734, State of West Bengal vs Aghore Nath Dey and others 1993(3) SCC 371, Chandra Parkash Tiwari and others vs Shakuntala Shukla and others 2002(6) SCC 127 and R.S. Raghunath vs State of Karnataka and another 1992(1) SCC 335, in support of his contentions.

Ms. Anu Chatrath, Additional Advocate General, Punjab, submits that the petitioners came into service after enforcement of Rules, 1994. The private respondents were appointed prior to the appointments of the petitioners and accordingly, they were assigned seniority from the dates of appointments over and above the petitioners as per Rules. Learned counsel also submits that the petitioners cannot claim seniority as per Rules 1976 as they were appointed after 1994. They are governed by the Rules 1994. The seniority of the officers is to be determined on the basis of continuous length of service. The seniority list dated 24.06.2016 has been finalized after giving adequate personal hearing to all the concerned officers and by considering their objections also. The tentative seniority list was circulated on 04.09.2015 and objections were invited. Thereafter, by considering the objections, a detailed order was passed on 24.06.2016, whereby, the tentative seniority list was finalized. Learned State counsel also submits that the seniority cannot be determined from the date of occurrence of a vacancy as the question of fixation of seniority arises only after the appointment.

Learned State counsel has relied upon the judgments of Hon'ble the Apex Court in cases Direct Recruit Class II Engg. Officers' Assocn. Vs State of Maharashtra and others 1990 AIR (SC) 1607, Union of India vs S.S. Uppal 1998(1) S.C.T. 384, Suraj Parkash Gupta vs State of Jammu & Kashmir 2000(3) S.C.T. 34, Pawan Pratap Singh and others vs Reevan Singh and others 2011(3) SCC 267 and judgment of this Court in case Inderjit Kaushik vs State of Punjab 1994(3)

S.C.T. 459.

Mr. R.K. Malik, learned senior counsel appearing for respondents No.4 and 5 in CWP No.15572 of 2016, while relying upon the judgment of Division Bench of this Court in case Bhim Sain Gupta vs State of Haryana 1997(2) S.C.T 254 submits that the petitioners were appointed after commencement of the Rules 1994 and they cannot be governed by the Rules of 1976. The petitioners cannot be given the benefit of seniority of the period when they were not in service.

Mr. Anupam Gupta, learned senior counsel appearing on behalf of respondents No.4 to 6 and 8 in CWP No.16073 of 2016 and respondents No.9 to 11 and 13 in CWP No.15572 of 2016 submits that Rules 1976 are the specific rules, whereas, Rules 1994 are the general rules. Rules 1976 would prevail, in case, there is a dispute between general rules and specific rules as has been held by Hon'ble the Apex Court in case S. Parkash and another vs K.M. Kurian and others 1999(5) Supreme Court Cases 624 as is clear from Section 1 of the Act. Learned senior counsel also submits that the "recruitment" and "appointment" are two different concepts in service jurisprudence. The appointment is always made after selection. There is no justification to consider the seniority from the date when even the appointment was not there. The seniority can be considered after the date of appointment only. After the commencement of new Rules of 1994, the provisions of Rules 1976 cannot be made applicable and it is a case of implied repeal of the other provisions of the Rules 1976.

Learned senior counsel has relied upon the judgment of Hon'ble the Apex Court in cases Jagdish Ch. Patnaik and others vs State of Orissa and others 1998(4) SCC 456, M.S. Sandhu and another vs State of Punjab and others 2014(6) Supreme Court Cases 514, R.S. Raghunath vs State of Karnataka and another 1992(1) Supreme Court Cases 335, Paramjit Singh and others vs Ram Rakha and others 1979(3) Supreme Court Cases 478, B.S. Yadav and others vs State of Haryana and others 1980 Supp SCC 524, N.K. Chauhan and others vs State of Gujarat and others 1977(1) SCC 308, State of Kerala and others vs Mar Appraem Kuri Company Limited and another 2012(7) Supreme Court Cases 106, Ratan Lal Adukia vs Union of India 1989(3) Supreme Court Cases 537 and State of Orissa and another vs M.A. Tulloch and Co. AII 1964 Supre Court 1284 in support of his contentions.

Heard the arguments of learned counsel for the parties and have also perused the impugned seniority list as well as other documents on the file.

The petitioners are aggrieved by the final seniority list of Punjab Civil Service (Executive Branch) issued on 24.06.2016. Their grievance is that the seniority has been fixed in violation of Rule 21 read with Rule 18 of the Rules, 1976 and in violation of law laid down by Hon'ble the Apex Court in Arvinder Singh Bains's case (supra).

Admittedly, petitioners are the appointees after commencement of Rules 1994. The judgment of Arvinder Singh Bains's (supra) is based on Rules 1976. The

grievance of the petitioners is that they have been placed junior to the direct recruits appointed through Register `B' ignoring the roster points as mentioned in Rules 21 read with Rules 18 of the Rules 1976. The seniority list was issued on 24.06.2016 and the same was finalized after giving adequate opportunity of hearing to all the concerned officers. The objections were duly considered which were invited after release of tentative seniority list circulated on 04.09.2015. The reasons for rejecting the objections were also conveyed. Thereafter, the final seniority list was prepared and the same is a subject matter of challenge in the present petition.

Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 is necessary to be reproduced, which is as under :-

" Rule 8 - Seniority : The Seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service."

Rule 20 of the Rules, 1994 is also necessary for the issue involved in the present petition, which is reproduced as under :-

"Rule 20 - Over riding effect: The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service of appointment to public service and posts in connection with the affairs of the State."

The petitioners are claiming seniority from the date of occurrence of a vacancy, whereas, as per the Rule 1994, the seniority is to be determined only after appointment. This issue was raised before Hon'ble the Apex Court in Jagdish Ch. Patnaik's case (supra), wherein, it was held that the appointment does not relate back to the date of vacancy. In Suraj Parkash Gupta's case (supra), it has been held that direct recruits cannot claim appointment from the date of vacancy in quota before their selection. It has clearly been held by Hon'ble the Apex Court in said judgment that for fixation of seniority, the relevancy is that the appointment should be against a particular post and then only a question of seniority would come. Meaning thereby, the date of occurrence of vacancy has no relevancy for the purpose of fixation of seniority as the seniority is to be assigned after appointment to the cadre. For the purpose of determination of seniority, the effective date of selection has to be understood in the context of the Service Rules applicable. The process of selection starts with the issuance of advertisement and thereafter, the selection list is prepared.

It has also been held in various judgments of Hon'ble the Apex Court as well as of this Court that the date of entry into a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer of the other or between one group of officers and the other recruited from the different sources. Ordinarily, the benefit of seniority cannot be granted from the back date. The seniority cannot be determined from the date of

occurrence of the vacancy unless the same is provided under the relevant Rules. Moreover, there is no justification to give benefit of seniority from the date when an employee has not even been born in the cadre as it would affect the interest of those employees who have been appointed legally. Rule 8 of Rules, 1994 provides for fixation of seniority from the date of joining in the cadre.

Petitioners are claiming seniority in view of Arvinder Singh Bains's case (supra), whereas, at that time the Rules of 1976 were applicable and not the Rules 1994. Rule 18 of the Rules 1976 relate to making appointments to the service from amongst the candidates entered on various Registers in a slab of 100 vacancies. It is a mechanism to appoint the candidates from various registers against the roster points. However, the petitioners cannot claim to grant them the benefit of seniority from the date of occurrence of vacancy, which is over and above the private respondents as they have joined the service prior to their entrance in the cadre.

There are three modes of appointment i.e (i) direct recruitment; (ii) by promotion and (iii) by transfer.

In the present case, the recommendations for 25 direct recruits candidates in Register 'B' were received from Punjab Public Service Commission on 18.12.2003 and subsequently, they were issued appointment letters in the month of June 2004 on completion of formalities like medical examination and police verification. The appointment letters were issued in the month of June, 2004. The recommendations of the petitioners in Register A-1 were received on 27.02.2004 and appointment letters were issued on 30.08.2004. The seniority list was decided by the State Government in view of provisions contained in Rule 8 of the Rules, 1994 which is having an overriding effect over any provision of recruitment rules governing the conditions of service, if contrary to the Rules 1994. The benefit of seniority cannot be given to the petitioners in view of Arvinder Singh Bains's case (Supra) as those officers were appointed before formulation of Rules 1994. The candidates who were re-appointed as PCS (EB) in the re-conduct process of 2003 have been assigned seniority from the date of their joining in the cadre, whereas, the candidates who were appointed in the allied services of the State in the re-conduct process have also been given appointment as per decision of Hon'ble the Apex Court in case Joginderpal and others vs State of Punjab and others in C.A. No.5589-5605 of 2014. Those candidates were given seniority from the date of their joining in the cadre after giving them the benefit of service rendered from September 1999 to 2002.

In view of the facts and law position as discussed above, there is no merit in the contention raised by learned counsel for the petitioners and the present petition, being devoid of any merit, is hereby dismissed.