

(1972) 03 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No. 694 of 1968

P.N. Jhingan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-03-1972

Acts Referred:

Citation : (1972) ILR Delhi 913

Hon'ble Judges : S.N. Shankar, J;B.C. Misra, J

Bench : Division Bench

Advocate : S. Pappu, Bindra Rana, M.S. Ganesh, B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

B.C. Misra, J.

(1) As a result of the combined competitive examination for Indian Administrative and allied central services held in September, 1952, the four petitioners, who have filed this writ petition under Article 226 of the Constitution, were respectively placed at positions Nos. 152, 161, 178 and 191. The petitioners were found eligible for appointment in the Indian Income Tax Service Class I but since 150 (and according to the petitioners 151) persons were selected for appointment, the petitioners were not absorbed in the said service and they were offered the posts of Income Tax Officers in Class Ii Grade Iii (which have a lower pay scale) and the petitioners state that similarly placed candidates had been informed that their acceptance of the offer would not prejudice their case for being considered for appointment in Class I service. "The petitioners joined Class Ii service in 1954 and at present Shri Jhingan and Shri Braham Dev Sethi, petitioners Nos. 1 and 3 are serving as Income Tax Officers while Shri C. Satyanarayana, petitioner No. 2 and Shri R. L. Bhutani, petitioner No. 4 are working as Assistant Commissioners of Income Tax.

(2) It appears that in the Income Tax Service Class I, there was what has come to be known as the "Quota Rule" according to which the appointment of direct

recruits (as a result of the competitive examination) had to bear a certain proportion to promotions to the said service from Class II, Grade III. This ratio was previously 80:20, but at the relevant time was two thirds and one-third. The Government had been treating the Quota Rule as administrative instructions and so were not strictly following it, which resulted in disproportion of the appointments sometimes in favor of the direct recruits and at other times the promotees. The matter ultimately came up before the Supreme Court in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, . In this decision, the Supreme Court held that the aforesaid Quota Rule had a statutory force and should be observed and the Court issued a mandamus commanding the authorities concerned "to adjust the seniority of the petitioner and other officers similarly placed like him and to prepare fresh seniority list in accordance with law after adjusting the recruitment for the period ^1951 to 1956 and onwards in accordance with the aforesaid Quota Rule." In obedience to the mandamus of the Supreme Court, the authorities prepared a seniority list in July, 1968 which has been struck down by Division Bench of this Court in *Mohan Chandra Joshi vs. The Union of India* Civil Writ No. 550 of 1970 decided on 25/03/1971 (2) but the same is, on a certificate granted by this Court, the subject-matter of an appeal pending in the Supreme Court. There have been a number of other offshoots following upon the decision in *Jaisinghani's* case(1) and one matter came up before the High Court of Madras in *P. R. Sharma vs. Union of India*, Civil Writ No. 396 of 1967 decided on 18/08/1970(3) to which a detailed reference would be made hereafter.

(3) The allegation of the petitioners unfolded by the writ petitions that the position of appointments from May, 1952 to 1954, as detailed in the petition, yielded a shortfall of vacancies in the places reserved for the direct recruits which had been occupied by the promotees. These promotees have, as a result of the application of the Quota Rule, under directions of the Supreme Court, been brought down and their posts have, therefore, to be filled in by direct recruits. The petitioners contend that these posts should, instead of being filled by direct recruits on fresh examinations held in subsequent years, be offered to the petitioners who had qualified in the 1952 examination and were eligible to be appointed to Class I Service and who would have secured the posts but for their illegal occupation by promotees and consequently the petitioners claim that they be treated as having joined the Income Tax Service Class I, Grade II from the date of their appointments and be treated as having qualified for being appointed as Assistant Commissioner and their seniority be accordingly re-fixed. Respondents Nos. 5 to 74 are the promotees who are alleged to be affected by the relief claimed in the writ petition but they have not appeared to contest this petition. Respondent No. 4 is the Union Public Service Commission and respondent No. 1 is the Union of India while respondents Nos. 2 and 3 are the public authorities concerned.

(4) An affidavit in return has been filed by the Under Secretary of the Ministry of Finance and a rejoinder affidavit was filed by one of the petitioners. The material

facts of the case are not much in dispute and the contesting respondents have contended that the petitioners are not entitled to the relief claimed in THE petition in the circumstances of the case. The learned counsel for the respondent has stated at the bar (though it is not contained in the returns filed on their behalf) that as a result of the 1952 examination in which the petitioners appeared, the Government had fixed the number of vacancies in the Income Tax Service Class I at 50 which have all been filled and there neither was nor is any post vacant available to the petitioners.

(5) The contentions formulated by Mrs. Shyamla Pappu on behalf of the petitioners are as follows: All the candidates who have taken examination and are qualified and eligible and fall within the vacancies correctly determined in accordance with law, are entitled to the benefit of the statutory rules and if this is not accorded, the action would suffer from the vice of hostile discrimination under Articles 14 and 16 of the Constitution .Secondly, the Quota Rule which has been found by the Supreme Court as statutory must, in obedience to the mandamus of the Supreme Court, be applied not only for purposes of seniority or promotion but also at the inception of the service for the purpose of recruitment and any over or under recruitment contrary to the Quota Rule of two-thirds and one-third would visit evil consequences and would be discriminatory. Thirdly, the posts available to direct recruits on adjustment as a result of the application of the Quota Rule must be offered to the petitioners who had been found qualified and eligible in the same year as posts fell vacant instead of being filled in by direct recruits from examinations held in subsequent years.

(6) The following chart given in the writ petition would disclose the case of the petitioners:-

Year	No. of War	No. Total	Direct	Deficiency	Total No.
Progressive direct Service pr-	recruits from earl-	of direct	total of recru-	candid-	
moted at 66.2/3	ier years	recruitment shortfall	itment	ates of Col.5	ent that (Col. 8 made (that should have minus ought to been made Col. 2 have been under the made in the rules relevant year)

	1	2	3	4	5	6	7	8	9
1951	50	-	-	-	-	-	-	-	-
1952	-	2	49	51	34	-	32	32	1953
52	-	38	90	60	32	92	40	1954	44
-	30	74	49	40	89	45	1955	45	-
-	24	69	46	45	91	46			

The respondents have in paragraph 14 of the counter-affidavit furnished the following figures:-

	No. of Direct
recruits taken No. of promotions made	
1951	50
-1952	2
49	1953
53	38
1954	48
31	1955
46	24
1956	-
25	

(7) The figures in this chart furnished by the respondents are slightly different from the one given in the decision of the Supreme Court in Jai singhan's case (supra) but the counsel for the respondent explains that the figures now given before us are correct figures found as a result of the research. The difference, however, is not material for decision of this writ petition.

(8) The points for consideration are whether the petitioners have now any legal right to be appointed or deemed to be appointed to the aforesaid posts in Class I as in 1954 with consequential seniority and benefits and whether infringement of this right contravenes Articles 14 and 16 of the Constitution.

(9) We have considered all the submissions of the counsel very carefully, but we are unable to accept them. Jai singhani's case⁽¹⁾ before the Supreme Court related to fixation of seniority amongst persons who had already joined Class I Service from two sources, namely, direct recruitment as a result of competitive examination and promotion from Class II Service. The Court found that the Quota Rule was not an administrative direction, but it had a statutory force and it could not be altered according to the pleasure of the Government or exigencies of the situation; the authorities were, therefore, directed to apply the same and fix the seniority accordingly. We do not understand either the Quota Rule or the mandamus of the Supreme Court to confer a right on persons like the petitioners to secure posts or be deemed to have been appointed in posts in Class I Service in 1954, when they had in fact and in law been appointed to Class II, Grade III Service which they had willingly accepted. It is obviously difficult to hold that any candidate has a legal right to be appointed to a post merely because he has passed the competitive examination and is found eligible. Should the Government for any reason fail or refuse to fill the vacancy or to offer the post to a successful candidate, he does not acquire a justiciable right and can ordinarily not come to the Court for directions to the Government to make his appointment to the post. As a result of the examination held in 1952, 190 persons were declared eligible, but only 150 or 151 were appointed. The remaining eligible candidates cannot claim any legal right to be appointed to any vacancies occurring at that time or in subsequent years, if the Government felt that there were no vacancies or had decided to offer the existing or additional vacancies to the candidates qualifying in examinations held in subsequent years. Consequently the petitioners do not have any right which they can enforce now in Court.

(10) The argument of hostile discrimination is fallacious. No material has been placed before us to show that any successful candidates left out of absorption in 1954 or 1955 have now, on the date of the petition or near-about, been appointed to the posts said to have occurred in 1954 after several competitive examinations have since been held resulting in appointment of a large number of direct recruits. The petitioners before us had been absorbed in Class II, Grade III Service and far from their having been discriminated against, it would appear to be discriminatory not to allow them to rank with other Class II officers equally

eligible for promotion to Class I under the quota reserved for promotees, and to single the petitioners out of them to confer a benefit of appointment as direct recruits, while they have all these years enjoyed the benefits of Class II officers, would constitute hostile discrimination against other holders of Class II posts as well as against the direct recruits of Class I. The unequal treatment of the equals would also constitute unfair discrimination which we are unable to countenance.

(11) We are supported in our view by the decision of the High Court of Madras in R. R. Sharma's case (supra) (3). The facts of that case are more or less similar. In that case, the petitioner had urged that he had taken a competitive examination in September, 1952 and was placed amongst 191 eligible candidates out of whom only 150 were absorbed in Class I Service, while the petitioner had been offered the post of Income Tax Officer in Class II, and he had been assured that his chances of promotion to Class I in case of his turn would not be prejudiced by acceptance of Class II post. It was claimed that as a result of the application of the Quota Rule under the directions of the Supreme Court for the year 1954, appointments had been made of 45 direct recruits and 30 promotees, but in fact 49 ought to have been appointed directly and so the petitioner claimed that he ought to have been appointed and must be deemed to have been appointed to the post in Class I as in 1954 and he be recorded the resultant seniority. The High Court of Madras repelled the contention and observed that by merely showing excessive improper recruitment against the Quota Rule, the petitioner could not insist that it should ipso facto follow that the corresponding vacancies should be filled in directly out of the unabsorbed list of successful candidates of the early years; the Quota Rule required that at the recruitment to Class I, Grade II Service, the prescribed proportion from the two sources should be maintained, but it did not mean that if promotions in excess of such proportion had been made, the corresponding places constituted vacancies available for being redistributed and filled in. With this observation of the Court, we respectfully agree.

(12) The counsel for the petitioners strongly relies upon the decision of this Court in Mohan Chandra Joshi's case (2). In that case, a Division Bench of this Court (S. N. Andley and T. v. R. Tatachari, JJ.) held that the method of working out the Quota Rule was to determine the number of direct recruits and the number of promotees in each year and treat the aggregate as the number of vacancies in that year and then make appointments of two direct recruits as against one promotee in each year's vacancies. We are of the view that this observation of the Court was made for the purpose of determining the validity of the seniority list compiled by the Department in July, 1968 which list has been struck down by this Court. We are unable to derive any assistance from this decision to support the contention of the petitioners that they should now be appointed or deemed to have been appointed in the vacancies of the year 1954 which have long since been closed.

(13) Mrs. Shyamla Pappu, counsel for the petitioners, does not dispute the

position that while considering the Quota Rule or issuing the mandamus, the Supreme Court was not considering the question of creation of posts and their being offered to the persons who had already joined Class I, Grade Iii Service of the Department ,but she contends that the rule should be extended by analogy and it be held that had the Quota Rule been rightly Applied in 1954 (at the time of appointment of the petitioners)and vacancies were found to exist, the petitioners had a right to be appointed in those vacancies. She said that the petitioners had been declared successful in the examination and had been declared eligible for appointment but had not been appointed merely because the Government felt that there were no vacancies and this wrong done to the petitioners must now be remedied. We are of the view that there is no scope for any such extension of the Quota Rule or mandamus of the Supreme Court by analogy or by the process of logical reasoning. The application of the rule does not mean that the posts, if any should be offered to the unabsorbed candidates of any particular year and that too after several years have passed and the lists of vacancies which had long since been closed be re-opened and re-distributed.

(14) There are two other reasons why no relief can be granted to the petitioners, assuming they were entitled to it. One is acquiescence and the other is laches. The petitioners had willingly accepted the offer of posts in Class Ii, Grade Iii Service and they have enjoyed its benefits including chances of promotion from the said class to Class I for several years past. The petitioners never sought to enforce their right, if any, to be directly recruited to Class I on the ground that there were vacancies in the year in which they had passed the examination. They had fully acquiesced in the filling of the posts and cannot be allowed to agitate the grievance now.

(15) The second reason is the great delay. Since 1954, about 18 years have gone by and a large number of direct recruits have been appointed to Class I Service as a result of several competitive examinations .The petitioners have filed the writ petition only in 1968 without offering any Explanation for the delay. Their stand that they could not come to Court earlier than the decision of Jaisinghani's case^ by the Supreme Court is not convincingly adequate .The Supreme Court in Jaisinghani's case(1) simply clarified the position in regard to Quota Rule and this declaration of the law did not confer any new rights on persons like the petitioners. The delay in the circumstances of the case is so inordinate that it will be wholly inequitable to grant any relief to the petitioners, assuming that they were entitled to it, though in fact, as we have held, the petitioners do not possess any legal right to obtain the relief claimed.

(16) In the result, we do not find any force in the writ petition and we dismiss the same, but in the circumstances of the case, leave the parties to bear their respective costs.