

(2009) 07 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No's. 6253, 6254 and 6255-6259 of 2008

Prabhjot Singh Mand and Others

APPELLANT

Vs

Bhagwant Singh and Others

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 — Rule 18, 20, 21, 7, 8

Citation : (2009) 10 JT 190 : (2009) 10 SCALE 316 : (2009) 9 SCC 435 : (2009) 2 SCC(L&S) 673 : (2009) 12 SCR 143 : (2009) 7 SLR 667

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Raju Ramachandran, P.S. Patwalia, Rajeev Dhawan and D.V. Sharma, S. Udaya Kumar Sagar, Rachana Joshi Issar, Bina Madhavan and Hemal K. Sheth, for Lawyer's Knit and Co., Gurminder Singh, R.D. Bawa, Dhiraj, Reeta Dewan Puri, P.N. Puri, Ajay Pal, Nikhil Jain, Gagan Deep Sharma, Shikha Roy Pabbi, Ajit Kumar, S. K. Sabharwal and Binu Tamta, for the Appellant;

Judgement

S.B. Sinha, J.—This appeal is directed against an interim order dated 25th March, 2008 passed by a learned single judge of the Punjab & Haryana High Court whereby and whereunder while issuing notice of motion, the reversion of the first respondent was stayed.

2. The matter has a chequered career. The dispute involved in the present appeals revolves round the seniority between the direct recruits and the promotees. Indisputably, the conditions of service of the employees hereto are governed by the Punjab Civil Services (Executive Branch) Rules, 1976. It repealed and replaced the Rules framed in the year 1930. By reason of 1930 Rules, 68% slots were fixed in the roster for direct recruits. Rule 18 of 1976 Rules, however, provided for 50% of the slots to be filled by direct recruits.

3. The State sent requisition to the Punjab Public Service Commission for filling up the vacancies of 48 officers; 24 by direct recruitment through examination

and 24 by nominating officers from the existing services to Punjab Civil Services (PCS). Advertisements were issued by the State of Punjab for direct recruitment to the PCS.

4. However, the said requisition was modified in the year 1982 whereby the number of officers to be selected was raised to 80 wherefor a revised advertisement was also issued. The Promotee Officers were brought into the PCS in the year 1984. Appellants, however, were appointed in the year 1986 by direct recruitment with effect from 1985. Seniority list was finalized in 1993 in respect of the officers appointed to PCS from 1976-1985 wherein the direct recruits who joined in 1986 were not included. Seniority list in respect of officers directly recruited and appointed in 1986 was finalized in 1994 and they were placed below the last officer in the seniority list of 1993.

5. Arvinder Singh Bains, the appellant No. 3 herein, along with one Dipinder Singh filed a writ petition (marked as Writ Petition No. 16516 of 1995) before the Punjab & Haryana High Court questioning the correctness of the said 1994 seniority list. The said writ petition was dismissed. An intra-court appeal preferred thereagainst was also dismissed by an order dated 12.12.2000.

6. A SLP was filed thereagainst before this Court on which leave was granted by an order dated 3.9.2001 and the appeal was numbered as Civil Appeal No. 6373 of 2001. An interim order was passed to the effect that any action taken would be subject to the outcome of the appeal.

7. An interlocutory application, however, was filed on or about 12.1.2006 marked as I.A. No. 2 of 2006 inter alia praying that no promotion be made to the Indian Administrative Services (I.A.S.) cadre from the cadre of P.C.S. which was dismissed by an order dated 12.01.2006 with the following observations:

In view of the fact that the order of this Court dated 3rd of September 2001 granting leave unambiguously states that any action taken will be subject to the outcome of the appeal, we do not find that a case for modification thereof is made out.

8. The said Civil Appeal was allowed by this Court by reason of judgment and order dated 24.5.2006 [since reported in (2006) 6 SCC 673 (Arvinder Singh Bains vs. State of Punjab & Ors.)], inter alia opining:

37. The appellant is not seeking any antedated promotion. The case of the appellant is that the inter se seniority of 80 officers (40 direct recruits + 40 promotees) should be fixed by applying roster provided for in Rule 18 of the PCS (EB) Rules, 1976 by reading Rules 18 and 21 together.

9. In arriving at the said finding, this Court took into consideration Rules 7, 8, 18 and 21 of the 1976 Rules.

10. Rule 7 lays down that the appointment to the service shall be made from amongst the accepted candidates whose names have been duly entered in the

prescribed Registers. Rule 8 provides for various Registers of accepted candidates, which are in the following terms:

A-I: Tahsildars

A-II: Ministerial employees of the State Government (Classes II and III)

A-III: ETOs/BODs/DDPOs

B: Direct recruits

C: Other government servants

Rules 18 and 21 of the 1976 Rules read thus:

18. Appointment of accepted candidates to the service.--The Government shall make appointments to the service in pursuance of Rule 7 from amongst the candidates entered in the various Registers in a slab of 100 vacancies as follows:

(i) the first vacancy and thereafter every alternative vacancy shall be filled from amongst candidates borne on Register `B";

(ii) the 2nd, 8th, 14th, 20th, 26th, 32nd, 38th, 44th, 50th, 56th, 62nd, 68th, 74th, 80th, 86th, 92nd, 96th and 100th vacancies shall be filled from amongst the candidates borne on Register A-I;

(iii) the 4th, 10th, 16th, 22nd, 28th, 34th, 40th, 46th, 52nd, 58th, 64th, 70th, 76th, 82nd, 88th and 98th vacancies shall be filled from amongst candidates borne on Register A-II;

(iv) the 12th, 30th, 42nd, 54th, 66th, 78th and 90th vacancies shall be filled from amongst the Excise and Taxation Officers accepted as candidates on Register A-III;

(v) the 18th, 36th, 60th and 84th vacancies shall be filled from amongst the District Development and Panchayat Officers or Block Development and Panchayat Officers accepted as candidates on Register A-III; and

(vi) the 6th, 24th, 48th, 72nd and 94th vacancies shall be filled from amongst the candidates on Register `C":

21. Seniority of the members of the service.--The seniority of officers appointed to the service shall be determined in accordance with the order of their appointment to the service; provided that--

(a) if the order of appointment of any candidate is cancelled under the provisions of Rule 20 and such candidate is subsequently appointed to the service, the order of appointment for the purpose of this rule shall be determined by the date of such subsequent appointment;

(b) if any officer appointed to the service fails to qualify himself for substantive

permanent appointment within the prescribed period of probation, the Government may determine whether the date of his appointment for the purpose of this rule shall be postponed by a period not exceeding the period by which such officer's substantive permanent appointment is delayed beyond the prescribed period of probation;

(c) the persons appointed as a result of earlier selection from a Register shall be senior to those appointed as a result of subsequent selection from the same Register.

11. It was held that appointment is made in terms of Rule 18 laying down that the first vacancy and thereafter every alternative vacancy shall be filled from amongst the candidates borne on Register `B". In other words, the first officer has to be appointed from Register `B" only. The stand of the State that direct recruits have preference over others was also noticed. In that view of the matter, it was opined that such a procedure must be reflected in the matter of seniority also.

12. This Court held that Rule 18 should be read with Rule 21 for the purpose of determining the seniority. It was held that as the selection process for the promotees was shorter as compared to direct recruits and as the promotees had enjoyed more perks by way of pay etc., the direct recruits should not suffer any injustice in the matter of seniority also especially when both the category of employees were selected against the same requisition sent by the Government to the Punjab Public Service Commission. On the basis of the aforementioned findings, this Court directed:

59. We have also referred to the decisions rendered by this Court. This Court said rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The action of the respondents in determining the seniority is clearly in total disregard of rota-quota rule prescribed in Rule 18 of the 1976 Rules. The action is, therefore, clearly contrary to the law laid down by this Court. Thus, we hold:

1. that the action of the State is contrary to the 1976 Rules;
2. the seniority under the 1976 Rules must be based on a collective interpretation of Rule 18 and Rule 21 of the 1976 Rules;
3. the action of the authorities is negation of Rule 18 of the 1976 Rules in determining the seniority by the impugned order. Since the action is contrary to law laid down by this Court, we have no hesitation in allowing the appeal and grant the relief as prayed for by the appellant.

13. Indisputably, review applications filed by some promotee officers thereagainst was also dismissed by this Court on 17.8.2006.

14. Inter alia, on the premise that the State has failed and/or neglected to the time frame for revising the seniority list, a Contempt Petition marked as

Contempt Petition (C) No. 214 of 2006 was filed on or about 15.10.2006. Thereafter, a tentative seniority list was prepared on 15.12.2006. A final seniority list was prepared on 4.4.2007 in terms whereof all the direct recruits (appellants) were placed before the first respondent.

15. On or about 26.4.2007, the State Government forwarded a proposal to the Union Public Service Commission (U.P.S.C.) to call a meeting of the Review Selection Committee to review the select lists prepared for promotion to I.A.S. from the P.C.S. for the years 1998-2006.

16. This Court by an order dated 20.8.2007 while dismissing the contempt petition observed as under:

Despite the dismissal of the contempt petition it is expected that the Union Public Service Commission should hold the meeting pursuant to the direction of this Court.

17. On or about 12.10.2007, the State Government wrote to the U.P.S.C. that it had been decided to review the select lists from 1992-1993 onwards for the purpose of appointment to the I.A.S. cadre. A second round of litigation thereafter started as some promotees including the first respondent filed writ petitions against the final seniority list of 2007 raising almost similar grounds which had been taken in the review petitions filed before this Court. An interim order was passed in the said writ petitions on 15.10.2007 directing that the selection process would go on but the writ petitioners therein would not be reverted till further orders. Evidently, in view of such order of stay, the direct recruits could not be promoted to IAS Cadre.

18. U.P.S.C. reviewed the select list from 1992 to 2006. It was found by the Committee that six officers were eligible for promotion under the new seniority list and made recommendations to the same effect. Six officers who were promoted on the basis of the incorrect seniority list, and subject to the final outcome of the decision in Arvinder Singh Bains (supra), were required to be reverted as either they had become over-aged or too junior. Respondent No. 1 was one of them. The respondent No. 1, however, filed an application marked as O.A. No. 185 of 2008 before the Central Administrative Tribunal at Chandigarh, inter alia, praying for the following reliefs:

1. Summon the records of the case and after perusal of the same quash the selection made of Respondent No. 4 to 9 to the Indian Administrative Service by conducting review DPC held on 25.2.2008 for the period 1992 to 2006, without determining the vacancies, afresh as the applicant along with others was promoted to the IAS from PCS on the basis of seniority list determined in 1993 and the applicant and others were appointed and are still holding the post of Indian Administrative Service, with further direction to the officials Respondent not to appoint the selected candidates from Sr. No. 4 to 9, as IAS against the posts against which the applicant and others are working.

2. Direct the Respondents to grant the benefit of the Judgment of Hon''ble Supreme Court of India in Arvinder Singh Bains'' case only to the applicant therein, if it is admissible to him, and not to the private respondents who never challenged the seniority of the applicant settled in 1993 and 1994.

19. By an order dated 18.3.2008, the Central Administrative Tribunal, Chandigarh while issuing notice directed that the promotions made to the I.A.S. would be subject to the final outcome of the said O.A.

20. The first respondent filed a writ petition against the said order before the High Court. The High Court by reason of an Order dated 25.3.2008 granted stay on the reversion of the first respondent although no such prayer was made in the original application. It is the said order which is being impugned herein.

21. Before, however, advertng to the propriety and/or legality of the said order dated 25.3.2008, we may notice that on an application filed by the State Government for vacation of stay granted on 15.10.2007 in C.W.P. No. 6857 of 2007, the High Court, by its order dated 3.4.2008, modified its interim order dated 15.10.2007 to the effect that the same would not affect the right of six persons who have been found eligible to be promoted to the I.A.S. and recommended by the U.P.S.C. on or about 25.2.2007. However, no order of appointment has been issued to that effect.

22. Two direct recruits recommended for promotion to the I.A.S. have also filed SLP before this Court against the said interim order dated 3.4.2008.

23. The stand of the Union of India in the matter appears to be that the said order is an obstacle in the matter of implementation of the judgment of this Court in Arvinder Singh Bains (supra) as the order of reversion has been stayed.

24. We may also furthermore place on record that the applications were filed in Writ Petition No. 4806-CAT of 2008 for vacation of the interim order which appears to have been withdrawn in view of the SLP filed herein. We have, however, heretobefore noticed that one SLP was dismissed by this Court with which we are not concerned hereat.

25. The stand of the appellants as also the State of Punjab is that the matter in regard to the interpretation of 1976 Rules as regards seniority between direct recruits and promotees having been finally determined by this Court in Arvinder Singh Bains (supra) wherein the relevant Rules have been interpreted, the High Court could not have granted an order of stay.

26. Mr. P.S. Patwalia, learned Senior Counsel appearing on behalf of the respondent No. 1, on the other hand, would contend that the first respondent being not a party to the litigation and he having been appointed in December 1984, the decision of this Court in Arvinder Singh Bains (supra) would not be binding on him. It was contended that as the relief has been granted only to the appellant therein and keeping in view the fact that the seniority list dated 19.3.1993 having not been challenged, the High Court could have granted an

order of stay.

27. This Court passed an order dated 22.10.2008 in the present appeals, which reads thus:

Leave is granted in all the SLPs.

The Union of India and the Union Public Service Commission are parties before us. Although the Union of India has filed counter affidavit, nobody has appeared on its behalf. The Union Public Service Commission is represented by Ms. Binu Tamta.

Heard the learned Counsel for the parties quite at length.

As all these appeals are preferred against the interim orders passed by the High Court of Punjab & Haryana at Chandigarh, being orders dated 25.3.2008, 3.4.2008 and 10.4.2008 and having regard to the fact that a large number of contentions have been raised before us, we are of the opinion that the operative portion of the judgment may be pronounced here and now. Detailed reasons therefor, however, would be assigned later on.

(1) The appeals are allowed, modifying the impugned orders of the High Court to the following extent:

(a) That portion of the impugned orders whereby and whereunder the High Court has stayed the reversion of the writ petitioners, who are respondents in these appeals, shall stand vacated. However, they shall be adjusted against any of the 12 vacancies which are stated to be existing and in respect of which steps are being taken to send requisition to the Union of India for making appointment. The writ petitioners - respondents will be entitled to continue against those vacancies only till appointment against those vacancies notified by the Union of India.

(b) The appellants before us must be appointed to the cadre of IAS in terms of the seniority list dated 4th April, 2007.

(c) The above directions shall, however, be subject to the ultimate result of the writ petitions which are pending before the High Court

(2) We in exercise of our jurisdiction under Article 142 of the Constitution of India, further direct the State of Punjab to send the requisition for filling up all the above mentioned 12 vacancies in the cadre of IAS, to the Union of India and the Union Public Service Commission, as expeditiously as possible and preferably within a period of three weeks from today. Both Union of India and Union Public Service Commission are hereby directed to consider the requisition sent by the State of Punjab in respect of the aforementioned 12 vacancies as expeditiously as possible and preferably within a period of 16 weeks from the date of communication of the requisition.

(3) We would request the High Court to consider the desirability of disposing of

the pending writ petitions as expeditiously as possible, preferably within a period of three weeks from today.

28. The question as to whether the promotee officers who have filed original applications before the Central Administrative Tribunal would be entitled to obtain any relief awaits consideration. At the outset, we may observe that the High court could not have passed an interim order which had a serious civil consequence so far as the appellants are concerned and that too without giving any opportunity of hearing to them. If the contention raised before us that the original applicants did not pray for stay of reversion is correct, in our opinion, the High Court ought not to have passed the impugned order. It is one thing to say that judgment delivered by this Court in Arvinder Singh Bains (*supra*) is not a judgment in rem but prima facie this Court has interpreted the Rules, which would be a law declared in terms of Article 141 of the Constitution of India. The High Court before arriving at a finding that the first respondent would be entitled to be promoted to the cadre of Indian Administrative Service, in our considered opinion, should have bestowed serious consideration in regard to the implementation of the said judgment and the effect thereof. It was for the said purpose, the High Court should have assigned some reasons in support of its order. We need not delve upon the said question in great detail. But it is beyond any cavil of doubt that before passing an interim order, the courts should not only consider prima facie case, balance of convenience, and irreparable injury but also its effect on public interest also. The public interest demands that the process should be continued. The Rules have been interpreted by this Court in Arvinder Singh Bains (*supra*), and review petition filed thereagainst had been dismissed. In the said review application, contentions have been raised which are similar to the ones raised by the first respondent in his original application. Furthermore, although this Court dismissed the contempt application by an order dated 20.8.2007 by making certain observations, the same should have been given effect to. We are not unmindful of the fact that in these matters not only the seniority list but also the selection process has been under challenge. But, as noticed hereinbefore, no interim relief qua reversion has been sought for.

29. This Court in *M. Gurudas vs. Rasaranjan* [(2006) 8 SCC 367] opined:

21. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only a mere triable issue.

30. The Tribunal refused to pass an interim order but observed that any action taken would be subject to ultimate result of the original application. Thus, in a situation of this nature, the High Court should have considered the question as to whether the respondent No. 1 had any prima facie case or is there any balance

of convenience in his favour. It is not a case where the dispute is between the private parties. Appointment to the cadre of I.A.S. is a matter of public interest. An interim order involving public interest in public law cases must receive different considerations.

31. The effect of the interim order vis-à-vis the clarificatory order passed by the High Court in the earlier writ application resulted in a piquant situation in the sense that whereas the appellants were entitled to be promoted to I.A.S., the Union of India in their counter affidavit raised the questions of difficulties contending that unless the posts fall vacant, no appointment therein could be made. It may be true that when an employee is reverted to a lower post, he would suffer civil consequences but then it was necessary not only in public interest, but also to give effect to the doctrine of comity and/or amity. The appellants were entitled to be promoted as of right subject to the result of writ petition. They could not be denied promotion by another interim order passed in favour of the first respondent directing that they could not be reverted as a result whereof the vacancy would not occur.

{See Transmission Corpn. of A.P. Ltd. Vs. Lanco Kondapalli Power (P) Ltd. [(2006) 1 SCC 540] }

32. This Court in *India Household and Healthcare Ltd. vs. LG Household and Healthcare Ltd* [(2007) 5 SCC 510] noticed:

17. This aspect of the matter has been considered in *A Treatise on the Law Governing Injunctions* by Spelling and Lewis wherein it is stated:

Section 8. Conflict and loss of jurisdiction. --Where a court having general jurisdiction and having acquired jurisdiction of the subject-matter has issued an injunction, a court of concurrent jurisdiction will usually refuse to interfere by issuance of a second injunction. There is no established rule of exclusion which would deprive a court of jurisdiction to issue an injunction because of the issuance of an injunction between the same parties appertaining to the same subject-matter, but there is what may properly be termed a judicial comity on the subject. And even where it is a case of one court having refused to grant an injunction, while such refusal does not exclude another coordinate court or Judge from jurisdiction, yet the granting of the injunction by a second Judge may lead to complications and retaliatory action....

xxx xxx xxx 19. A court while exercising its judicial function would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court.

33. The impugned interim order clearly violates the aforementioned rule.

34. We, however, need not consider the question as to whether the rosters are different or whether the State and/or the Commission were correct in preparing the select lists. We may, however, at this stage, only notice that this Court issued direction to prepare a new seniority list. We need not also go into the questions

raised by the learned Counsel appearing on behalf of the respondents that the appellants were not entitled to any relief on the ground of laches or delay on their part. We may, however, observe that this Court in Arvinder Singh Bains (supra) did not issue any direction and/or any specific indication that the said decision would be confined to the petitioners therein only.

35. We were, however, informed at the bar that 12 vacancies existed. Only in that view of the matter directions were issued to consider the cases of the respondents for promotion to the cadre of I.A.S. against any of those vacancies if they are found ultimately eligible therefor. It is only with that in view, we had in exercise of our jurisdiction under Article 142 of the Constitution of India directed the Union of India to make requisition therefor. We may furthermore observe that we have not gone into some other questions which have been raised at the bar as no observation made therein may prejudice one of the parties hereto.

36. The above are the reasons in support of our order dated 22.10.2008.