
(2003) 01 P&H CK 0202
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 901 of 1987

Raghubir Singh Malik

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Citation : (2003) 133 PLR 611

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; Ritu Bahri, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner was recruited as Sub-Inspector through Subordinate Services Selection Board, Punjab and joined the respondent-department as Sub-Inspector on 13.5.1960. Seniority list of Sub Inspectors of the Cooperative Societies was published for the first time in the month of February, 1972. The name of the petitioner was not shown in the aforesaid seniority list. In the month of January, 1984 again a tentative list of Sub Inspectors of Cooperative Societies was published depicting the position as it existed on 1.7.1983. The name of the petitioner was shown at Sr. No. 284. The petitioner made a representation against the tentative seniority list. Representation of the petitioner was not decided. The petitioner, therefore, filed CWP No. 1800 of 1985. The aforesaid writ petition was allowed and the respondents were directed to dispose of the representation of the petitioner within two months from the date of the passing of the order i.e., September 1, 1986. On 15.10.1986, the representation of the petitioner was rejected by passing a wholly non-speaking order. Upto 1.8.1954, Sub Inspectors, Cooperative Societies were working under the Union. The State Government took over the staff thereafter. The service condition of the Sub Inspectors were governed by the Punjab Cooperatives Subordinate Services Rules, 1936 (hereinafter referred to as "the Rules"). The post of Sub Inspectors was not included in the Appendix "A" to the aforesaid

Rules. However, the notification dated 9.6.1972, the post of Sub Inspectors, Cooperative Societies was added in Appendix "A". The petitioner claim that since he was appointed as Sub Inspector on 13.5.1960, his seniority in the cadre of Sub Inspectors has to be fixed in accordance with the instructions dated 29.3.1957 which have been subsequently modified on various dates, In all these instructions, it is provided that seniority of the employees who have been recruited through Subordinate Services Selection Board/Public Service Commission, shall be determined in the same order in which their names were recommended.

2. Written statement has been filed by the respondents. It has been stated that the seniority of the petitioner has to be determined under the 1936 Rules. Under Rule 8 of these Rules, the seniority of the petitioner has to be determined with effect from the date he had passed the Sub Inspector Training Class examination which is provided under Rule 8 (i) (Part II Executive) of the Punjab Cooperative Subordinates Service Rules, 1936. The petitioner passed the examination in October, 1964. Thus his seniority has been correctly fixed w.e.f. 1964.

3. Mr. R.K. Malik, learned counsel appearing for the petitioner has submitted that by now, it is settled proposition of law that seniority of the government employee has to be determined in accordance with the rules/regulations or executive instructions in the absence of statutory rules which were prevalent at the time of the entry of the government servant into service. Since the post of Sub Inspectors, Cooperative Societies was not included in Appendix "A" of 1936 Rules, the seniority of the petitioner has to be fixed in accordance with the instructions dated 29.3.1957 which provided that the seniority shall be fixed in the same order in which the employees' names are recommended either by the Subordinate Services Selection Board, Punjab or by the Punjab Service Commission. He has submitted that the accrued right of the petitioner could not be taken away by the subsequent amendment in the 1936 Rules. In support of the aforesaid submissions, the learned counsel for the petitioner has relied on a judgment of the Division Bench of this Court in the case of Bhim Sein Gupta and ORs. v. State of Haryana and ORs. 1997 (2) A.I.J 46.

4. MRs. Ritu Bahri, learned counsel appearing for the State has reiterated the stand taken by the respondents in the written statement and submitted that the seniority of the petitioner has been correctly determined from the date of his passing of the examination which is prescribed under the Rules for Sub-Inspectors.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In Bhim Sein Gupta's case (supra), the Division Bench was considering a similar proposition. After considering the entire matter, it has been held that, "the seniority of the employees appointed prior to the promulgation of the new rules ought to be fixed under the old rules". In coming to this conclusion, the Division Bench relied on two judgments of the Supreme Court i.e. S. Yadav and Ors. v. State of Haryana and Ors. 1980 (3) S.L.R. 591

and D.P. Sharma and Ors. v. U.O.I, and Anr. 1989 SCC (L&S) 353. In B.S. Yadav's case (supra), the Supreme Court has held that "the seniority of the officers joining the service before the amendment was to be determined under the unamended rules and the seniority of the members of service joining after the amendment of the rules would be determined under the amended service rules". Similarly in D.P. Sharma's case (supra) the Supreme Court held that "where prior to the promulgation of the Rules, the seniority of the employees was determined under a memorandum or instructions, the seniority would still be determined under the memorandum and instructions of those employees who were appointed prior to the promulgation of the Rules and the seniority in a particular rank under the Rules would only be determined of those employees who were appointed after the promulgation of the Rules."

6. I am of the considered opinion that the ratio of law laid down by the Supreme Court in the aforesaid two cases is fully applicable to the facts and circumstances of the present case.

7. In view of the above, the writ petition is allowed. Order, Annexure P-5 is quashed. The respondents are directed to re-determine the seniority of the petitioner from the date he joined as Sub Inspector on 13.5.1960 on the basis of the recommendations made by the Subordinate Services Selection Board, Punjab. Since, the petitioner has retired, the respondents are directed to notionally re-fix the seniority of the petitioner. The petitioner shall also be considered for promotions as and when due under the rules and the seniority be fixed in accordance with rules. In case the petitioner is found to be suitable for promotion, notional promotions be granted. The petitioner shall be entitled to consequential benefits also. In case the petitioner is promoted with retrospective effect, the retiral benefits of the petitioner shall be re-fixed and the same be released to the petitioner. Let the necessary action be done within three months of the receipt of certified copy of this order.