

(1986) 11 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1219 of 1984

R.C. Chaudhri and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-11-1986

Acts Referred:

Punjab Superior Judicial Service Rules, 1963 — Rule 12, 8

Citation : (1987) 2 ILR (P&H) 339

Hon'ble Judges : J.V. Gupta, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : B.S. Khoji and J.S. Sethi, in C.W.P. No. 2786 of 1982, for the Appellant; H.S. Nagra, for A.G., Kuldip Singh K.S. Mongia, Roop Chand and V.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—These five writ petitions, three of them by the employees of the Co-operative Department of the Punjab State, namely, R.C. Chaudhri and others in C.W.P. No. 1219 of 1984, Kartar Singh and others in C.W.P. No. 2786 of 1982, and S.S. Paul and others in C.W.P. No. 71 of 1984, and two by the employees of the Co-operative Department of the Haryana State, namely, M.S. Sheokand and others in C.W.P. No. 3899 of 1983 and S.P. Kaushik and another in C.W.P. No. 3438 of 1983, raise a common question of law relating to the interpretation of some of the rules, particularly the rule relating to the seniority, of the Punjab State Co-operative Service (Class II) Rules, 1958 (hereinafter referred to as the Rules), which are common to all the Petitioners and, therefore, a common judgment is proposed in all these cases.

2. Wherever reference to facts is necessary, these are taken from Civil Writ No. 1219 of 1984.

3. The controversy in these writ petitions revolves round the fixation of seniority of the Assistant Registrars drawn from two sources, namely, by way of direct

recruitment and by way of promotion. To be specific, the controversy lies in a narrow compass. The promotee officers assert that confirmation in the service should be on the basis of continuous length of officiating on the post irrespective of the fact as to whether appointee to the post of Assistant Registrar is a direct recruit or a promotee, whereas the stand taken on behalf of the direct appointees and the State Government is that the ratio of the direct recruits and promotees to the post of the Assistant Registrar is not only to be maintained at the time of recruitment, but is also to be reflected all through, that is even at the time of confirmation in the service as an Assistant Registrar. The confirmation has to be effected if a post in the quota of the given source is available for confirmation, that is the confirmation of the promotees is to be confined to the post available in their quota and likewise the confirmation of the direct recruits to be confined to the post available in their quota.

4. The promotee officers have additionally canvassed that even if for the sake of arguments it is assumed that confirmation is to be effected if a vacant post within the quota of the posts reserved for the given source is available, the said rule is not to be followed as there had been large scale deviation from the quota rule at the time of recruitment and it would be iniquitous to follow quota rule at the time of confirmation.

5. Before proceeding to consider the aforesaid projected stands of the parties and further contentions advanced on either side in support of their respective case, it would be appropriate at this stage to notice the relevant rules bearing upon the question. Rule 2(f), which defines "The Service", is in the following terms:

2. In these rules, unless there is anything repugnant in the subject or the context:

* * * * *

(f) "The Service" means the Punjab State Co-operative Service, Class II.

Rule 3 providing for the "number and character of posts" runs as follows:

3. Number and Character of posts:

The service shall comprise posts specified in Appendix "A" to these rules, provided that Government may at any time increase or decrease the number of posts in the service either (temporarily or "permanently).

APPENDIX "A"

(Referred to in Rules 3 to 12)

Sr.	No	Description of post	No. of posts	Scale of pay
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1.	Assistant Registrar	20	250-25-550/25-750
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2.	Lady Asstt. Registrar	1	250-25-550/25-750
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3. Principal of Training Institute 1 250-25-550/25-750

4. Tanning and Leather Expert, Industrial Trg. 1 250-25-550/25-750

Rule 5 provides for the "Method of Recruitment" and the relevant portion thereof is in the following terms:

5. Method of Recruitment:

1. Members of the Service shall be recruited:

(a) by promotion from the State Service, Class III; or

(b) by direct appointment; or

(c) by transfer of a person already in the service of the State.

2. When any vacancy occurs or is about to occur in the Service, Government shall determine in what manner such vacancy shall be filled provided that 33-1/3 per cent of the vacancies shall be filled by direct recruitment and the remainder by promotion or transfer.

Rule 9 provides for the "conditions of service and runs as under:

9. Conditions of Service:

Training and Departmental examination of directly! appointed recruits:

(a) A candidate selected for direct appointment to the Service shall undergo a course of training for two years before being appointed to the service and shall pass such departmental examination as may be prescribed by Government but when a member of the State Service Class III has been selected for a post to be filled by direct recruitment" the period of training may, if Government thinks fit, be reduced by a period not exceeding the number of years he has worked as Inspector.

(b) Notwithstanding anything Contained in clause (a) above every member of the Service shall unless exempted by Government shall pass by the higher standard departmental examination in accounts from time to time prescribed by Government for members of the Service, within two years from the date of his appointment to the Service:

Provided that if a member of the Service is unable to pass the examination within the probationary period of two years owing to illness or the exigencies of service, Government may extend the period within which the member shall so pass the examination:

Provided further that should, a member fail to pass the examination within the period of probation of such extended period, he may be discharged from the service if recruited direct or reverted to his former post if recruited otherwise.

Note.--Permanent Inspector of Co-operative Societies will be eligible to appear in

the examination and if they qualify will not be required to qualify again on their appointment to the Service.

Rule 10 dealing with "probations" is in the following words:

10. Probations:

(1) All members of the Service shall on appointment remain on probation in the first instance for a period of two years, provided that Government may allow service rendered on a post on an identical scale or in a higher post in another Department to count for probation in post in the Service.

(2) Provided further that in the case of members promoted from the State Service, Class III, continuous officiating of four months or over shall be reckoned as a period spent on probation.

(3) If the work or conduct of any candidate or member during the period of training or promotion is in the opinion of Government not satisfactory, they may dispense with his service, if he has been recruited by direct appointment or may revert him to his former post if he has been recruited by promotion or by transfer.

On the conclusion of the period of probation of any member of the Service Government may if vacancy exists, confirm him in his appointment, or if his work or conduct has, in its opinion not been satisfactory, may extend his period of probation by such period as it may think fit and thereafter pass such orders as it could have passed on the expiry of the first period of probation provided that the total period of probation, including extension, shall not exceed three years in any case.

Rule 11 deals with "seniority" and is in the following words:

11. Seniority:

The seniority of members of the Service shall be determined by the date of confirmation to the Service that if two or more members are confirmed on the same date:

(a) a member recruited by transfer from any other service shall be senior to a member recruited by direct appointment:

(b) a member recruited by direct appointment shall be senior to a member appointed by promotion from the State Service Class III.

(c) in the case of members who are recruited by direct appointment or transfer from any other service, an elder member shall be senior to a younger member.

(d) in the case of members who are appointed by promotion from the State Service Class III, seniority shall be determined according to the seniority in that service.

Rule 17 authorises the Government to relax the rules and is in the following

words:

17. Power to relax rules:

Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

The controversy between the promotees and direct recruits regarding fixation of their seniority being ancient and it having received attention of the Courts every now and then, the matter, therefore, is not *res integra* and the judicial precedents would have decisive role in the matter.

6. The first question that falls for consideration is as to whether the quota rule envisaged in Rule 5 of the Rules is to be followed at the time of recruitment and thereafter the recruited employees course along in the service as one unified and integrated stream or the quota rule is to be followed at the time of confirmation and it is the confirmed employees of a given cadre that proceed further up in the service as an integrated lot.

7. Wherever the rules provide for more than one source of appointment to the service and a quota is fixed for a given source and in regard to integrated seniority of the two sources, the rules prescribe the date of confirmation in the service as the determining factor, the Courts have considered the quota rule as inseparably linked up with confirmation, that is, the quota rule has to be followed while confirming employees drawn into service from different sources. Their Lordships of the Supreme Court in *Paramjit Singh Sandhu and Ors. v. Ram Rakha and Ors.* 1979 (2) S.L.R. 88, have gone to the extent of observing that:

Where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation, to accord utmost fair treatment a rotational system has to be followed while giving confirmation. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruitment from that source has to be confirmed in the post available to the source.

For the aforesaid view, their Lordships in that case sought support from *Mervyn Cutindo and Ors. v. Collector of Customs Bombay and Ors.* 1963 (2) S.C.R. 609 , and the following observations of their Lordships in *A.K. Subraman and Others Vs. Union of India (UOI) and Others*, to the effect that:

Unlike the rule in the present case seniority was not dependant on confirmation but seniority was dependent upon continuous officiating in the cadre. In this

background this Court held that the quota has to be enforced at the time of initial recruitment in officiating capacity and not at the time of confirmation. The situation in the case under discussion is materially different. Therefore, it cannot be said that ignoring the rule a proposition of universal application has been laid down that whenever there is a quota prescribed for recruitment to a cadre it can only apply at the time of initial recruitment and not at the time of confirmation.... this Court while saying in Subraman's case that quota rule has to be adhered to, and enforced at the time of initial recruitment reaffirmed the observation in Mervyn Cutindo's case that there is no inherent invalidity in introduction of quota system and to work it out by rule of rotation. When it is said that the confirmation shall follow the quota rule it is in terms being stated that the rotational system should be followed at the time of confirmation so as to make quota rule effective and seniority rule reasonable because all the three are interlinked.

and their observation in S.B. Patwardhan and Another Vs. State of Maharashtra and Others, , that the scheme of rules was more or less similar to the one that was examined by this Court in Subraman's case (supra).

8. So far as this Court is concerned, the matter should be treated as concluded in regard to the interpretation of Rule 11 providing for the fixation of seniority by the ratio of the aforesaid judgment. However, Mr. J.L. Gupta, Senior Advocate, who primarily addressed the Court on behalf of the promotees, appeared to think that use of the expression "vacancy" in Rule 5 should have a distinct bearing on the construction of the relevant provision of Rule 5. The Learned Counsel canvassed that the quota envisaged for the two categories of appointees in Rule 5 is to be observed only in the filling of the vacancies and it does not have any relation to the post in the service. In other words, the appointing authority has to fill in the vacancies as and when the same arise keeping in view the quota rule.

9. There would have been no difficulty in accepting the aforesaid proposition if the relevant portion of Rule 5 had not reserved to the appointing authority the discretion to decide the manner in which a given vacancy is to be filled up. If the said discretion had not been there, then filling up of the vacancies by strictly observing the quota rule would not have left any scope for heart burning on either side in the matter of determination of the seniority on the basis of the date of confirmation.

10. When before a Full Bench of this Court an identical argument in Surinder Kumar and Anr. v. State of Haryana and Ors. 1979 (2) S.L.R. 301, was canvassed that by using the expression "vacancies" in the proviso the intention of the Government was not to maintain the quota in the cadre and that, had that been the intention, then the term "cadre post" would have been used in the proviso. R.N. Mittal, J., who delivered the opinion for the Bench, observed that the intention of the framers of the Rules was clear from the language of the rule that they wanted to provide quota in the cadre and not merely a quota in regard to the filling up of the vacancies.

11. For the aforesaid reason, we have no hesitation in holding that the relevant portion of Rule 5 envisages the fixation of quota between the promotees and the direct recruits in the "Service". The "Service", as admitted on both sides, comprises of both permanent posts and temporary posts. That means that the said quota is to be reflected in the manning of the permanent posts, as also of the temporary posts. That further means, promotees are entitled to be confirmed only against a post available in the promotees' quota and likewise would be the case with the direct recruits.

12. While interpreting Rule 8 of the Punjab Superior Judicial Service Rules, 1963, which provided for recruitment to the service from two sources, that is, promotees and direct recruits, in accordance with the ratio prescribed therein and Rule 12 of the said Rules, which prescribes for the fixation of seniority between the members of the service on the basis of the date of confirmation in the service, their Lordships in *B.S. Yadav and Ors. v. State of Haryana and Ors.* 1980 (3) S.L.R. 591 held .

A post which falls vacant in the quota of promotees cannot be filled by the confirmation of a direct recruit therein nor indeed can a promotee be confirmed in a post which is in the quota of direct recruits.

In that case, the High Court had followed rotational system in the matter of confirmation of the promotees and direct recruits. Their Lordships did not agree with that approach and held that only quota rule was to be followed while confirming the appointees from two sources and not the rotational system. In this regard, following observations of their Lordships are instructive:

We would like to say at the cost of repetition that we are not dealing with the abstract question as to whether the rule of quota necessarily excludes the rule of rotation. We are only concerned to point out that it is not correct to say that the rule of rota must necessarily be read into the rules of quota. We have to decide in these cases the narrow question as to whether on a true interpretation of Rules 8 and 12 of the Superior Judicial Service Rules of Punjab and Haryana, the quota rule prescribed by Rule 8 justifies, without more its extension at the time of confirmation so that after every two promotees are confirmed one direct recruit has to be confirmed and until that is done, promotees cannot be confirmed, even if vacancies are available within their quota in which they can be confirmed. We are of the opinion, on a proper interpretation of the Rules, that promotees are entitled to be confirmed in the vacancies which are available within their quota of 2/3rd, whether or not 1/3rd of the vacancies are occupied by confirmed direct recruits. And similarly, direct recruits are entitled to be confirmed in vacancies which are available within their quota of 1/3rd, whether or not 2/3rd of the vacancies are occupied by confirmed promotees. What we find lacking in justification is the refusal of the High Court to confirm the promotees even if vacancies are available in their quota in which, they can be confirmed merely because, by doing so, more than two promotees may have to be confirmed at one time, without the confirmation of a proportionate number of

direct recruits. The fairness which Articles 14 and 16 postulates is that if a promotee is otherwise fit for confirmation and a vacancy falling within the quota of promotees is available in which he can be confirmed, his confirmation ought not to be postponed until a direct recruit whether yet appointed or not completes his period of probation and thereupon becomes eligible for confirmation. The adoption of this principle in the matter of confirmation will not, in practice, give any undue advantage to the promotees.

In view of the above, we hold that a combined reading of the relevant portion of Rule 5 and Rule 11 would show that there is no manner of doubt that while confirming the Assistant Registrars, the competent authority shall have to observe the quota rule prescribed in Rule 5, that is, no promotee is to be confirmed against a vacancy falling in the quota of direct recruits nor a direct recruit is to be confirmed against a post falling vacant in the quota of promotees.

13. Mr. Gupta, Learned Counsel for the promotees, then urged that the quota rule had, in fact, broken down, as there had been large scale deviations therefrom while effecting appointments. It was canvassed that between 1956 and 1972 there had been no direct appointments and the effort to induct direct recruits was for the first time initiated in the year 1972 who became available for confirmation only in 1976. The Learned Counsel contended that when such being the position it is the length of continuous service on the post which alone be the determining factor for confirmation and the confirming authority is not to see as to whether the vacancy against which a member of the service is being confirmed falls in his quota or not. In support of the above submission, the Learned Counsel relied upon three Supreme Court decisions, namely, *A. Janardhana Vs. Union of India (UOI) and Others*, , *G.S. Lamba and Others Vs. Union of India (UOI) and Others*, , and *Narender Chadha and Ors. v. Union of India etc.* 1986 (1) S.L.R. 437.

14. The ratio of the above decisions relied upon by Mr. Gupta would not be attracted to the facts and circumstances of the present case. Those decisions had been given in the peculiar and extraordinary facts and circumstances of those cases, as summarised in the following words by a Division Bench of this Court in *Shri Fauji Singh v. Shri Rajender Singh and Ors.* L.P.A. 958 of 1985 decided on Aug. 6. 1986,

In those cases, there had been violent deviations from the quota or rota (rotation) rules. In *Narender Chadha's* case (*supra*), some of the departmental promotees had put in nearly 15 years of service and they were facing imminent threat of reversion from the higher posts to the feeder posts from which they had been promoted several years back. They were being kept on ad hoc basis. No less than 75 per cent vacancies in their grade were required by the statutory service Rules to be filled by direct recruitment through an open competitive examination to be held by the U.P.S.C. The Service was constituted in 1964. No direct recruitment was resorted till 1968. In the meanwhile, large number of persons were appointed by promoting them from the inferior posts and they had

been continuously holding these posts. It was held that the "Government was in need of the services of the promotees and they had been holding the posts for nearly 15 to 20 years. It was not fair to say at this distance of time that the Government was only keeping them in their posts as a matter of grace." It was further held that "it would be unjust to hold that at this distance of time, on facts and circumstances of the case, the Petitioners are not holding posts in Grade, IV." In G.C. Lamba's case (supra), it was held that limited competitive examination (which was one of the methods for making appointment to the Service) had not been held for years and promotions from the select list had been made in excess of the quota. There was enormous departure from the rules of recruitment in making appointments over several years. It was held that the excess allotment, in the circumstances of the case, should be presumed to have been made in relaxation of the rules since there was power to relax the rules. Therefore, it can be safely stated that the enormous departure from quota rule year after year permits an inference that the departure was in exercise of the power to relax the quota rule conferred on the Controlling Authority. Once there is power to relax the mandatory quota rule, the appointments made in excess of the quota rule would not be illegal or invalid. The facts and circumstances in A. Janardhana's case were also similar to the ones in G. Section Lamba's case (supra).

The facts of this case, in our view, do not justify a conclusion that quota rule has been broken down for all intents and purposes and adherence to quota rule in the matter of confirmation would be highly-unjust and unfair to the promotees.

15. The erstwhile State of Punjab came to be reorganised in the year 1966 and the Punjab State, as it now exists, came into being on 1st November, 1966. The process of selection of direct recruits was initiated by the Development Commissioner and Secretary to Government, Punjab, Cooperative Department, when he wrote to the Chief Secretary on 10th August, 1970, as mentioned in para 9 of the petition itself, to take steps to recruit the probationary Assistant Registrars of the Cooperative Societies direct through the Punjab Public Service Commission and in 1971, six posts of Assistant Registrars of Cooperative Societies were advertised by the Punjab Public Service Commission to be filled by direct recruits. To such of the appointees as were promoted to fill in the post meant for the direct recruits, it was expressly made clear that their appointment was on ad hoc basis till the arrival of the direct recruits.

16. In view of the fact that while effecting appointment of the promotees, the competent authority made it clear that their appointments were ad hoc and only till the arrival of the direct recruits, the Government clearly expressed its intention in the matter against any relaxation of the quota rule and, therefore, neither the relaxation of the quota rule could be presumed nor it could be held that the quota rule should be deemed to be relaxed.

17. Mr. Gupta lastly contended that the controversy between the promotees and the direct recruits in the matter of confirmation had been settled by this Court

through earlier judgments and the said judgments should be considered as binding. The Learned Counsel referred to the Single Bench and Division Bench judgments of this Court which are annexed to the petition as annexures P. 1 and P. 2.

18. Here it may be observed that the said judgments cannot operate as res-judicata against the direct recruits herein, as they were not parties to those cases.

19. Before the learned Single Judge, no doubt, it was canvassed on behalf of the direct recruits (Petitioners in that case) that the provisions of Rule 5(2) were to be borne in mind at the time of confirmation also. The learned Judge did observe while repelling the contention of the State that this rule could not compel the Government to necessarily confirm the officiating personnel while maintaining the ratio one third to two third. But there is not. much discussion in the judgment Shri Anup Singh and Ors. v. State of Punjab and Ors. G.W.P. No. 1623 of 1966, decided, on 29th November, 1967.

20. Before the Division in Shri Anup Singh Kode and Ors. v. State of Punjab and Ors. L.P.A. 42 of 1068; decided on 29th May, 1969, on appeal, when this, point was canvassed, it was pointed, out that the Petitioners had not. taken up in their writ petition the specific plea that the vacant posts; within their, quota were, available and, therefore, they were entitled to be confirmed against those posts. In this regard, the following observations of the Division. Bench deserve noticing:

The Appellants in their petition have not made this grievance that out of total vacancies which existed, the quota of the direct recruits fell short of 33-1/3 per cent. The precise allegation of the Appellants in the petition is, "that the permanent posts of Assistant Registrars against which the Petitioners were recruited, were rightly kept, vacant all these years and nobody was confirmed against these posts and on 18th/20th May, 1965, and also on 18th/20th May, 1966, these posts were vacant and the Petitioners under the rules should be deemed to be confirmed: against these permanent posts with effect from 18th/20th May, 1965 or 18th/20th May, 1966 It may be mentioned that these four posts could not be filled either by promotion or by transfer in view of the provisions of Rule 5(2) of the Rules." From this allegation it cannot be spelt out that these was any plea in the petition to the effect that the quota of the direct recruits fell short of 33-1/3 per cent and. for that reason the Appellants had to be confirmed on four, pests out, of the 13 on which Respondents 2 to 14 were confirmed If there had been a specific plea in this respect the Respondents would have had an opportunity, to meet the same pointedly Moreover, there is no material on the record which would justify a finding in favour of the Appellants regarding this contention.

As a result of the above discussion, the conclusion that we have reached can be stated thus:

(1) that Rule 5(2) of the Rules envisages a quota for promotee and direct

recruits in the "Service" and the same is to be adhered to, subject to the proviso, while effecting recruitment to the Service;

(2) that the combined reading of Rule 5(2) and Rule 11 of the Rules, leaves no manner of doubt that the quota envisaged in Rule 5(2) is to be adhered to while effecting confirmation, that is, a promotee is to be confirmed against the post available in his quota and likewise a direct recruit is to be confirmed against the post available in his quota:

If on a given date, a direct recruit becomes entitled to be confirmed after satisfactorily completion of the period of probation and a post is available in his quota, then he is to be confirmed on that post, even though there was another promotee officer officiating against the said post, and

(3) that there have not been such deviations from observance of the quota rule as would justify a conclusion that the quota rule had broken down and, therefore, while effecting confirmation quota rule is not to be adhered to.

Now coming to the writ petitions, filed by Haryana employees namely, Civil Writs Nos. 3438 and 3899 of 1983, it may be observed that the Petitioners herein have sought a direction to the Haryana State to finalise the seniority. These writ petitions, therefore, could have been decided by simply a direction to the State Government to finalise the seniority list within a stipulated period. However, on both sides it had been argued that the Court should also lay down the guidance to the State Government in regard to the fixation of the seniority of the promotes and direct recruits.

20. Since these petitions have been tagged on to the petitions filed by the employees of the Punjab Government and the interpretation of the relevant rule has been discussed threadbare, so it would be appropriate to observe in regard to these petitions also that while finalising the seniority list, the Haryana State shall follow the construction that we have placed on the combined reading of Rule 5(2) and Rule 11 of the Rules, that is, that while confirming the members of the Service, the quota rule between the promote and the direct recruits shall be adhered to in the manner suggested in this judgment.

21. In the result, out of petitions filed by the employees of the Punjab State, Civil Writ Petitions Nos. 71 of 1984 and 1219 of 1984 are dismissed while the third one, that is, Civil Writ Petition No. 2786 of 1982 is allowed and Civil Writs Nos. 3438 and 3899 of 1983 filed by the employees of the Haryana State are allowed with the direction that the seniority of the members of the Service shall be finalised within six months. There will, however, be no order as to costs in these writ petitions.