

(2003) 01 P&H CK 0219

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 4491 and 11011 of 2001

S. Gurmeet Pal Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Citation : (2003) 133 PLR 685

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Puneet Jindal and P.S. Patwalia, for the Appellant; Ashok Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This order will dispose of CWP Nos. 4491 and 11011 of 2001. In both the writ petitions, the grievance made is that inspite of being senior to the respondents as Lecturers, the petitioners have been superseded and their juniors have been promoted and posted on the post of Principals. The petitioners in CWP No. 4491 of 2001 had earlier been given current duty charge on the post of Principal which was subsequently withdrawn. All the petitioners have been regularly and permanently appointed on the post of Lecturers. The service conditions of the petitioners and the private respondents are governed by the Punjab Educational Service (College Cadre) (Class I) Rules (hereinafter referred to as "the 1976 rules). The claim of the petitioners for promotion is based on Rule 10 of the 1976 rules. Relevant extract of the 1976 rules is reproduced as under:-

RECRUITMENT

3. Number and Charter of Posts: The service shall comprise the posts shown in Appendix "A" to these rules.

Appendix "A"

(Rules 3 and 4)

Particulars of the post.

Pay Scale

Number of Posts

Temporary

Permanent

Total

1. Director of Public Ins-instructions (Colleges)

Rs. 1800- 100-2000/125/2250

-

1

1

2. Dy. Director Colleges and Planning (Colleges)

Rs. 1200-50- 1300-60-1540=EB-60-t900

-

1

1

3. Principals of Govt. Arts, Trg. Colleges and Director Government Colleges of Science Educatio Research Jagraon

Rs. 1200-50- 1300-60-1540-EB-60-1900 n

13

21

34

Total

13

21

36

4 to 8 xxxx xxxx xxxx xxxx

9. Qualifications:

(i) No person shall be appointed to a post in the Service by direct recruitment

unless he possesses the educational qualifications, professional training and other qualifications as specified in Appendix "B".

(ii) A person appointed to a post in the Service by direct recruitment shall possess knowledge of Punjabi of Matriculation or its equivalent standard failing which he shall have to acquire the requisite knowledge within a period of six months of his appointment after which he shall be required to pass a test of the aforesaid standard as may be specified by the state Govt. otherwise his services shall be liable to termination.

10. Method of recruitment.

1. Appointment to the posts in the Service shall be made in the manner indicated below:-

(i) In the case the Director of Public Instructions (Colleges) by selection from amongst the members of the service;

(ii) In the case of other posts in the Service-

a) 50 per cent of the posts by Promotion from amongst the members of Punjab Educational (College Cadre) Service (Class II) or by transfer for deputation from other State Governments, Government of India or the Universities having such experience as is specified in Appendix "B".

(2) All the appointments to the posts by promotion shall be made on the basis of seniority-cum-merit and no person shall have any right for promotion merely on the basis of seniority.

(3) Whenever a vacancy occurs or is about to occur, the Government shall determine the manner in which it shall be filled.

Appendix "B" (Rule 9(i))

Qualifications and experience for appointment to the service (i) by direct recruitment, (ii) by promotion.

(i) By Direct recruitment

(a) M.A. First Division or High Second Division (50%) in relevant subject or an equivalent degree of a foreign University with 8 years" teaching experience.

(b) Ph. D. with 8 years" teaching experience,

(ii) By Promotion

Experience of working as a Lecturer for a minimum period of eight years."

2. Rule 10(2) lays down that all appointments to the posts by promotion shall be made on the basis of seniority-cum-merit, and no person shall have any right for promotion merely on the basis of seniority. However, the respondents have issued instructions on 29.12.2000 for setting up a Departmental Promotion

Committee and for considering the cases of promotion to Class I and Class II (now Group A and Group B). In these instructions it is inter alia provided as under:-

"i) all cases pertaining to promotion as Head of the Department would be decided on the basis of merit-cum-seniority. The benchmark for promotion to such posts will be "Very Good" and the Officer graded as "Outstanding" would rank senior to those grades as "Very Good".

3. Relying on the aforesaid criteria, the petitioners had been adjudged lesser in merit to the private respondents who have been promoted superseding the claims of the petitioners by orders dated 20.3.2001 and 28.6.2001. The order dated 20.3.2001 is challenged in CWP No. 4491 of 2001 and order dated 28.6.2001 is the subject matter of the challenge in CWP No. 11011 of 2001, The petitioners in both the writ petitions have more than 30 years experience as Lecturers in various government colleges of the State of Punjab.

4. It is submitted by the learned counsel for the petitioners that the petitioners have to be promoted on the basis of seniority-cum-merit. Under this criteria, seniors would have to be promoted unless they are declared unfit for promotion. Even if the merit of the petitioners is lesser to the private respondents, they cannot be deprived of the promotion on the post of Principal.

5. Reply has been filed by the respondents. It has been stated that the petitioners have no right to claim promotion as a matter of right merely on the basis of seniority. The promotions have to be made on the basis of the policy contained in the executive order dated 29.12.2000. The aforesaid order is described in the written statement as amended promotion policy. Under the amended promotion policy, a benchmark has been provided. To be eligible for promotion, the ACRs of the employee for the last five years before the case for promotion is considered, should be "Very Good". The employee had to obtain 15 marks out of 20 marks on the basis of grading in the ACRs. Since the petitioners did not make the benchmark, they were rendered ineligible for promotion. In CWP No. 4491 of 2001, on merits it has been stated that there are complaints against petitioners No. 1 and 3 while they were holding current duty charge of Principal at Government College, Jandiala and Government College, Faridkot respectively. The complaints are said to be under investigation. In CWP No. 11011 of 2001 only a short reply has been filed by the official respondents. In paragraph 4 of the reply, the record of the petitioners for the previous five years has been tabulated. In paragraph 5, it is stated that petitioners No. 1 to 10 could not obtain minimum 15 marks out of 20 marks on the basis of last five years ACRs and they are found ineligible for the post of Principal by the Departmental Promotion Committee. The respondents have further stated that the post of Principal of Government College lies in the list of Scheduled Posts and stands at Sr. No. 11(7) in the Government Notification No. GSR/19/309/Const/Art, dated 20.1.1962. According to the respondents, all posts with existing pay scales of 12000-16350 and above are designated as Grade A posts under the 1962 Rules.

It is submitted by Mr. Ashok Aggarwal, Additional A.G., Punjab that posts of Principal have to be filled on promotion by selection from the post of Lecturers. The criteria for selection has been given in the policy dated 29.12.2000. This policy having been issued in terms of the 1962 Rules has to be followed in preference to the criteria which has been given in 1976 rules.

6. We have considered the submissions made by the learned counsel for the parties and perused the paper Book.

7. In the 1976 rules, the criteria prescribed for promotion is seniority-cum-merit. On a number of occasions, the term "seniority-cum-merit" has been interpreted by various High Courts. It is, however, not necessary for us to dilate any further on the term "seniority-cum-merit" as the same was recently considered by a Division Bench of this Court in the case of Dr. Brij Bhushan Sharma v. Punjab School Education Board 2000 (3) S.C.T. 173 P&H. The observations of the Division Bench in paragraphs 20, 21 and 22 seem to be a complete answer to the submissions of the respondents. The aforesaid paragraphs of the judgment are as follow:-

"20. Now, we will like to concentrate as to whether the impugned order Annexure P-6 can be approved on the test of judicial scrutiny or not.

In this regard, we will like to go to the Rule which governs the process of promotion. It is the common case of the parties that Regulation 13(ii) of the Punjab State Education Board (Employees Service) Regulations, 1988 is the relevant rule which lays down that appointment to any post by promotion shall be made strictly on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone. Seniority-cum-merit and merit-cum-seniority are two different phrases which are used by the Administration while considering the case of promotion of a public servant. By the term "seniority-cum-merit, we understand that seniority is to be reckoned at the first place and till a candidate under the zone of consideration is otherwise disqualified or ineligible for any valid reasons the seniority will be first priority in order to give promotion to such public servant. Admittedly, the petitioner was senior to respondent No. 2. There is nothing on the record to suggest that petitioner was suffering from any departmental infirmity in the shape of any adverse record of entry. There is not stigma. His departmental career is not under any cloud. Simply that respondent No. 2 had a better experience in the Teaching Cell will not justify the Board to supersede the right of consideration of the petitioner to the post of Deputy Director. The rule is not to the contrary that merit-cum-seniority will be the guiding factor.

21. Our attention has been invited to a judgment of the Division Bench of this Court reported as Ram Kumar Rao v. State of Haryana 1995 (4) S.C.T. 762 P&H, which lays down as follows:-

Rule 9 Sub-rule (3) specifically provides that promotion shall be made strictly on the basis of seniority-cum-merit and no person shall be entitled to claim

promotion on the basis of seniority alone. The Rule clearly envisages that under the normal circumstances a senior person shall be promoted unless adverse circumstances or service record exist against him. If his claim for promotion is ignored, specific reasons are required to be assigned. In the absence of adverse service record, the claim of the senior cannot be ignored on the basis of comparative merit with his junior. The question of comparison would arise only if a senior is found ineligible for promotion. To hold a person ineligible for promotion, the promoting authority is to look into his record and cannot deny promotion in the absence of adverse service record."

In this view of the matter, the petitioner was supposed to be promoted even if respondent No. 2 is slightly more meritorious than that of him. There is no adverse circumstance against the petitioner nor it has been pointed out by the learned counsel appearing on behalf of respondent No. 1 that the service record of the petitioner suffers from any defect. If this is the situation, then the claim of the petitioner could not be ignored on the basis of the comparative merit with his juniors.

22. Reliance can also be placed on State of Kerala and Another Vs. N.M. Thomas and Others, , wherein it was held as follows:-

"Principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration the senior though the less meritorious shall have priority."

Thus, we also repel the second contention raised by the learned counsel for respondent No. 2 through which an endeavour was made before us to justify the promotion of respondent No. 2."

8. The comparative meaning of the terms "seniority-cum-merit" and "merit-cum-seniority" have also been considered by the Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . The Supreme Court observed as follows:-

"9. The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (appointment by Promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in Union of India v. Mohan Lal Kapoor has said: (S.C.C. p. 856, para 37)

"For inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is

only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se on the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

Similarly, Beg, J. (as the learned Chief Justice then was) has said: (S.C.C. p. 851, para 22)

"22. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant Rules, is that the "entrance" or "inclusion" test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor."

10. On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit" lays greater emphasis on seniority. In *State of Mysore v. Syed Mahmood* while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the Rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among person eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

9. The aforesaid enunciation of law leaves no manner of doubt that when the criteria seniority-cum-merit, then given the minimum necessary merit requisite for efficiency administration, the senior though less meritorious shall have priority.

10. The respondents have, however, submitted that criteria of merit-cum-seniority as to be applied since the notification dated 29.12.2000 had been issued under the 1962 Rules and the post of Principal is a Scheduled Post. We are unable to accept the submission of the learned counsel for the respondents. A perusal of Section 2-A of the 1962 Rules shows that scheduled post means a post specified in the schedule appended to the Rules, Entry No. 11 of the Schedule relates to the Educational department. The posts mentioned therein are as under:-

Name of the Department

List of Posts

XXX

XXX

11. Education

1. Director of Public Instruction, Punjab
2. Administrative Officer.
3. State Social Education Organiser
4. Harijan Welfare Officer
5. Co-ordinator, Secondary Education.
6. Officer Incharge, National Discipline Scheme.
7. Youth Welfare Officer (Girls).
8. District/Additional District/Inspectors/ Inspectresses of Schools.
9. Inspectors/Inspectresses/ Additional Inspectors/ Inspectresses of Schools.
10. Circle Social Education Officers.
11. Special Officer, Primary Education.
12. Deputy Directors.
13. Assistant Directors.
14. Deputy Inspector of Schools for Agriculture, Punjab.
15. Assistant Inspectresses of Schools for Domestic Science."

11. A perusal of the aforesaid Rules clearly shows that the post of Principal does not find mention in the Schedule. That being so, 1962 Rules would not be applicable. Notification dated 29.12.2000, having been issued under the 1962 Rules would, therefore, also not cover the posts of Principal. Therefore, the promotion case of the petitioners had to be governed by the criteria given in the 1976 Rules.

12. In view of the above, both these writ petitions are allowed. The case of the petitioners for promotion will be considered by the respondents within a period of 2 months of the receipt of the certified copy of this order on the basis of the statutory rules namely, Punjab Educational Service (College Cadre) (Class-I) Rules, 1976 on the basis of the criteria laid down in Rule 10(2) i.e. on the basis of seniority-cum-merit and by ignoring the criteria laid down by the respondents in the instructions dated 29.12.2000, Annexure P-1. In case the petitioners are found eligible and are, in fact, promoted, with effect from the dates persons junior to them were promoted they shall be entitled to all consequential benefits. The consequential benefits shall be paid to the petitioners within a period of 2 months of the decision taken by the respondents.

Sd/- Hemant Gupta, J.