

(1990) 04 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No's. 8 and 9 of 1990

Shanker Pal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-04-1990

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : (1991) 39 BLJR 858 : (1992) 1 PLJR 537

Hon'ble Judges : G.G. Sohani, C.J.;B.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.G. Sohani, C.J.—These appeals are directed against the judgment dated 14th December, 1989, passed by a learned single Judge of this Court in C.W.J.C. No. 8406 of 1988.

2. The material facts giving rise to these appeals are as follows:

(i) In the State of Bihar, rules governing the State Police Force are made under the provisions of the Police Act, 1861, and are compiled in a Manual known as "the Bihar Police Manual, 1978" (hereinafter referred to as, "the 1973 Manual"). Earlier the Bihar and Orissa Police Manual, 1930, (hereinafter referred to as "the 1930 Manual") was in force which was revised and replaced by 1978 Manual.

(ii) The rules framed in the 1978 Manual provide for appointment and promotion to various ranks of police officers specified therein. The ranks of police officers mentioned in rule 639 and which are material for the purpose of these appeals are in, ascending order, as follows:

1. Constables.

2. Naiks.

3. Havildars.

4. Assistant Sup-Inspectors.
5. Reserve Sub-Inspectors and Sub-Inspectors.
6. Reserve Inspectors and other Inspectors.
7. Deputy Superintendent.

The note appended to Rule 639 states that Reserve Inspectors and Reserve Sub-Inspectors were previously called as Sergeant Majors and Sergeants respectively. The ranks of Sergeants and Sergeant Majors, which existed under Rule 639 of the 1930 Manual, no longer find place in the 1978 Manual and these ranks are, therefore, equated with the ranks of Reserve Sub-Inspectors and Reserve Inspectors created under the 1978 Manual. Similarly, the rank of Jamadar, to which appointments were made by promotion from the rank of Havildars, vide rule 660-B of 1930 Manual, is no longer one of the ranks specified by rule 639 of the 1978 Manual. But when the 1978 Manual came into force there were a number of police officers holding the rank of Jamadars who were appointed by promotion from the rank of Havildars.

(iii) The rules provide for direct recruitment or promotion to various ranks specified in Rule 639. Rule 656 provides for direct recruitment of Reserve Sub-Inspectors (previously called Sergeants) and Sub-Inspectors and the minimum educational qualification prescribed by Clause (iii) of Rule 658 for direct recruitment of a Reserve Sub-Inspector or a Sub-Inspector is that a candidate must have passed the degree examination of an Indian University or an equivalent examination recognized by the State Government, Rule 649 provides for the promotion of Sub-Inspectors to Inspectors and of Reserve Sub-Inspectors to Reserve Inspectors. Rule 646 provides for promotion of Inspectors, including Reserve Inspectors to the rank of Deputy Superintendent.

(iv) Constables are recruited directly under the rules and Rule 663 provides that candidates, who have passed secondary examination, that is to say, matriculation examination, shall be selected as constables as far as possible. Constables are entitled for promotion either to the rank of a Havildar/Naik or an Assistant Sub-Inspector, but for promotion of a constable to the rank of Assistant Sub-Inspector, Clause (c) Rule 660 provides that no constable shall be promoted to the rank of Assistant Sub-Inspector unless he has passed the examination for Assistant Sub-Inspector's course at the Police Training College. This qualification is, however, not necessary in case of promotion of a constable to the rank of Naik and Havildar. According to Rule 660-A promotion to the rank of Havildar is to be made from amongst Naiks/Constables who have done the senior leaders course under Rule 684(2). Rule 660-B provides that 50 per cent of the posts of Reserve Sub-Inspectors shall be filled up by promotion from the rank of Havildars, who have done at least four years service. Under the 1930 Manual there was another avenue of promotion from Havildars. Rule 660-B of the 1930 Manual provided that Jamadars shall be appointed by promotion from the rank of Havildar. But for those who were promoted to the rank of a Jamadar, there was no further avenue

of promotion. There was, therefore, a persistent demand by Jamadars for providing a further avenue of promotion for Jamadar. To satisfy this demand the State Government by a notification issued in August, 1979, created 118 posts of Subedars and further directed the promotion to the post of Subedars was confined to Jamadars. Aggrieved by this direction of the State Government eliminating Reserve Sub-Inspectors (Sergeants) from consideration to the promotional post of Subedar and apprehending that in course of time, Subedars claiming themselves to be of a rank equivalent of the Inspector, might seek promotion to the post of Deputy Superintendent from the rank of Inspector as provided by Rule 646, Sergeants made a representation to the State Government that they be also considered eligible for promotion to the newly created posts of Subedars. But this representation was rejected. Hence, Teerth Narain Mallick and other Sergeants (Reserve Sub-Inspectors) filed a petition before this Court, which was registered as C.W.J.C. No. 3678 of 1979, praying that they be also held eligible for promotion to the newly created posts of Subedars because promotion of Jamadars alone to the rank of Subedars, which was alleged to be equivalent to that of an Inspector or Reserve Inspector (Sergeant Major) would amount to their supersession. Their claim was resisted on behalf of the State inter alia, on the ground that Sergeants and Jamadars belonged to different categories and that 118 posts of Subedars were created with the specific purpose of giving promotion to the Jamadars for whom there was no further avenue for promotion. A Division Bench of this Court consisting of Hon'ble L.M. Sharma, J. (as he then was) and Hon'ble B.S. Sinha, J. held by their judgment dated 1st April, 1980, that it was open to the State Government to provide for promotion of Jamadars to some higher rank under its powers under Article 162 of the Constitution; that Jamadars were a class separate from Sub-Inspectors and Reserve Sub-Inspectors (Sergeants), that Jamadars because of lack of necessary education had no further avenue of promotion for which they had been all along agitating and that with a view to provide an incentive to the Jamadars, the posts of Subedars had been created and that for promotion to those posts Jamadars alone were entitled. It was, therefore, held that the decision of the State Government to create 118 posts of Subedars and confining promotion to these posts to Jamadars alone, did not infringe any right vested in the Sergeants (Reserve Sub-Inspectors). It was noted that the State Government had filed an affidavit stating that Jamadars, who would be promoted to the newly created posts of Subedars, would not become eligible, by virtue of becoming Subedars, to earn promotion to the rank of Deputy Superintendent of Police or to any other higher rank. It was, therefore, held that the posts of Subedars could not be equated with those of Reserve Inspectors, who were eligible for promotion to the post of Deputy Superintendent and that there was, therefore, no foundation for the apprehension of the petitioners that subedars would be considered equivalent to the rank of Reserve Inspectors (Sergeant Majors) and that Sergeants would be required to take orders from the Subedars. In this view of the matter, the petition filed by Sergeants (Reserve Sub-Inspectors) claiming promotion to the posts of Subedars was dismissed. Aggrieved by this judgment the Sergeants filed

a SLP before the Supreme Court, which was registered as SLP (Civil) No. 7440 of 1980. A petition (Writ Petition No. 2084 of 1980) was also filed before the Supreme Court by one Ram Kumar Singh, one of the Sergeants, who was not one of the petitioners before this Court in C.W.J.C. No. 3678 of 1979, claiming the same relief as was claimed by Sergeants in the petition (C.W.J.C. No. 3678 of 1979) filed before this Court. Writ Petition No. 2084 of 1980 as well as the SLP (Civil) No. 7440 of 1980 came up for hearing before the Supreme Court on 10th February, 1982, and they were disposed of by the Supreme Court by passing the following orders:

Mr. K.C. Bhagat, learned Counsel appearing on behalf of the respondent State, states that Subedars will not be given precedence over the Sergeants in the Police Lines or in the Parade Ground and there will be no question of promotion from the rank of Subedars to the posts of Deputy Superintendents of Police and higher posts. The writ petition and the SLP dismissed.

(v) Subsequently, Teerth Narain Mallick and others moved an application before the Supreme Court for initiating contempt proceedings against the State of Bihar for having violated the undertaking given before the Supreme Court. That application was registered as Civil Misc. Petition No. 9171 of 1986 and the aforesaid order dated 10th February, 1982, by which the SLP and the Writ Petition No. 2034 of 1980 were disposed of, was withdrawn by the Supreme Court by its order dated 23rd September, 1986, and SLP was allowed and the appeal was registered as Civil Appeal No. 371 of 1987. That appeal and the writ Petition No. 2084 of 1980 were again heard and disposed of by a common judgment dated 10th February, 1987. The question for consideration before the Supreme Court was whether the High Court was right in rejecting the claim of Sergeants (Reserve Sub-Inspectors) for promotion to the post of Subedars by holding that the post of Subedar could not be equated with the post of Reserve Inspector and that to provide an incentive to the Jamadars, the posts of Subedars had been created and hence for promotion to those posts, Jamadars alone, and not the petitioners, who were Sergeants (Reserve Sub-Inspectors) were entitled. It was held by the Supreme Court that it was not necessary to interfere with the arrangement made by the State Government in the matter of creation of 118 posts of Subedars and confining the promotional opportunity thereto to Jamadars alone. The judgment of the High Court in this behalf was thus affirmed. The main apprehension of the petitioners was that Subedars would claim promotion to the rank of Deputy Superintendent from the rank of Reserve Inspectors contending that the rank of Subedars was equivalent to that of Reserve Inspector. The High Court had rejected that contention by holding that Subedars could not be equated with the rank of Reserve Inspector. The Supreme Court did not set aside this finding of the High Court that the posts of Subedars could not be equated with Reserve Inspector. The Supreme Court also noted that on behalf of the State Government it was stated before the High Court from Subedars, further promotion to the rank of Deputy Superintendent of Police would not be admissible. The Supreme Court, however, observed that in the

interest of service the promotional prospect to the post of Deputy Superintendent of Police might not be totally banned for Subedars. The Supreme Court, therefore, directed that the same educational qualification, as was prescribed for Reserve Sub-Inspectors, should be provided as requisite qualification for considering the claim of Subedars for promotion to the rank of Deputy Superintendent of Police. The State Government was also directed to increase the strength of Reserve Inspectors by 20 per cent of the existing strength so that the promotional prospects of the Reserve Sub-Inspector would become better and the State of Bihar was directed to comply with that direction within six months and to effect promotion to such newly created posts from out of the Reserve Sub-Inspectors.

(vi) After the aforesaid decision of the Supreme Court, the State Government by an order dated 3rd November, 1987, promoted Ganesh Ram, who was promoted from the rank of Jamadar to that of the Subedar, to the post of Deputy Superintendent of Police, even though Ganesh Ram did not possess, as directed by the Supreme Court, the requisite educational qualification prescribed for the Reserve Sub-Inspector, which was a degree of a recognized University. The State Government also did not create 20 per cent extra posts of Reserve Inspector, as directed by the Supreme Court, and also continued to fill up the vacancies in the post of Subedars, though it was observed by the Supreme Court that there would be no continuity of such posts when the incumbents retired. A petition was, therefore, filed by Teerth Narayan Mallick and others before the Supreme Court, which was registered as Civil Misc. Petition No. 11600 of 1988 for taking action against the State of Bihar and other Officers for contempt. The Supreme Court by its order dated 20th September, 1988, held that it was of prima facie view that a case for taking action for contempt was made out and a notice was, accordingly, issued to the Home Secretary, Government of Bihar, to show cause as to why should not be dealt with for having committed contempt of court. Initially; an attempt was made to justify the action of the State Government but ultimately it was accepted on behalf of the State Government before the Supreme Court that the acts of the State Government, as alleged by the petitioners, were contrary to the directions of the Supreme Court and time was taken to retrace the various steps taken by the State Government. The promotion accorded to Ganesh Ram was cancelled by order dated 8th October, 1988. The contempt matter was thereafter disposed of by the Supreme Court by its order dated the 23rd February, 1989, by observing as follows:

After the judgment was delivered, the State of Bihar promoted Subedar Ganesh Ram to the post of Deputy Superintendent of Police though he was not a graduate 20 per cent extra posts were not sanctioned and 26 extra promotions were given beyond the existing strength of 118 Subedars. In the initial affidavit filed by the Home Secretary, attempt was made to justify the different steps which, according to the petitioners, constituted contempt but Mr. Sibal appearing for the State later accepted the position that steps taken by the State of Bihar were contrary to the direction indicated in the judgment and took time to retrace

the various steps taken by the State Government. The promotion accorded to Shri Ganesh Ram has been recalled; 20 per cent extra posts have been created and the promotional appointments in excess of 118 sanctioned posts have been revoked. The Home Secretary has, on behalf of the State of Bihar, tendered an unconditional apology and Mr. Sibal appearing for the State has reiterated the same.

The Supreme Court, therefore, held that the State had, by its various actions, purged itself of contempt. The proceedings were, therefore, dropped but the State was directed to pay costs of the proceedings. At the time of hearing before the Supreme Court it was pointed out on behalf of Ganesh Ram that he had filed a writ petition before the Patna High Court assailing the order of the State Government canceling his promotion and that the said petition was pending before the High Court. It was, therefore, observed by the Supreme Court as follows:

...We have indicated above that the State of Bihar to meet the allegations of contempt has reverted him from the promotional post of Deputy Superintendent of Police to Subedar and on the submission of the petitioner we make it clear that what we have said above may not stand in the way of adjudication of the petitioner's writ petition before the High Court.

(vii) Thereafter the writ petition filed by Ganesh Ram assailing the order of cancellation of his promotion to the post of Deputy Superintendent of Police was heard by a learned single Judge of this Court. Sergeants and Sergeant Majors intervened in that petition. By his judgment dated 14th December, 1989, a learned single Judge of this Court allowed the petition filed by Ganesh Ram and quashed the order passed by the State Government cancelling the promotion of Ganesh Ram, the petitioner, to the post of Deputy Superintendent of Police from the rank of Subedar in order to purge itself of contempt in proceedings initiated before the Supreme Court. Aggrieved by this judgment, the State as well as the interveners have preferred appeals and as both these appeals raise common question of facts and law, they were heard together and are being disposed of by this common judgment.

3. It was contended on behalf of the appellants that the learned single Judge erred in holding that the order passed by the State Government canceling the promotion of the petitioner was not justified, It was urged that the learned single Judge failed to appreciate that under the rules, the petitioner, who was not holding the rank of an Inspector, was not entitled to be considered for promotion to the post of the Deputy Superintendent of Police, that a Subedar became eligible for promotion to the post of Deputy Superintendent of Police only by virtue of the direction given by the Supreme Court in its order dated 19th February, 1987, to consider the case for promotion to the post of Deputy Superintendent of Police of only such Subedars as were having the same educational qualification as we prescribed for Reserve Sub-Inspectors, that the educational qualification prescribed under the rules for recruitment as Reserve

Sub-Inspector was passing of a degree examination of an Indian University and that as the petitioner did not admittedly possess that educational qualification as laid down by the Supreme Court, he was not eligible for promotion and hence the order canceling that promotion could not be held to be illegal. It was also contended that the impugned order, which was passed by the State Government for purging itself of contempt could not be held to be illegal. In reply, it was contended that the Supreme Court had not decided the question about the legality of the impugned order because the Supreme Court had made it clear in the order dated 22nd February, 1989, that the observations made in that order would not stand in the way of adjudication of the petitioner's writ petition filed before this Court. It was also contended that in the case of promotion to the post of Reserve Sub-Inspector no educational qualification was prescribed, that the action of the State Government in promoting the petitioner to the post of Deputy Superintendent of Police was not the subject-matter of contempt petition before the Supreme Court and the State Government was not justified, as rightly held by the learned single Judge, in canceling the order of promotion of the petitioner to the post of the Deputy Superintendent of Police.

4. The short question for consideration in this case is whether the State Government was justified in passing the order dated 8th October, 1988, (Anuexure-1 to the writ petition, i.e., C.W.J.C. No. 8406 of 1988) canceling its earlier order dated 3rd November, 1987, whereby petitioner Ganesh Ram was temporarily promoted to the post of Deputy Superintendent of Police. It is not disputed that the petitioner who was holding the post of a Subedar, was not eligible under the Rules for promotion to the post of a Deputy Superintendent of Police, Promotion to that post is from the rank of Inspectors or Reserve Inspectors. Rule 645 of the 1978 Manual lays down that the Deputy Superintendent of Police will be appointed in accordance with the Rules contained in Appendix 71. Part I of Appendix 71 deals with the direct recruitment to the post of Deputy Superintendent of Police and Part II deals with promotion of Inspectors to the rank of Deputy Superintendent of Police. It was not contended before us on behalf of the petitioner that the petitioner, who was promoted from the post of a Jamadar to the rank of a Subedar, after the creation of 118 posts of Subdedars in August, 1979, was holding a rank equivalent to that of Inspector. The rank of Subedar is not equivalent to the rank of Inspectors, including Reserve Inspectors, as held by this Court in C.W.J.C. No. 3678 of 1979 decided on 1st April, 1980, where it was observed that "the post of Subedars cannot be equated with the Reserve Inspectors and there is no such provision in the Police Manual. "This finding was not set aside by the Supreme Court in Civil Appeal No. 371 of 1987 arising out of the aforesaid decisions of this Court. In fact the Supreme Court noted the stand of the State "that from Subedars, further promotion to the rank of the Deputy Superintendent of Police would not be admissible." The Supreme Court did not find that this stand taken by the State Government was erroneous or unjustified according to the Rules. Under the circumstances it cannot but be held that the petitioner was not eligible under the

Rules for promotion to the post of a Deputy Superintendent of Police. In fact this position was conceded on behalf of the petitioner but it was vehemently contended that the petitioner became eligible for promotion to the post of Deputy Superintendent of Police by virtue of the directions of the Supreme Court in its order dated 10th February, 1987. It is true that the petitioner came to be promoted to the post of Deputy Superintendent of Police by order dated 3rd November, 1987, not under the Rules, but in pursuance of the construction placed by the State Government on the direction of the Supreme Court contained in its judgment dated 10th February, 1987, passed in Civil Appeal No. 371 of 1987. It is, therefore, necessary to turn to the decision of the Supreme Court in that behalf.

5. Now in Civil Appeal No. 371 of 1987, which was decided by the Supreme Court on 10th February, 1987, the question for consideration was whether this Court was right in holding that Sergeants (Reserve Sub-Inspectors) were not entitled to be considered for promotion to the newly created posts of Subedars meant for promoting Jamadars alone. The decision of this Court rejecting the claim of Sergeants was not set aside by the Supreme Court and the finding of this Court that the post of a Subadar cannot be equated with post of a Reserve Inspector and that Sergeants, who are Reserve Sub-Inspectors, cannot claim promotion to the post of Subedars, was affirmed. In fact, the apprehension of the Sergeants (Reserve Sub-Inspectors) was that if the rank of Subedar was held equivalent to the rank of an Inspector, or Reserve Inspector, then Subedars would claim promotion to the post of Deputy Superintendent of Police from the rank of Inspectors. To allay this apprehension, the State Government had made it very clear before the High Court at the outset that Subedars would not be promoted to the rank of Deputy Superintendent of Police. This stand by the State Government was in conformity with the Rules, which provide for promotion to the post of Deputy Superintendent of Police from the rank of Inspector alone. The Supreme Court did not hold that the bar on the promotion of Subedar to the post of Deputy Superintendent of Police as stated on behalf of the State Government, was contrary to Rules or was unjustified. The Supreme Court did not hold that every Subedar was eligible for promotion to the post of a Deputy Superintendent of Police. It was, however, observed by the Supreme Court that "we think it reasonable that in the interest of service that the promotional prospect to the post of Deputy Superintendent of Police may not be totally banned for Subedars". (Emphasis supplied). This observation was made with a view to promote the interest of service. The Supreme Court, therefore, directed that "the same educational qualification which is prescribed for Reserve Sub-Inspectors should be provided as the requisite qualification for considering the claim of promotion to the rank of Deputy Superintendent out of the Subedars". This direction is binding on every one and it is common ground that it was in pursuance of his direction, which was binding on the State Government, that the petitioner Ganesh Ram, who was holding the post of Subedar, came to be promoted as a Deputy Superintendent of Police by order dated 3rd November,

1987, passed by the State Government. The question for consideration, therefore, is whether the petitioner Ganesh Ram become eligible for promotion to the post of Deputy Superintendent of Police in terms of the aforesaid direction of the Supreme Court.

6. It is an admitted fact that Ganesh Ram, is not a degree-holder which is the requisite qualification prescribed by Rule 658(c) for recruitment to the post of Reserve Sub-Inspector. A petition was, therefore, filed before the Supreme Court that by promoting Ganesh Ram contrary to the directions of the Supreme Court the State had committed contempt. It is true that in that petition there were other allegations also against the State Government alleging that the State Government had failed to comply with the directions of the Supreme Court contained in its judgment dated 10th February, 1987. But, one of the allegations was that by promoting Ganesh Ram, a Subedar, who was not a degree-holder, to the post of Deputy Superintendent of Police, the State Government had disobeyed the directions of the Supreme Court and was guilty of contempt. A notice was, accordingly, issued to the Home Secretary, Government of Bihar, to show cause why action for contempt be not taken against him. It was at that stage that the State Government though it had initially tried to justify its action, ultimately thought it fit to cancel the order of promotion accorded to the petitioner and tendered an unconditional apology before the Supreme Court. The Supreme Court held that the State had by this action in retracting the various steps taken by it contrary to the directions of the Supreme Court, purged itself of contempt and the proceedings for contempt were, therefore, dropped by the Supreme Court. It is in these circumstances that the impugned order dated 8th October, 1988, canceling the earlier order of promotion was passed. It is true that while dropping proceedings for contempt, when it was brought to the notice of the Supreme Court that petitioner Ganesh Ram had filed a writ petition before this Court assailing the order dated 8th October, 1988, canceling his promotion, the Supreme Court by its order dated 22nd February, 1989, made it clear that the observations of the Supreme Court should not stand in the way of adjudication of the petitioner's writ petition before this Court. Therefore, from the mere fact that no action for contempt was taken by the Supreme Court against the State Government in view of the fact that the Government had cancelled the order of promotion of the petitioner, it cannot be held that the cancellation was justified, because the Supreme Court left that question open while adjudicating the claim of the petitioner. It is, therefore, necessary to find out whether the cancellation of the petitioner's promotion to the post of Deputy Superintendent of Police is or is not justified.

7. It is, however, necessary to bear in mind before I proceed to examine the question of legality of the impugned order that the said order was not passed with a view to take any penal action against the petitioner. The impugned order was passed because the State sought to correct the mistake, it thought, it had made in promoting the petitioner. In the counter-affidavit filed by the State resisting the claim of the petitioner it was clearly stated as follows:

That the petitioner was promoted by mistake of fact to the post of Dy. S.P. because he is not a graduate, so mistake could be corrected when it came to light.

It is also not the case of the petitioner that any penal action has been taken against him by the State. The impugned order is the result of correction of a mistake said to have been done by the State in promoting the petitioner.

The question for consideration, therefore, is whether there was any mistake in promoting the petitioner as contended on behalf of the State. If there was such a mistake, then the impugned order cannot be held to be unjustified.

8. As already observed, the right of the petitioner to be considered for promotion to the post of the Deputy Superintendent of Police is based not on any statutory rule but only on the direction of the Supreme Court in its order dated 10th February, 1987. All that is, therefore, necessary is to ascertain whether the petitioner could be promoted in terms of the said direction of the Supreme Court. That direction was that "the same educational qualification, which is prescribed for Reserve Sub-Inspectors, should be provided as the requisite qualification for considering the claim for promotion to the rank of Deputy Superintendents out of Subedars. "This direction, therefore, raises the question as to what is the requisite qualification prescribed for Reserve Sub-Inspectors which the Supreme Court had in mind in making the aforesaid observations.

9. Now for recruitment to the post of Reserve Sub-Inspectors the educational qualification which a candidate is required to possess is as prescribed by Clause (iii) of Rule 658, which is as follows:-

658 Qualifications to be possessed by a candidate--

* * * * * (iii) He must have passed the Degree examination of an Indian University or an equivalent examination recognised by the State Government (Appendix-38). He must be able to speak Hindi fluently.

It is an admitted fact that the petitioner Ganesh Ram does not hold the aforesaid educational qualification. It is, however, contended on his behalf and which contention was upheld by the learned single Judge that the aforesaid educational qualification is not necessary in the case of a promotee Reserve Sub-Inspector and hence there was no mistake in promoting the petitioner to the post of Deputy Superintendent.

10. It is true that Rule 660-B provides for promotion of Havildars to the posts of Reserve Sub-Inspectors and that no educational qualification is prescribed for such promotion. But then if the Supreme Court had in mind the educational qualification requisite for promotion to the post of Reserve Sub-Inspector, the Supreme Court would not have referred to any educational qualification as a pre-requisite for promotion to the post of Deputy Superintendent of Police, because no such qualification is provided under the Rules. All that is necessary for promotion to the post of Reserve Sub-Inspector is that a person should hold the

post of a Havildar. Every Subedar, prior to his promotion as Subedar, must have held the post of Havildar from which post he was promoted first as a Jamadar and then as a Subedar. If the educational qualification of a Havildar alone was intended, then the Supreme Court would have completely lifted the ban on promotion of Subedars to the post of a Deputy Superintendent of Police, because every Subedar having reason from the rank of a Havildar, possesses the educational qualification necessary for a Havildar, which is that of a constable. The ban on the promotion of Subedars to the post of Deputy Superintendent was on account of the fact that there were two avenues for promotion available for a Havildar. Either he could be promoted first as Jamadar and then as Subedar or he could be promoted to the rank of Reserve Sub-Inspector and thereafter as Reserve Inspector. Having availed of one avenue of promotion, a Havildar was not held eligible for the other avenue of promotion as the rank of Subedar was held to be not equivalent to the rank of Inspector from which rank alone promotion to the post of Deputy Superintendent of Police was permissible. Therefore, it was stated on behalf of the State before this Court in the petition (C.W.J.C. No. 3678 of 1979) filed by Sergeants, that further promotion from the rank of Subedar to that of Deputy Superintendent of Police was not admissible. The Supreme Court did not hold that this ban was illegal and was totally unjustified. The Supreme Court merely held that there should not be total ban in the interest of service. It was, therefore, partially relaxed by the Supreme Court in the case of Subedars possessing the same educational qualification as was prescribed for Reserve Sub-Inspectors. The direction of the Supreme Court has to be construed reasonably and so construed it would only mean that the reference to the educational qualification in the direction of the Supreme Court was to that educational qualification which is provided for recruitment to the post of Reserve Sub-Inspectors as contained in Clause (iii) of Rule 658. Any other interpretation of the aforesaid direction of the Supreme Court would mean that each and every Subedar was held by the Supreme Court to be eligible for promotion to the post of a Deputy Superintendent of Police. The learned single Judge, with respect, erred, in my opinion, in holding that the educational qualification, laid down by the Supreme Court, was that which was necessary in the case of a promotee to the post of Reserve Sub-Inspector.

11. In the circumstances of the case, therefore, the conclusion is irresistible that the State Government realised its mistake in promoting petitioner Ganesh Ram to the post of Deputy Superintendent of Police, though he was not eligible for that promotion in terms of the observation of the Supreme Court and when contempt proceedings were initiated against the State, the order of promotion was cancelled by the State with a view to purge itself of contempt. Under the circumstances, the impugned order dated 8th October, 1988, canceling the promotion of the petitioner to the post of Deputy Superintendent of Police cannot be held to be illegal or unjustified.

12. Both the appeals are, therefore, allowed. The order dated 14th December, 1989, passed by the learned single Judge is set aside and the writ petition filed

by petitioner Ganesh Ram is dismissed. In the circumstances of the case parties shall bear their own costs throughout.