

(1972) 02 MP CK 0009
In the Madhya Pradesh High Court

Siyaram Singhal and Others

APPELLANT

Vs

Madhya Pradesh Government and Others

RESPONDENT

Date of Decision : 16-02-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 309, 311

Citation : (1972) JLJ 505 : (1972) 2 LLJ 411 : (1972) 17 MPLJ 722 : (1972) MPLJ 722

Hon'ble Judges : S.M.N. Raina, J;N.C. Dwivedi, J

Bench : Division Bench

Judgement

S.M.N. Raina, J.

The petitioners are lecturers in the Education Department of the State Government and were confirmed in the post with effect from 18-9-69 vide order dated 24-11-69 (Annexure 1). Their pay scale is Rs. 250 450. Certain non-government educational institutions were taken over by the Government. Originally the Government issued instructions, dated 28th June, 1960, vide Annexure 2, whereby the seniority of the persons absorbed in Government service was to be reckoned on the basis of the instructions contained in the General Administration Department memo, dated 29th December, 1953. According to the said instructions, their seniority vis-a-vis the seniority of the regular Government servants was to be determined according to a formula given therein. These instructions were subsequently revised by the Government in the year 1967, vide Government instructions dated 21-12-67 (Annexure 3). According to these instructions the seniority of an absorbed employee in the post/cadre on absorption is to be determined from the date he held the post/cadre or the date on which he qualified for such post/cadre whichever was later. According to the petitioners the revised instructions are not legal and just inasmuch as they adversely affect their seniority, and promotion of non-petitioner No. 6 to the post of principal in the scale of Rs. 275-700 on the basis of such seniority by order dated 25-7-70 (Annexure 4) is illegal and liable to be struck down.

Another grievance of the petitioners is that the Government by order dated 25-7-70 (vide Annexure 4) has promoted certain U.D. teachers (non-petitioners 3 to 8) whose pay scale is Rs. 150-290 to the post of principal, Higher Secondary School, which is a gazetted post carrying pay scale of Rs. 275-700 in preference to petitioners who are lecturers. According to them the U.P. teachers being of category 3 cannot be promoted to the post of principal, Higher Secondary School, which is of category 1 in preference to lecturers, who are of category 2. The action of the Government, it is alleged, is repugnant to Articles 14 and 16 of the Constitution and it also amounts to reducing the applicants in rank without any justification, and is thus contrary to the provisions of Articles 309 and 311 of the Constitution. They have, therefore, filed this petition praying that the order dated 25-7-70 be quashed.

The first contention of Shri Patankar, learned Counsel for the petitioners, is that the seniority of the employees of the former private (non-government) institutions on absorption in Government service should count from the date of absorption in a particular post. According to him, the service rendered by them in corresponding post in private institutions cannot be taken into account for purposes of determining their seniority in Government service for the said post. We do not, however, find any merit in this contention. Seniority in service merely determines the order of precedence for purposes of consideration of promotion. One who is senior is entitled to be considered for promotion first before the claims of his junior can be considered. This is in substance the meaning and significance of the rule of seniority.

It is settled law that promotion cannot be claimed as of right. All that a Government servant is entitled to claim is that his claims to promotion should be considered on just and equitable principle and there should be no unfair discrimination against him.

In the instant case, the petitioners have no grievance regarding their seniority vis-a-vis regular Government servants. Their grievance is only in respect of the seniority assigned to the absorbed employees in the combined gradation list under Government instructions dated December 21, 1967, vide Annexure 3. The rule of seniority as laid down in paragraph 3 of the instructions is as under:

The seniority of an absorbed employee in the post/cadre of absorption shall be determined from the date he held in the post/cadre or the date on which he was qualified for whichever is later. His seniority will take place in the combined gradation list below the Government servants appointed/promoted to the corresponding post under Government in the year.

In paragraph 7 of the return filed by the Government, it is stated that the object of the aforesaid rule is to protect the previous service of the absorbed employees by counting their seniority in the post/cadre from the date on which they held the post or cadre or from the date on which they were qualified for the post whichever was later and thus to do justice to them. In this connection it was

brought to our notice that under the Board of Secondary Education Madhya Pradesh Regulations 1949, the recognized institutions had posts corresponding to those in the Government institutions carrying similar scales of pay. Regulation 12 lays down that no educational institution shall be recognized or continued to be recognized unless the following conditions inter alia are fulfilled ;

12. (s) that the number and qualifications of the teaching and other staff shall be the same as prescribed for the corresponding staff in Government institutions:

(t) that the scales of pay of the principal, headmaster, lecturer, teachers, clerks and other staff shall not be less than those sanctioned for the corresponding staff in Government institutions;

Since it appears that private educational institutions carried posts corresponding to those in the Government institutions, carrying same scales of pay and the qualifications required for the post were also the same, there is no reason why the service rendered on such posts should be ignored on absorption for purposes of seniority in Government service on the same post. It is significant that the rule of seniority laid down by the Government provides that in case a particular incumbent acquired the requisite qualifications for the post with effect from a later date, his service only from such date shall be counted for seniority and the service rendered by him previously on the post will be ignored. This was to ensure parity with the Government servants holding corresponding posts in Government service and to avoid any unfair or unjust discrimination between the two classes of employees.

The absorbed employees constitute a distinct class by themselves. This classification is based on an intelligible differentia, which distinguishes them from the regular Government employees. Length of experience in a particular post provides reasonable basis for promotion to a higher post. It was, therefore, perfectly just and reasonable to take into account the service rendered by absorbed employees on corresponding post in private institutions for purposes of seniority. There would be no justification whatsoever for counting their seniority merely from the date of their absorption and ignoring their previous service. Thus, the rule of seniority as laid down by Government is fair and just and does not offend against Article 14 or Article 16 of the Constitution. The promotions made on the basis of such seniority are not open to question.

Shri Patankar further urged that, if at all the Government further wanted to lay down any rule of seniority, it should have framed a rule in exercise of the powers conferred by Article 309 of the Constitution, and that it was not open to it to issue any executive instructions in this connection. We are not impressed by this contention. No doubt, it is open to the State Government to frame a rule regarding seniority under Article 309, but in the absence of any such rule the matter could be regulated by executive instructions in exercise of the powers conferred by Article 162 of the Constitution. The following observations of their Lordships of the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and

Another,

But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

Since the instructions issued by the Government are not inconsistent with any rule framed under Article 309 or any other statutory provisions they are perfectly valid.

The next grievance of the petitioners is about the promotion of upper division teachers to the post of principal, Higher Secondary School in preference to lecturers. The contention of Shri Patankar is that the direct jump from category 3 to category 1 at this stage affects the lecturers, who belong to category 2. In order to appreciate this contention it is necessary to refer to the three categories of this branch of service. They are as under:

- (1) Category 1-Principal, Higher Secondary School (gazetted)-Pay scale 275-700.
- (2) Category 2-Lecturer of Higher Secondary Schools-Basic Training Institutes or headmasters of High Schools-Pay scales 350-450.
- (8) Category 3-Upper division teachers -Pay scale 150-290.

It appears from paragraph 15 of the return filed on behalf of the Government that it has been decided to provide opportunities to the upper division teachers for direct promotion to the post of principal and accordingly 40% of such posts are reserved for them, while 60% are to be filled by promotion from amongst the lecturers or otherwise. It is no doubt true that it is open to the U.D. teachers to be promoted to the post of lecturer, which is of a higher grade, but it seems this chance of promotion was not equally available to all of them. It is stated in paragraph 15 of the return that there was a great shortage of lecturers in science subjects, and, so the Government promoted all trained Science Graduates with five years' service. But there was no shortage of lecturers in Hindi, Sanskrit, Geography, History, Economics and Civics subjects. So every senior teacher with M.A., B.Ed, qualifications could not be promoted to the post of lecturers even now. It was mainly to provide opportunity for promotion to the post of principal to such U.D. teachers that the above rule has been adopted.

It is entirely within the discretion of the Government to determine the source of recruitment for any post. It is, therefore, open to the Government to fill the post of principal, Higher Secondary School, by direct appointment or by promotion from the post of lecturers or the post of upper division teachers. In *Roshan Lal Sharma Vs. Union of India (UOI) and Others*, , the Punjab High Court summarised the legal position relating to the power of appointment of

Government as under in paragraph 21:

(1) In the absence of any statutory rules governing appointment to any State service, the appropriate State may recruit members to that service in any manner it likes in exercise of its executive powers under Article 162 of the Constitution provided the guarantees contained in Articles 14 and 16 of the Constitution are not infringed.

(2) So long as the action of the Government does not violate any fundamental or statutory rights of the person concerned, mere absence of a statute or a rule justifying a particular manner of appointment will not invalidate it.

(3) If, however, there is in existence any valid law or statutory rule relating to appointment to a particular service, the executive is bound to abide by the relevant law or rule and has no jurisdiction to ignore, outstep or violate the same under the guise of executive powers.

We entirely agree with this view. We have, therefore, to consider whether the rule of direct recruitment from the post of upper division teacher to the post of principal adopted by the Government in any way offends against Article 14 or Article 16 of the Constitution. Ordinarily, we would expect the promotion to be from category 2 to category 1 and not directly from category 3 to category 1. But the Government have given adequate reasons for keeping the door open for promotion to category 1 directly from category 3. It appears that certain upper division teachers possessing qualifications of M. A., B. Ed., could not be promoted as lecturers because they were qualified in art subjects, while comparatively junior upper division teachers qualified in science subjects could be promoted as lecturers on account of shortage of lecturers in such subjects. If the promotions to category 1 are to be made only from category 2 certain well qualified upper division teachers will be at a disadvantage in the matter of promotion to the post of principal, merely because they are qualified in art subjects while their juniors would be entitled to be promoted as principal because they were earlier promoted as lecturers being qualified in science subjects.

So far as the post of principal, Higher Secondary School, is concerned, it seems it is immaterial whether a candidate is qualified in art subjects or science subjects. There could, therefore, be no good reason for giving accelerated chances of promotion to the post of principal to the upper division teachers qualified in science subjects vis-a-vis upper division teachers qualified in art subjects. It appears that it was mainly for this reason that the Government kept the door open for direct promotion of upper division teachers to the post of principal. On this view of the matter, we find nothing in this principle as Standing against Article 14 or 16 of the Constitution and as such the instructions contained in Annexure R-I relating to this principle cannot be adjudged illegal or void.

We would, however, like to observe that the aforesaid principle can be justified only for the limited purpose indicated above. The usual principle applicable to all branches of Government servants in general is that the promotion to any

particular post is from the next lower category. Promotion directly from category 3 to category 1 can be justified only in rare and exceptional circumstances. The rule of promotion directly from category 3 to category 1 can be abused. For example, if a junior upper division teacher is directly promoted as principal in preference to one senior to him, who had been earlier promoted as lecturer, the promotion would certainly be open to question. But the question whether the rule of promotion from category 3 to category 1 has been abused in any case resulting in any unfair discrimination against any particular Government employee will have to be considered on the basis of facts and circumstances of each case. The learned Counsel for the petitioner was unable to place before us any material to show that there has been any unfair or unjust discrimination against the petitioners in the matter of promotion by promoting non-petitioner to the post of principal. Learned Counsel for the petitioners merely attacked the rule of direct promotion from category 3 to category 1 in general without reference to cases of the non-petitioners in particular. As the rule in general is not improper or illegal for the reasons given above, we do not find any good reason for interference in this case.

The petition, therefore, fails and is hereby dismissed. We do not, however, make any order as to costs in the circumstances of this case. The security amount shall be refunded to the petitioners.