
(1989) 05 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 460 of 1984

Swaran Singh and Others

APPELLANT

Vs

Guru Nanak University and Others

RESPONDENT

Date of Decision : 29-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1989) 2 ILR (P&H) 389 : (1990) 97 PLR 370

Hon'ble Judges : Ujagar Singh, J;M.M. Punchhi, J;A.P. Chowdhri, J

Bench : Full Bench

Advocate : H.L. Sibal and R.C. Setia, for the Appellant; S.S. Nijjar, Bar at law and T.P.S. Gill, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—This petition under Article 226 of the Constitution by a dozen assistants of the Guru Nanak Dev University is a desperate attempt against ,38 assistants of the same University on the old theme of inter se seniority on the challenge to a Single Bench decision of this Court in C W. P. 4205 of 1979 Jatinderpal Singh and Ors. v. The Guru Nanak Dev University and Ors.. C. W. P. 4205 of 1979, decided on December 19,1980.

2. This petition was initially admitted to a Division Bench. Before the Division Bench the petitioner placed reliance on a limine order passed by a Division Bench of this Court in C. W. P. 4041 of 1978 Surinder Kumar Sharma v. Guru Nanak Dev University, Amritsar, C. W. P. 4041 of 1978 on November 20, 1978. The said petition was dismissed by a one line order in view of the averments made in the return. The respondents, on the other hand, relied on Jatinderpal Singh's case (supra). The Division Bench tentatively was of the opinion that the view taken by the learned Single Judge in Jatinder Singh's case (supra) was apparently correct, but since it ran counter to the view taken by the Division Bench in Surinder Kumar Sharma's case (supra), they referred this petition for decision to a larger Bench. In accordance therewith, this petition has been listed before this Bench

for disposal.

3. A little factual data as culled out from the pleadings of the parties, if noted at the outset, would make things easier. The Guru Nanak Dev University Ordinance, 1969 established the University, followed by Act of the same name on November 29, 1969. Section 19 of the Act provided that the first statutes of the University shall be made by the State Government and notified in the Official Gazette. The first statutes of the University thus were promulgated by the State Government and notified in the Punjab Government provided for the determination of the seniority of the employees of the University. That is the only relevant Statute for the present controversy. Its reproduction here would be useful:

"32. (1) The Seniority inter se of members of any service in the Guru Nanak Dev University, Amritsar shall be determined by the length of service on a post in that service :-

Provided that the seniority of persons recruited from other University/ Government departments or Local Bodies during the period from 1st November, 1969 to 30th October, 1970 shall be determined on the basis of length of their service in that cadre in their parent department, if there is no break in service between their relinquishing the charge in the parent department and the joining service of the Guru Nanak Dev University, Amritsar. This shall be operative for one year with effect from 1st November, 1969 :

Provided further that in the case of members recruited by direct appointment, the order of merit determined by the Selection Committee shall not be disturbed in fixing the seniority :

Provided further that in the case of two or more employees appointed on the same date, their seniority shall be determined as follows : -

(a) an employee recruited by direct appointment shall be senior to a member recruited otherwise;

(b) an employee recruited by promotion shall be senior to a person recruited by transfer;

(c) in the case of employees recruited by promotion or transfer, seniority shall be determined according to the seniority of such employees in the appointments from which they were promoted or transferred; and

(d) in the case of employees recruited by transfer from different cadres, their seniority shall be determined according to pay; preference being given to a member who was drawing higher rate of pay in his previous appointment and if the rates of pay drawn are also the same thereby, their length of service in those appointments and if the length of service is the same, an older member shall be senior to a younger member.

(2) The first proviso to clause (1) shall not be applicable to members of the teaching staff.

(3) In the case of employees whose period of probation is extended under the provisions of the Statutes, the date of appointment for the purpose of this rule shall be deemed to have been deferred to the extent the period of probation is extended."

4. The first proviso deserves more pointed attention. It is evident that it relates to recruitments made within a specified period i. e, from November 1, 1969 to October 30, 1970. It is also evident that Statute 32, which itself was made on July 4, 1970, was taking within its sweep some period of the past and some of the future. It is still further evident that the recruitment mentioned in this proviso was general in character and not confined to any particular mode like direct appointment, transfer or promotion. For the preset this would suffice.

5. On the prospect and pursuit of its establishment, the University was in need of experienced staff. It accordingly invited applications for appointments to various posts including that of clerks directly as well as through advertisement in the Press. The parties herein came to be appointed as clerks from time to time but within the specified period covered by the first proviso i. e. from November 1, 1969 to October 30, 1970. There were experienced as also raw hands. Some had the experience specifically covered under the first proviso.

6. A provisional seniority list in accordance with Statute 32 was prepared by the University on 14th September, 1973. Objections were invited. Representations were received by the University from various employees. The Vice-Chancellor appointed a committee to consider those representations. The committee after considering those representations and hearing the representationists, made recommendations which were approved by the Vice-Chancellor. A final seniority list was thus circulated in July, 1975. It is significant that the syndicate of the University had no occasion to approve the seniority list

7. Surinder Kumar Sharma, one of the affected persons, aggrieved against fixation of seniority in such manner approached this Court in CWP No, 404 of 1978, impleading the University alone as the respondent His case was that before October 29, 1970, he was employed, as a clerk in the Punjab University, Chandigarh, and had at that time to his credit service of five years and two months rendered in that University, and in addition thereto about six years service rendered earlier thereto in various other departments of the Government. His assertion was that he had left the Punjab University on October 29, 1970, and had joined the University the same day i. e. before October 30, 1970, so as to obtain the benefit of the first proviso, whereunder seniority of persons recruited from other Universities/Government Departments or Local Bodies during the period from November 1, 1969 to October 30, 1970, was to be determined on the basis of the length of service in that cadre in the parent department. Having found that he had not been given the benefit of service in the Punjab University under the first proviso and persons junior to him had obtained an edge over him, he came to this Court seeking redress). Notice of motion was issued and the University through its Registrar filed a reply. The

relevant portion of the reply is as follows :-

"The only interpretation which can be given to provisos (i) and (ii) of the above mentioned section is that the benefit of past service can only be given of those persons who are recruited from other Universities and Government Departments or Local Bodies by way of transfer The word "recruitment" in (i) proviso only means those recruited by way of transfer The (ii) proviso is attached to the case of the petitioner. The petitioner was recruited by way of direct appointment. In the Guru Nanak Dev University no employee has been recruited by way of transfer. The petitioner has not been recruited by way of transfer, as such he is not entitled to the benefit of his past service in the University. It is thus submitted that (i) proviso is not applicable to the case of the petitioner and he is governed by (ii) proviso being a direct recruitee."

8. It is on the strength of this defence that the University asserted that Surinder Kumar Sharma's seniority had rightly been fixed. The Motion Bench consisting of S. S. Sandhawalia, C. J. and R. N. Mittal, J. dismissed the writ petition in view of the averments made in the return and not by any elaborate order interpreting even remotely Statute 32 by a speaking order. The said order was passed by the Division Bench on November 20, 1978. The Division Bench order aforesaid is the strongest card in the hands of the petitioners, who assert that the return of the University appealed to the Bench and that is virtual approval of the views of the University.

9. In the following calendar year i. e. 1979 Jatinderpal Singh and others, who were similarly aggrieved as Surinder Kumar Sharma, approached this Court through CWP No. 4205 of 1979, impleading not only the University but its Vice-Chancellor, the Syndicate and a few private respondents as parties. This petition obviously went through the Motion Bench of two Hon"ble Judges of this Court and was placed before IS. Tiwana, J. for regular hearing. This time the University changed its stance since in the meantime it had varied the seniority list of the year 1975, aggrieved against which Surioder Kumar Sharma had come to this Court in CWP No. 4041 of 1978. It had changed the seniority list and circulated a tentative one on November 3, 1979, inviting representations against the same. The occasion for change had arisen because representations had been received by the University against the seniority list of the year 1975 and the representationists were people who had earlier service to their credit prior to their joining the service of the University and were hammering invocation of the first proviso to Statute 32 to their advantage. The Syndicate in its meeting held on February 20, 1979, authorised the Vice- Chancellor to appoint a Committee headed by a retired Judge of the High Court to look into the representations thus filed The Committee so constituted considered the matter and the recommendations made by it were approved by the Syndicate in its meeting of October, 1979. On the basis of the decision of the Syndicate, a tentative list as on October 31, 1979, was issued on November 3, 1979, The same was circulated for inviting objections. The Syndicate found the stand taken by the Registrar of

the University in his written statement filed in CWP No. 4041 of 1978 to be not based on a correct interpretation of the first proviso to Statute 32. According to the Syndicate, the only valid interpretation which could be given to the first proviso to Statute 32 was that benefit of earlier service could be availed of by all recruits coming from other Universities, Government Departments and Local Bodies when recruited during the period November 1, 1969 to October 30, 1979, provided there was no break in their service between their relinquishing the charge in the parent department and joining the University service, irrespective of the mode of recruitment. In other words, the earlier stand taken by the University about the first proviso applying to recruitments by way of transfer,, was reversed. Rather, according to the University, no appointment; by way of transfer could possibly have been made to the service of the University, as it was an autonomous body and not in a position to receive or send persons on transfer.

10. I. S. Tiwana, J. as is evident from the judgment in Jatinderpal Singh's case (supra), appended herewith as Annexure P-10, went on to interpret Statute 32, with specific regard to the first proviso, by holding as follows :-

"After a careful reading of the above noted provisions of Section 32 (Statute 32) I find that the primary contention of Mr. Gupta to the effect that the first proviso is only confined to cases of recruitment of employees from other Universities Government Departments or Local Bodies by way of transfer, is not sustainable. The language of this proviso does not contain any such limitation, Rather its phraseology covers all recruitments, that is, recruitments made in either of the three recognised modes of recruitments. or appointment as referred to above."

And further:-

".....As would be clear from the leading of the provisions of the first proviso, it only relates to the determination of seniority of the persons recruited during a specified, period of time, that is, from November, 1969 to October 30, 1970."

Still further:-

"Thus I do not find any merit In the contention of the learned counsel for the petitioners that the first proviso, only applies to the case of the persons recruited- by way of transfer and not to the ones directly appointed As has been pointed but above in case this interpretation of the learned counsel is to be accepted, then the provisions of first proviso to sub-section (1) of Section 32 are completely rendered redundant and any such interpretation has to be avoided."

And lastly :-

".....This is more so in the present case for the reason that the Syndicate, who is the framer of this provision is also now the interpreter of the same. It very well knows the intention behind the framing of this provision."

11. It would be unnecessary to detail out the respective selections of the parties herein. Suffice it to mention that they came in by process of at least three

selections and their dates of joining are tabulated in Annexure P 4 appended with the writ petition. Admittedly they were selected during the crucial period i. e. November 1, 1969 to October 30, 1970. The occasion to the petitioner to come to this Court had arisen not only because the University revised the seniority list of the parties herein as, clerks,--vide Annexure P-8 but also in the promotional cadre of Assistants,--vide order Annexure P-9 employing in its aid, to justify the action, Jatinderpal Singh's case (supra).

12. As indicated earlier, the challenge is to the correctness of Jatinderpal Singh's case (supra) and the main grouse is that the University could not be allowed to change its stance as to what it had taken in Surinder Kumar's case (supra). It would bear repetition that nothing as such" was decided in Surinder Kumar's case. This Court while dismissing that petition, in view of the averments made in the return, cannot be said to have affixed a seal of approval to the stance taken in the return to Chat. The order, firstly, is not indicative of that fact expressly; secondly, from inferences alone no ratio emerges, and thirdly, there is no such binding ratio. That case can at best be said to have been decided against Surinder Kumar Sharma Sharma on the stance on law adopted by the University. It is a well known principle of law that there is no estoppel against a statute. The University could not be bound to stick to that view it had in law and could always revert to the correct interpretation of the Statute. I. S. Tiwana, J. dealt with that matter and decided that the University could not be estopped from claiming that the interpretation once put by it was wrong. Significantly, there was no Letters Patent appeal against the decision of I. S. Tiwana, J. in the said case.

13. Yet whether interpretation was put in Jatinderpal Singh's case (supra), we were independently asked to interpret Statute 32. We heard Mr. H. L. Sibal, learned Senior Advocate, at great length in that regard. It is undisputed that prior to the promulgation of Statute 32 on July 4, 1970, there was no seniority rule. Statute 32 had come to govern a virgin field when there were people already working as clerks. Before that time, there was evidently no cadre consisting of any specific number of posts in any service. Statute 32, for the first time, raised the issue, of Seniority and having laid the rule that seniority inter se of members of any service in the University shall be determined by the length of service on a post in that service, immediately went forward to carve out three provisos. The first one provided that the seniority of persons recruited from other Universities/Government departments of Local bodies during the period from 1st November, 1969 to 30th October, 1970, shall be determined on the basis of length of their service in that cadre in their parent department, if there is no break in service between their relinquishing the charge in the parent department and joining the service of the Guru Nanak Dev University, and that this, shall be operative for one year with effect from November 1, 1969. Patently, the proviso had a life of only one year and would automatically cease to have effect on October 30, 1970. A protective cover was thus given by the proviso to experienced persons recruited having the requisite background during the period of one year commencing from November 1, 1969, the day from which the effect

was brought about, to October 30, 1970. Undeniably and necessarily some recruitments from those named sources had been made and some were expected to be made in future also. So the Statute took care of the limited past as also the limited future. It cannot be denied that the law maker authorised to make law on a subject can take care to envelop within the scope of its legislative activity matters things of past, present and future. Such an exercise cannot be termed as retrospective application of law. The proviso rather, as we view it, protects the interests of those who left their parent departments and lost no time in joining the University to carry out its affairs right from the time of its birth and teething. The Government which was the initial framer of the Statute was well within its legitimate rights to give them a protective cover, to give credit of past service to all those recruits -coming from the named sources provided there was no break in their service between their relinquishing the charge in the parent department and joining the service of the University. Now to "recruit" in ordinary English language is to enlist or raise new personnel particularly in regard to enlistment of new soldiers. To "recruit" is also obtaining fresh supplies of men. The trained supply of men which the University received within that period, by whichever manner, that is to say, by direct recruitment, promotion or transfer was given a special treatment regarding their seniority, protected on the anvil of past and continuous service without break.

14. In contrast, the second proviso says that in case of members recruited by direct appointment, the order of merit provided by the Selection Committee shall not be disturbed in fixing the seniority. In S. K. Sharma's case (supra) the second proviso was put up as a defence to the case of the then petitioner. As we know by now, the University has shifted that stand, and in our view, rightly, as would presently be seen. The second proviso is confined only to direct appointment emphasizing that the order of merit determined by the Selection Committee shall not be disturbed in fixing the seniority. Now under the first proviso, as is evident, there were direct recruitments made by Selection Committees of persons who had claimed higher seniority on the basis of past and continuous service in the named departments. A direct recruit who had no such claim to past and continuous service and had been selected by a Selection Committee was entitled to have his place on the merit list maintained vis-a-vis the rest and not disturbed under the second proviso irrespective of his taking up appointment later and someone junior in the order of merit having joined earlier and having lengthy period of service on a post in that service. This proviso to the main rule is only to preserve the order of merit determined by the Selection Committee when warring against the length of service on a post by someone higher in merit fated to actually join later than someone lower in merit. The two provisos i.e. the first and the second one cover up different fields and the mere fact that direct appointments can also be made under the first proviso is no ground to assume that the second proviso is paramount in the field so as to stultify what is sought to be achieved by the first proviso.

15. Testing from another angle, it would be seen that an order of merit

determined by the Selection Committee if introduced in the first proviso would be utterly incongruous. A person lower in merit could have a longer length of service in the cadre in his parent department from where he came. He obviously would secure a higher place in the seniority that someone higher in merit who had lesser or no length of service to his credit in the cadre in his parent department. The second proviso cannot thus be read to mean that it overrules the first proviso. The two have to be read harmoniously together and an interpretation which furthers the intention of the law giver has to be adopted than the one which destroys it.

16. Now coming to the third proviso, it regulates the inter se seniority when two or more employees are appointed on the same day. The third proviso would have to be read in the second proviso as also the first proviso to the extent it is applicable, in the third proviso every conceivable method of recruitment has been taken care of and how cross claims of parties inter se can be settled. Mr. Sibal's argument that the third proviso has no applicability to the cases covered by the first proviso is not wholly acceptable because the context does not justify it. Particular reference can be made to sub-clauses (a) and (b) of the proviso, which are employable even in case covered under the first proviso and clause (a) is also employable to cases occurring under the second proviso

17. Thus, even by contrasting the three provisos to Statute 32(1) independently, we arrive at the same conclusion as was reached by I. S. Tiwana, J. in Jatinderpal Singh's case (supra). Accordingly, while explaining and settling the law in that regard, we approve its ratio and hold that the principle involved in proviso (i) holds the field in determining the seniority inter se between the parties, since they were recruited between November 1, 1969 and October 30, 1970.

18. It was then illustrated by Mr. Sibal that sine the parties were appointed by three selections, one after the other, seniority in terms of the first proviso had first to confine to one selection then to the second and so on to the third, so as to satisfy the requirement of the second proviso saying that the seniority shall be determined on the basis of the order of merit. At one stage, the University also, as per its return, had adopted the principle that the seniority of the first selection would be followed by seniority of the second selection and so on. The method adopted by the University in actual practice may not affect direct recruitments covered by the second proviso but wherever there are direct appointments covered by the first proviso, within the specified period, the aforesaid principle is likely to be toppled, for a person in the second selection can steal march over a person of the first selection if he had longer continuous service in the cadre in the parent department. That presents no difficulty when so interpreted and the University's view in that regard must be taken to be correct as applying to the recruitments made under the second proviso, irrespective of the actual date of appointment.

19. Lastly, it was contended before us, illustrating the case of petitioner No. 1,

that he had served the Punjab University from July 1960 to October 29, 1965 and from October 30, 1965 in the Posts and Telegraph Department before joining the University and he was only given benefit of service of the latter department from October 30, 1965 and not of the Punjab University though service was continuous. It was pleaded that similar was the case with the other petitioners In the return filed by the University, it has been pleaded that the Syndicate in its meeting held on December 19, 1979, discussed the definition of "parent department" for the purpose of first proviso to Statute 32(1) and resolved as under: -

"(ii) "Parent Department" for the purpose of first proviso to Statute 32 (1) shall mean the Department (in another University/Government or Local Body) immediately preceding the Guru Nanak Dev University except that in the case of parsons who were selected from the Punjab School Education Board, the length of service in that cadre in the in the parent department will include the service both in the Board and in the Punjab University provided, it was a case of allocation of service from the Punjab University to the Board and not of recruitment by open selection, and there was no break in service"

20. It was urged that if credit had to be given to experience and continuity of service, the credit could not be confined to the last continuity of service, the credit could not be confined to the last parent department served but to all the departments from which continuity of service could be had. The stance of the University is that the seniority assigned to the petitioners as well as the private respondents has been given keeping in view the interpretation of the "parent department" by the Syndicate. We have pondered over the matter and are of the view that if experience and continuity of service earned a premium under the first proviso, the expression "parent department" resolved by the Syndicate in its meeting held on December 19, 1979, though worthy of approval, lacks in one particular, which we wish to explain here. The resolution that "Parent Department" shall mean the department (in another University/ Government or Local Body) immediately preceding the University may be fair and sound, but if the parent department itself has given credit of continuity of service to the employee of service rendered in the department in which he was previously employed, it goes without saying that the length of service for the purpose of the "parent department", shall be the service thus reckoned. Conversely put, if the parent department itself has not recognised any service previously rendered in any other University/Government or Local body, then the University is not obliged under the first proviso to trace back continuity of service from the "parent department" to other Universities, Government Departments or Local Bodies, for, we are of the view that in the first proviso the does not include the plural. It cannot be read to does not include the plural. It can not be read to mean services rendered in adversities/Government Departments or Local Bodies.

Thus, to this; limited extent, if any particular employee can claim improvement of his seniority, he may represent to the University and the University shall

determine that question having regard to the scope of "Parent Department" defined heretofore. There Seems no further Syndicate expression parent Department resolved by the

21. As an argument of last resort, Mr. Sibal then contended that our independent interpretation, besides approval to the ratio in Jaunderpa Singh's case (supra) would lead to discrimination inasmuch as the seniority of Surinder Kumar Sharma stands settled of the of the old interpretation of Statute 32 by the University and the fate of others would be governed by the new interpretation, leaving a hole in the set up. The decision rendered by the Division Bench in S K Sharma's case (supra) is based on the return filed by the Registrar of the University in which the old interpretation of Statute 32 was protected. The order of dismissal passed by the Division Bench can not be construed as the imprimatur of this Court on the correctness of the decision of the Vice-chancellor of the University. Besides as said earlier the decision of the Vice-Chancellor had not been put for approval before the Syndicate, which alone is competent u/s 19(6) of the Act to add a new Statute, and to the existing ones, or cause any amendment or repeal of a Statute. When the Syndicate under the Act empowered, its interpretation of the Statute, though not always binding on the Court, carries great value. The latter interpretation is by the Syndicate and, as is evident, it overrules that of the Vice Chancellor. We see no trace of approval of the interpretation put by the Vice Chancellor by the mere dismissal of the writ petition of Surinder Kumar Sharma. At best it can be said that the interpretation put by the Vice-Chancellor appealed to the Court as a possible interpretation but by no means an interpretation to which express or tacit approval was given. The scope of Article 226 of the Constitution being what it is, myriads are the ways in which the High Court reacts to a particular situation. This apparently is one such instance. But even if it be remotely understood that the dismissal of that petition is a virtual approval of this Court of the interpretation of Statute 32 by the Vice Chancellor, then unhesitatingly we overrule the same and hereby unshackle the supposedly sealed fate of Surinder Kumar Sharma, for he would fall in the line with others to have the benefit of the interpretation put to Statute 32 in Jatinderpal Singh's case (supra), as also by us, and for which the University is otherwise bound on its own.

22. To conclude, we hold that the view expressed by I. S. Tiwana, J in Jatinderpal Singh's case (supra) is perfectly sounded in addition to what we have said in interpreting Statute 32 heretofore and the in Surinder Kumar Sharma's case (supra) by the Division Bench is a decision on the pleadings of the Parties and has no binding authorities and is also overruled.

23. Resultantly, this petition fails and is hereby dismissed. No costs