

A

MOHAN SINGH ETC.

v.

STATE OF PUNJAB AND ORS. ETC.

APRIL 10, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Service Law :*

*Punjab Civil Secretariat (State Service Class-III) Rules 1963: Rule 8.*

C

*Advocate-General's Office—Assistant—Promotion to Superintendent Grade-I—Challenge on the ground that promotion was not against reserved vacancy—Held not justified on facts—Rule 8 held applicable.*

D

The appellant, an Assistant in the office of the Advocate-General, Punjab, was promoted as Superintendent Grade-I. Respondents 3 and 4 filed a writ petition and successfully challenged his promotion before a Single Judge of the High Court. The appeal preferred by the appellant was dismissed by the Division Bench of the High Court.

E

In appeals to this Court preferred by the appellant, it was contended for the respondents that (i) the post against which the appellant was promoted was not reserved, it being the fifth post, and therefore he was not entitled to that post; (ii) promotion cannot be given from the post of Assistant to the post of Superintendent Grade-I when intermediary post of Superintendent Grade-II was available.

F

Allowing the appeals, this Court

G

HELD: 1. The High Court was not right in allowing the writ petition filed by respondents 3 and 4. Record clearly indicates that the first vacancy occurred on 3.6.70. On second occasion, namely, 17.7.1975, a second post of Superintendent Grade-I was created and a person was appointed to that post. It cannot be contended that the same cannot be considered as second vacancy. When the second post was created on 17.7.1975, though the incumbent was promoted along with creation of the post, it is clear that a vacancy had arisen. Thus considered, the Advocate General was right in his stand taken that the vacancy at hand was the 6th vacancy reserved for member of the Schedule Castes as per the roster. [267-F, 266-B, C]

H

2. The contention that double jump cannot be given from the post of Assistant to the post of Superintendent Grade-I when intermediary post of Superintendent Grade-II is available is really not acceptable. Rule 8 of the Punjab Civil Secretariat (State Service Class-III) Rules, 1963 clearly indicates that a Deputy Superintendent with a minimum experience of one year in that post or an experience of 10 years as an Assistant is eligible for promotion to the post of Superintendent Grade-I. It is true that Rule 8 is inapplicable, as admitted by the Government but Rule 8 permitted the promotion in question. When a practice has grown to accept aforesaid Rules and when Rule 8 is being applied to the Secretariat service, there is no justification to deny the same benefit to the persons in allied services though the rules are *per se* applied, unless discernible differentia touching the nature of the service is shown to which effect there is nothing before this Court. [266-D, E, 267-B, C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5205 of 1995 etc.

From the Judgment and Order dated 26.9.94 of the Punjab High Court in L.P.A.No. 796 of 1994.

Arun Jaitley, Ms. Indu Malhotra, Ms. Ayesha Khatri, Ranbir Yadav, G.K. Bansal, Ashwani Kumar Chopra and P.N. Puri for the appearing parties.

The following Order of the Court was delivered:

Leave granted.

Appellant, Mohan Singh, was promoted as an Assistant on 20.10.1973 and was confirmed with effect from 13.10.1980. When vacancy in the post of Superintendent Grade-I arose on 27.11.1989 on promotion of one Gurdev Singh as Assistant Registrar, the Advocate General, Punjab promoted him as Superintendent Grade-I. Calling that promotion in question, respondents Tarlok Singh and Deena Nath Singla filed CWP No. 80/90 in the High Court which was allowed by the learned Single judge and LPA No. 796/94 filed by appellant Mohan Singh was dismissed by a Division Bench by order dated 26.11.1994. Thus, these appeals by special leave.

The only question is whether the appellant is entitled for promotion from the post of Assistant to the post of Superintendent Grade-I. Learned

A counsel for the respondents contended that the post which fell vacant on the promotion of Gurdev Singh was not reserved, it being the fifth post and, therefore, the appellant was not entitled to that post. We find no force in the contention. The chart at page 16 of the Paper Book (prepared on the basis of averments made in the counter affidavit of the Advocate General filed in the High Court) clearly indicates that the first vacancy occurred on 3.6.70. On second occasion, namely, 17.7.1975, a second post of Superintendent Grade-I was created and Shiv Kumar Sharma, who was working as P.A. to the Advocate General was appointed to that post. It is contended that the same cannot be considered as second vacancy. We do not agree, as when the second post was created on 17.7.1975, though the incumbent was promoted along with creation of the post, it is clear that a vacancy had arisen. Thus considered, the Advocate General was right in his stand taken in the High Court that the vacancy at hand was the 6th vacancy reserved for member of the Schedule Castes as per the roster.

D The contention raised in this matter, which was accepted by the High Court, is whether double jump can be given from the post of Assistant to the post of Superintendent Grade-I when intermediary post of Superintendent Grade-II is available. Though *prima facie* the contention appear to be attractive as indicated in the order dated 16.1.1995 while issuing notice, on going through the rules we find that the same is really not acceptable. It is not in dispute that Rule 8 of the Punjab Civil Secretariat (State Service Class III) Rule, 1963 provides thus:

"The posts in the service shall be filled in the following manner:

F (b) In case of Superintendent (or Section Officer) (i) by promotion from amongst Assistants. Section Officers of the Punjab Civil Secretariat having an experience of working on that post for a minimum period of one year or from amongst such Deputy Superintendents, Assistants-in-charge and Assistants as are members of the Punjab Civil Secretariat (State Service Class-III) and have an experience of working as Deputy Superintendent for a minimum period of one year or an experience of working as an Assistant for a period of ten years, as the case may be."

H It would clearly indicate that a Section Officer of the Punjab secretariat having an experience of working on that post for a minimum period of one year, or Deputy Superintendent, Assistants- in-charge and

Assistants as members of the Punjab Civil Secretariat (State Service Class-III) and having experience of working as Deputy Superintendent for a minimum period of one year or an experience of working as an Assistant for a period of ten years, as the case may be, are eligible for promotion to the post of Superintendent Grade I. In other words, a Deputy Superintendent with a minimum experience of one year in that post or an experience of 10 years as an Assistant is eligible for promotion to the post of Superintendent Grade-I. It is true, as rightly contended for the contesting respondents, that Rule 8 is inapplicable, as admitted by the Government in their appeal which is a companion to this appeal. But Rule 8 permitted the promotion in question. The Advocate-General also drafted rules similar to Rule 8 and sent to the Government and are pending approval

When a practice has grown to accept aforesaid Rules and when Rule 8 is being applied to the Secretariat service, we find that there would be no justification to deny the same benefit to the persons in allied services though the rules are not *per se* applied, unless discernible differentia touching the nature of the service is shown to which effect there is nothing before us. The Government in their appeal has supported the contention of the Advocate-General in promoting the appellant. It is seen that earlier this principle was followed in the office of the Advocate-General; no doubt prior to creation of the post of Superintendent Grade II. When the practice has grown and the Government itself has been following the same rules and draft rules also contain such a provision, we think that the same may also be followed in the office of the Advocate-General which is part of the wing of the Government.

Under these circumstances, the High Court was not right in allowing the writ petition filed by respondent Nos. 3 and 4. The appeals are accordingly allowed. The orders of the Division Bench and the Single Judge are set aside. The Writ Petition filed by these respondents stands dismissed. No costs.

T.N.A.

Appeals Allowed.