

JATINDER PAL SINGH AND ORS. ETC. ETC.

A

v

STATE OF PUNJAB

SEPTEMBER 16, 1999

[DR. A.S. ANAND, C.J., K. VENKATASWAMI, G.B. PATTANAİK,
S.P. KURDUKAR AND M. JAGANNADHA RAO, JJ.]

B

Service Law :

Promotion—Seniority—Roster point promotees vis-a-vis-general candidates—Inter se seniority—Determination of—Reserved candidates promoted as Head Masters/Head Mistresses on the basis of roster points—Claim for promotion to the post of Principals—Allowed by High Court relying on Jagdish Lal's case—Validity of—Held, in view of Ajit Singh I as affirmed by Ajit Singh II, reserved candidates promoted on roster points not entitled to claim benefit of continuous officiation in promotional post—High Court not justified in allowing the claim of reserved candidates relying on Jagdish Lal's case—Punjab Education Service (School ad Inspection Cadre) (Class II) Rules, 1976—Rules 10 & 12.

C

D

Promotion—Seniority—Roster point promotees vis-a-vis general candidates—Inter se seniority—Determination of—Railways—Promotion of reserved candidates even after 1.3.1996 but before 1.4.1997 on the basis of continuous officiation—General candidates already reaching the promotional level—Effect of—Held, there is no need to revert the reserved candidates—However, their promotion shall be deemed as ad hoc—Seniority and promotion to be 'determined following Virpal and Ajit Singh I as affirmed in Ajit Singh II.

E

F

Promotion—Roster point—Applicability of—Whether can be applied on vacancy basis even if the roster has exhausted?—Held, no.

In Punjab Education Department, general candidates working as senior Lecturers/Principals or as Deputy District Education Officers were promoted to the post of Principals by an order dated 3.7.1997. Persons belonging to reserved category, working as Head Masters/Head Mistresses challenged the said promotion orders by filing writ petitions and claiming promotions to the post of Principals. High Court allowed the writ petitions by following

G

H

A *Jagdish Lal's* case. Aggrieved, general candidates have filed the present appeals.

In Railways, certain promotions were made even after 1.3.1996 (*Ajit Singh I* case) on the basis of the continuous officiation of the roster point promotees even though several general candidates had reached the promotional level before the reserved candidates. Consequently, Interlocutory Application were filed by Railways for protecting the promotions of reserved candidates made after 1.3.1996 but before 1.4.1997. Besides this certain IAs were filed by reserved candidates, SC/ST organisations and Union of India.

B

C Disposing of the appeals and IAs, the Court

HELD : 1.1. Promotion of officers belonging to Punjab Education Department is governed by *Ajit Singh I* as affirmed in *Ajit Singh II* in regard to seniority and prospectivity based on *R.K. Sabharwal*. Thus, High Court was not justified in allowing the writ petitions of reserved candidates relying on *Jagdish Lal*. [589-G]

D

Ajit Singh & Ors. v. State of Punjab, [1999] suppl. 2 SCR, relied on.

Ajit Singh Januja & Ors. v. State of Punjab, [1996] 2 SCC 715 and *R.K. Sabharwal v. State of Punjab*, [1995] 2 SCC 745, relied on.

E

Jagdish Lal & Ors. v. State of Punjab, [1997] 6 SCC 538, held inapplicable.

1.2. Under Punjab Education Service (School and Inspection Cadre) (Class II) Rules, 1976, sub-clause (3) of Rule 10 states that all appointments to the posts shall be made on the basis of seniority-cum-merit and no member of the service shall have any right for promotion merely on the basis of seniority. Rule 12 of the Rules states that *inter se* seniority of the members of the service shall be determined by the continuous length of service on a post counted from the date of appointment etc. As stated in *Ajit Singh II*, the seniority rule of continuous officiation is inter linked with the promotion rule based on equal opportunity and cannot be delinked. The promotion of the reserved candidates from the post of Master/Mistress was governed by roster points in Punjab, by the Circular dated 19.7.69 referred to in *Ajit Singh II* which stated that 'roster points are seniority points'. The writ petitioners (Master/Mistress) who belonged to the reserved category admittedly got promotion as Head Master/Head Mistress on the basis of such a roster. On

F

G

H

the date when the impugned order promoting the respondents was made (i.e. 3.7.1997), the law as laid down by this Court in *Ajit Singh's*, case (judgment dated 1.3.1996) was holding the field. The reserved candidates were therefore not entitled to claim benefit of continuous officiation in the promotional post from the date of their appointment to that post. [589-B-C-D-E] A

2. There is no need for Railways to revert reserved category officers, promoted even beyond 1.3.1996 but before 1.4.1997. But their promotions shall be deemed to be *ad hoc* as they were otherwise irregular and further their seniority in the promoted category shall have to be determined by following *Virpal* and *Ajit Singh I* as explained in *Ajit Singh II* as if they were not so promoted. If a reserved candidate was promoted to Level 4 before 1.4.1997, without considering the case of the senior general candidate who had reached Level 3 before such promotion such reserved candidate need not be reverted, but the said promotion to Level 4 is to be reviewed and seniority at Level 3 has to be refixed and on that basis promotion/seniority at Level 4 (as and when the general candidate is promoted to Level 4) is again to be refixed. The seniority of the reserved candidate at Level 4 will be refixed on the basis of when his turn would have come for promotion to Level 4, if the case of the senior general candidate was considered at Level 3 in due time. *Ajit Singh & Ors. v. State of Punjab*, [1999] Suppl. 2 SCR, relied on. [591-H; 592-A-C-D] B C D

Union of India v. Virpal Singh, [1995] 6 SCC 684 and *Ajit Singh Januja & Ors. v. State of Punjab*, [1996] 2 SCC 715, relied on. E

3. It cannot be accepted in view of *Sabharwal's* case that roster points have to be applied on vacancy basis and as and when vacancies arise, even if roster has exhausted itself. [590-D]

R.K. Sabharwal v. State of Punjab, [1995] 2 SCC 745, relied on. F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 316-317 of 1999 Etc. Etc.

From the Judgment and Order dated 8.10.98 of the Punjab and Haryana High Court in C.W.P. Nos. 10756 and 10759 of 1997. G

C.S. Vaidyanathan, Additional Solicitor General, H.N. Salve, Dr. Rajiv Dhawan, Raju Ramachandran, Hardev Singh, D.D. Thakur, L.G. Havnur, K. Parasaran, M.N. Rao, Rajiv K. Garg, Preetesh Kapur, Atul Sharma, N.D. Garg, Ms. Meenakshi Arora, Rajiv Dutta, Ms Enakashi Kulshreshtha, Uday Kumar, Kapil Sharma, Hemant Sharma, K.C. Kaushik, (D.S. Mehra) for Ms. Anil H

A Katiyar, Chand Kiran, Dr. K.S. Chauhan, E.C. Vidyasagar, Muqbal Chand, Prof. D.N. Sadashiv, A. Raghunath, A. Subba Rao, Anurag Mathur, Pradeep R. Tiwari, A. Mariarputham, Ms. Aruna Mathur, A.D.N. Rao, (R.S. Suri) (NP), Ms. Sushma Suri, Vijay Hansaria, Sunil K. Jain and Ajay Kumar Gupta for the appearing parties.

B The Judgment of the Court was delivered by

C **M. JAGANNADHA RAO, J.** In this judgment we shall deal with certain appeals relating to officers of the State of Punjab. We shall also deal with Interlocutory Applications Nos. 10-12/98 filed by the Railways and IAs 4-6 by the Union of India. We shall also deal with certain contempt applications and other Interlocutory applications.

I. C.A. Nos. 316-317/99

D The two appeals C.A.Nos. 316-317/99 have been preferred by the general candidates of Punjab against the judgment of the Punjab & Haryana High Court in CWPs 10756 of 1997 and 10759 of 1997 dated 8.10.1998. The High Court, in the judgment under appeal, followed *Jagdish Lal & Ors. v. State of Punjab*, [1997] 6 SCC 538 in preference to the judgment in *Ajit Singh Januja & Ors. v. State of Punjab*, [1996] 2 SCC 715, hereinafter called *Ajit Singh No. I*. The officers here belong to the Punjab Education Department and the contest is for the post of Principals governed by the Punjab Education Service (School and Inspection Cadre) (Class II) Rules, 1976.

E Today, we have delivered judgment in IAs 1 to 3 filed in *Ajit Singh* by the State of Punjab (C.As. 3792-94/89). That judgment will be described here as *Ajit Singh (II)* for convenience.

F The facts of these two Civil Appeals are as follows: C.W.P. No.10756/97 was filed by Ms. Gurbachan Kaur and 6 others (Head Mistresses) all belonging to the reserved category praying for a writ of certiorari to quash the promotion order dated 3.7.97 and for a mandamus seeking promotion of the said writ petitioners as Principals. Similarly, C.W.P. No. 10759 of 1997 was filed by Charan Singh and 9 others (Head Masters) all belonging to the reserved category for similar relief and also for promoting the writ petitioners in the place of the opposite party. They impleaded the appellants (general candidates) as respondents in the writ petition. The appellant Jatinder Pal Singh in CA No. 316 of 1999 was a respondent in C.W.P. 10759/97. The array of the parties shows that the writ petitioners (Head Masters/Head Mistresses)

(reserved category) were all working as Head Masters in 1997 while the non-official respondents (general candidates) were working as Senior Lecturer/Principal or as Deputy District Education Officers. The general candidates have come up in appeal because the High Court has followed *Jagdish Lal*.

So far as this department is concerned, the relevant rules are as follows. Under Rule 10 of the Class II Rules, the posts of Principal, Deputy District Education Officers, Senior Lecturers etc. are to be filled up by promotion in respect of 75% and 25% by direct recruitment. Under Class II Rules, 1976, Sub-clause (3) of Rule 10 states that all appointments to the posts shall be made on the basis of seniority-cum-merit and no member of the service shall have any right for promotion merely on the basis of seniority. Rule 12 of the Rules states that *inter se seniority* of the members of the service shall be determined by the continuous length of service on a post counted from the date of appointment etc. appendix B (Rule 9) specifies the required years of teaching experience as head of High/Higher Schools (i.e. Head Master/Head Mistress) or equivalent post. As stated in *Ajit Singh II*, the seniority rule of continuous officiation is interlinked with the promotional rule based on equal opportunity and cannot be delinked.

Admittedly, the promotion of the reserved candidates from the post of Master/Mistress to the post of Head Master/Head Mistress was governed by roster points in Punjab, by the Circular dated 19.7.69 referred to in our judgment in *Ajit Singh II* delivered today, which stated that 'roster points are seniority points'. The writ petitioners (Master/Mistress) who belonged to the reserved admittedly got promotion as Head Master/Head Mistress on the basis of such a roster. On the date when the impugned order promoting the respondents was made (i.e. 3.7.1997), the law as laid down by this Court in *Ajit Singh's* case (judgment dated 1.3.1996) was holding the field. Inasmuch as subsequently, on 7.5.97 the judgment of this Court in *Jagdish Lal* was delivered, the reserved candidates filed these two writ petitions which were allowed under the impugned judgment following *Jagdish Lal*.

In the light of our judgment in *Ajit Singh II* delivered today, it is clear that the respondents (writ petitioners) cannot rely on *Jagdish Lal*. The case is governed by *Ajit Singh I* as affirmed in *Ajit Singh II* both in regard to seniority and prospectivity based on *R.K. Sabharwal*, [1995] 2 SCC 745.

Therefore, the appeals are allowed and the writ petitions are dismissed subject to the principles laid down in *Ajit Singh II*. It will be for the State of Punjab to implement *Ajit Singh II* both in regard to seniority as stated in

A Points 1 to 3 therein and as to prospectivity of *R.K. Sabharwal* and *Ajit Singh I* as explained in Point 4 in *Ajit Singh II*. The respective cut off dates of *Sabharwal* and *Ajit Singh I* shall have to be adhered to as stated in *Ajit Singh II*.

II. I. As. 1-3 in C.P.Nos.148-150/97:

B

These IAs have been filed by the petitioner, *party-in person*, who is a reserved candidate, in the CPs which were disposed of on 17.3.1997. The petitioner was promoted as Superintendent Grade II on 10.7.87 while Rewa Singh (general candidate) was promoted as Superintendent Grade I on 3.3.89. Some more general candidates were promoted as Superintendents Grade I on 1.4.96. His grievance is about the above promotions of general candidates. (Petitioner has since been promoted as Superintendent Grade I in April, 1997).

C

The Contempt Petitions 148-150 of 1997 were dismissed by this Court on 17.3.97 stating that there was no contempt or breach of the interlocutory orders of this Court dated 9.8.94/16.10.95 passed in *Ajit Singh I*. In these IAs and in his written submissions petitioner contends that roster points have to be applied on vacancy basis and as and when vacancies arise, even if the roster has exhausted itself. This plea cannot be accepted in view of *Sabharwal*. Petitioner also relies on *Jagdishlal* which contention can no longer survive. There are thus no merits in these IAs. They are dismissed.

D

E

III. IAs. by Union of India : IAs 4 to 6 in IAs 1 to 3 in *Ajit Singh I*:

IAs 4 to 6 are filed by the Union of India in IAs 1 to 3 in CA Nos.3792-94/89 *Ajit Singh's* case. We have disposed of these IAs 1 to 3 filed by the State of Punjab for clarification by our judgment delivered today and described it as *Ajit Singh II*. The Union of India wants *Ajit Singh I* to be confirmed. That has been done. These IAs 4 to 6 stand disposed of.

F

IV. IAs. for impleadment:

IAs 7 to 9 in IAs 1 to 3 in *Ajit Singh I*:

G

IAs 7 to 9 are filed in IAs. 1 to 3 in CA Nos. 3792-94 of 1989 for impleadment of the All India Confederation of SC/ST Organisations. The IAs are allowed. Our Judgment in *Ajit Singh II* delivered today shall govern.

V. IAs by Railways:

H

IAs 10 to 12 in IAs 1 to 3 in *Ajit Singh I* : .

Seniority of roster point promotees will be governed by Virpal as explained in *Ajit Singh II*. A

→ IAs 10-12 of 1998 are by the Railways in IAs 1 to 3 in *Ajit Singh's* case. (On 18.1.1999, by mistake, it is shown that these IAs are allowed. We recall the said order and restore the IAs to file). The Railways want to say that *Union of India v. Virpal Singh*, [1995] 6 SCC 684 has not been correctly B decided. The same point was raised by the reserved candidates in the IAs 1 to 3 filed in *Ajit Singh's* case by the State of Punjab for clarification. We have dealt with this aspect in our main judgment in IAs 1-3/97 in *Ajit Singh II* and rejected the same. That will govern these IAs. In fact, admittedly C Railways have implemented Virpal as per their orders dated 28.2.97 in respect of selection and non-selection posts. Thus, there are no merits in these IAs 10-12 and they are liable to be dismissed. In other words, the question of seniority of the roster point promotees will be on the basis of what was decided in *Virpal* and *Ajit Singh I* and as explained under Points 1 to 3 in *Ajit Singh II*.

Prospectivity of Sabharwal and Ajit Singh I: D

So far as the 'prospectivity' based on Sabharwal is concerned, the decision on Point 4 of *Ajit Singh II* will apply.

So far as prospectivity of *Ajit Singh I* is concerned, our decision in *Ajit Singh II* will apply in principle but with a slight modification of the cut off date as stated above. E

It appears that in the Indian Railways which is a very huge organisation, after *Ajit Singh I* was decided, the said judgment could not be taken up for implementation immediately. Therefore, there were certain further promotions after 1.3.96 on the basis of the continuous officiation of the roster point promotees (reserved candidates) even though several general candidates had reached the promotional level before the reserved candidates moved further upwards. The Railways made a special plea through the learned Additional Solicitor General, Sri C.S. Vaidyanathan that such reserved candidates be not F reverted from the higher post if promoted before 1.4.97. G

We are acceding to this request made on behalf of the Railways as a special case but subject to a reservation - which was accepted by learned senior counsel. We agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1.3.96 but before 1.4.97. H

- A But their promotions shall have to be deemed *ad hoc* as they were otherwise irregular and further their seniority in the promoted category shall however have to be determined by following *Virpal* and *Ajit Singh I* as explained in *Ajit Singh II* as if they were not so promoted. To give an example - in the case of roster points at two Levels, i.e. from Level 1 to Level 2 and Level 2 to Level 3, if the reserved candidate was promoted before 1.4.97 to Level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate from Level 3 to Level 4 before 1.4.97, the senior general candidate at Level 2 had reached Level 3, he has to be considered as senior at Level 3 to the reserved candidate because the latter was still at Level 3 on that date. But if such a general candidate's seniority was ignored and the reserved candidate was treated as senior at Level 3 and promoted to Level 4, this has to be rectified after 1.3.96 by following *Virpal*, *Ajit Singh No.1* as explained in *Ajit Singh II*. In other words, if a reserved candidate was promoted to Level 4 before 1.4.97, without considering the case of the senior general candidate who had reached Level 3 before such promotion such reserved candidate need not be reverted, but the said promotion to Level 4 is to be reviewed and seniority at Level 3 has to be refixed and on that basis promotion/seniority at Level 4 (as and when the general candidate is promoted to Level 4) is again to be refixed. The seniority of the reserved candidate at Level 4 will be refixed on the basis of when his turn would have come for promotion to Level 4, if the case of the senior general candidate was considered at Level 3 in due time.
- E

Subject to the above, IAs 10 to 12 are dismissed.

VI. IAs by Karnataka Officers:

IAs 13 to 15 in IAs 1 to 3 in Ajit Singh I:

- F IAs 13 to 15/98 have been filed by certain officers of Karnataka State who are respondents in pending SLP (C) Nos.24115-16 of 1996. By an order dated 9.1.1998, this Court directed that the said SLPs be listed after the decision of the Constitution Bench. No orders are necessary in these IAs.
- G The Civil Appeal Nos. 316-317/99 and the IAs filed in CP.148-150/97 and the various other IAs filed in IAs 1 to 3 in *Ajit Singh I* are disposed of accordingly.

S.V.K.

Appeals and IAs disposed of.