

Harkishan Singh vs State Of Punjab & Ors on 25 March, 1971

Equivalent citations: 1971 AIR 1602, 1971 SCR 223, AIR 1971 SUPREME COURT 1602, 1971 LAB. I. C. 960

Author: A.N. Ray

Bench: A.N. Ray, C.A. Vaidyalingam

PETITIONER:
HARKISHAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS

DATE OF JUDGMENT 25/03/1971

BENCH:
RAY, A.N.
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RAY, A.N.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 1602 1971 SCR 223
1971 SCC (2) 58

ACT:
Punjab Civil Medical Service Class I (Recruitment and Conditions of Service) Rules, rr. 2(c) 5 and 9(3)-Direct recruitment to Selection Grade--If permitted by rules-Fixation of seniority in absence of rules. .

HEADNOTE:
The appellant and the third respondent were members of the Punjab Civil Medical Service, Class I. The second Respondent, who was serving abroad, was offered the post of Civil Surgeon in the Punjab Civil Medical Service and he joined the post of Chief Medical Officer in the Punjab Civil Medical Service, Class 1, temporarily. Applications for filling up the post permanently were invited through the. Public Service Commission, and the second respondent was selected and appointed. Thereafter, he was appointed in the Selection Grade of the Punjab Civil Medical Service. Ten day,. later, the appellant and the third respondent were

also appointed. to the selection Grade.

The appellant impeached the second respondent's appointment to the Selection Grade on two grounds: (1) that the appointment to the Selection Grade could only be by promotion from Punjab Civil Medical Service, Class 1, and not by direct appointment; and (2) even if the second respondent could be appointed direct to the Selection Grade his seniority should be below that of the appellant and the third respondent, on the ground that the appellant and the third respondent were senior to the second respondent in the time scale of Class I Service.

HELD:(1) The Service as defined in r. 2(c) of the Punjab Civil Medical Service Class I (Recruitment and conditions of Service) Rules, means the Punjab Civil Medical Service Class I and the Selection Grade is a part and parcel of the Punjab Civil Medical Service Class I Therefore, when r. 5 specifically speaks of appointment to the Service by direct recruitment it embraces both Class I and the Selection Grade. The word appointment means both by promotion and by direct recruitment and is used in that sense in relation to the selection grade in r. 5 and in relation to the total number of appointments to the service in r. 9(3). Direct appointment to Selection Grade is not only contemplated in rr. 5 and 9(3) but is also implicit in them. Further, the rules contemplate direct appointment to Selection Grade in proper cases when there are no suitable persons in Class I time scale who can be promoted to the Selection Grade. [226A; 228B-F]

(2) The second respondent's appointment to the post of Chief Medical Officer was in consultation with the Punjab Public Service Commission as contemplated by r. 3, but the seniority list of the Class I service to which the appellant and the respondents belonged was not fixed. Where there are no specific rules in regard to the fixation of seniority in the Selection Grade in the case of direct appointment, the second respondent, having been recruited earlier than the appellant and the third respondent, his seniority should not be disturbed. [228G; 229C-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 430 of 1970. Appeal by special leave from the judgment and order dated August 13, 1969 of the Punjab and Haryana' High Court in L.P.A. No. 288 of 1968.

Jagjit Singh Chawla, K. L. Mehta and S. K. Mehta, for the appellant.

H.L. Sibbal, Advocate-General, Punjab and R. N. Sachthey for respondent No. 1.

V.C. Mahajan, S. S. Khanduja and V. P. Kohlo, for respondent No. 2.

The Judgment of the Court was delivered by Ray, J.--This is an appeal by special leave from the judgment dated 13 August, 1969 of the High Court of Punjab and Haryana.

The appellant was appointed and confirmed in Punjab Civil Medical Service Class I with effect from 26 February, 1955. Respondent No. 3 Dr. S. S. Sekhon was confirmed in the same Class I service, on 28 February, 1955. The time scale salary of Class I service is Rs. 600-40-800-50-900 with efficiency bar at 800/-. A class I officer on promotion to the selection grade is entitled to Rs. 1000/-. Dr. Pritam Singh is a Fellow of the Royal College of Surgeons. He obtained qualifications in various post graduate medical courses in England and America. In 1961 he was serving the Government of Uganda in Africa at a salary of Rs. 3000/p.m. in a permanent pensionable post. The Punjab Government in the year 1961 offered him the post of Civil Surgeon in the Punjab Civil Medical Service. Dr. Pritam Singh expressed his willingness to accept the post at a suitable salary.

Respondent No. 2 Dr. Pritam Singh was appointed on 16 July, 1962 as Chief Medical Officer in the Punjab Civil Medical Service Class I in the scale of Rs. 800-50-1500 with a starting salary of Rs. 1000/- p.m. with such allowances as might be admissible under the rules. He joined the post with effect from 4 August, 1962. By an order of the Governor of Punjab dated 18 December, 1962 the post was directed to be in addition to the existing posts of Civil Surgeons both in the selection grade and ordinary grade. The Government of Punjab thereafter took steps of filling the post of the Chief Medical Officer, Chandigarh on a permanent basis through the Public Service Commission. A public notice inviting applications for the post was issued under the authority of the Commission in the month of April, 1963. Dr. Pritam Singh applied for the post. Neither the appellant nor respondent Dr. Sekhon applied for the post because they did not have the requisite qualification prescribed for the post. Dr. Pritam Singh was selected by the Punjab Public Service Commission. The order of appointment by the Governor was issued on 10 May, 1963. Dr. Pritam Singh was on probation for a period of two years with effect from the date on which he joined as Chief Medical Officer, namely, 4 August, 1962, and he was governed by the Punjab Civil Medical Service Class I Rules. On 30 August, 1963 a formal letter was issued to Dr. Pritam Singh that the Governor of Punjab in consultation with the Punjab Public Service Commission had allowed Dr. Pritam Singh the grant of higher starting pay of Rs. 1250/- p.m. on his appointment as Chief Medical Officer on a regular basis in the time scale of Rs. 800-50-1500 with effect from 17 April, 1963 as Principal Medical Officer, Chandigarh which was the name of the redesignated post of the Chief Medical Officer. On 9 December, 1965 Dr. Pritam Singh was confirmed with effect from 17 April, 1963 as Principal Medical Officer, Chandigarh.

On 20 October, 1966 the respondent Dr. Pritam Singh was appointed by the President of India in the selection grade of Punjab Civil Medical Service in the scale of Rs. 1300-50-1600 with effect from 20 October, 1966.

The appellant impeached the order dated 20 October, 1966 appointing the respondent Dr. Pritam Singh in the selection grade to be in violation of the, Punjab Civil Medical Service (Recruitment and Conditions of Service) Rules, 1940 on two broad grounds; first, that the appointment to the selection grade of Punjab Civil Medical Service could be only by promotion from Punjab Civil Medical Service

Class I and not by direct appointment, and, secondly, even if Dr. Pritam Singh could be appointed direct to the selection grade his seniority would be below that of the appellant and Dr. Sekhon.

When Dr. Pritam Singh was appointed to the selection grade he was placed at the bottom of the selection grade. The appellant and the respondent Dr. Sekhon were also appointed to the selection grade with effect from 1 November, 1966 10 days subsequent to the appointment of Dr. Pritam Singh. The appellant and Dr. Sekhon contended that they had been senior to Dr. Pritam Singh in the time scale of Class I Service and therefore the respondent Dr. Pritam Singh should not have been placed senior to them in the selection grade. 15-1 S.C. India/71 The Punjab Civil Medical Service, Class I (Recruitment and Conditions of Service) Rules are 17 in number. Rule 2(c) defines the service to mean, the Punjab Civil Medical Service Class I. Rule 3 states that all appointments to the service shall be made by the Government on the advice of the Commission from time to time as required. The other relevant Rules necessary for the purpose of the present appeal are rules 5, 6, 7(1), 8 and 9 which are as follows:-

"5. Appointment to the service shall be made either by promotion from the Class 11 service or by direct recruitment in India or in England and when any vacancy occurs or is about to occur, Government shall determine in what manner such vacancy shall be filled. Note: Except with the previous sanction of Government only such persons shall be eligible for direct appointment as are not already in Government service.

6.(1) The service shall consist of such number of posts of Civil Surgeons as may be determined by Government from time to time. (2) Not less than nine posts shall be filled by promotion from the Class 11 service.

Provided that recruitment by promotion shall be made by strict selection and no member of the Class 11 service shall have any claim to such promotions of right.

7. (1) Members of the service who are appointed against permanent vacancies shall on appointment remain on probation for a period of two years if recruited by direct appointment and one year if recruited otherwise than by direct appointment.

Explanation: Officiating service shall be reckoned as period spent on probation but no member of the service who is officiating in any appointment shall on the completion of his period of probation be entitled to be confirmed until he is appointed against a permanent vacancy.

8. The seniority of the members of the service shall be determined by the dates of their confirmation in the service :

Provided that if two or more members are confirmed on the same date:

(a) A member recruited by direct appointment shall be senior to a member recruited by promotion.

(b) in the case of members who are both or all appointed by promotion from the Class II service, seniority shall be determined according to the seniority of those members in that service and

(c) in all other cases Government shall decide the seniority.

9.(1) A member of the service shall on appointment be entitled to a pay of a scale rising from Rs. 600 a month by an annual increment of Rs. 40 a month to Rs. 800 a month and then by an annual increment of Rs. 50 a month to Rs. 900 a month with an efficiency bar at Rs. 800 a month. In addition a member if he is of non-Asiatic domicile shall be entitled to receive such overseas pay as may be prescribed by Government from time to time. (2) Members of the service shall be eligible for promotion to a selection grade and on such promotion shall be entitled to a pay of Rs. 1000 a month.

Provided that promotion to the selection grade shall be made strictly by selection and no member of the service shall be entitled as of right to such promotion.

(3) The number of appointments in the selection grade shall not exceed 25 per cent of the total number of appointments in the service,"

Counsel for the appellant contended that rule 9(2) which, stated that the members of the service shall be eligible for promotion to the selection grade meant that only the members of Class I service could be promoted to a selection grade and there could be no direct appointment to a selection grade. A direct appointment to the selection grade was said by the appellant to be an infraction of rule 9(2). The contention of the appellant with regard to rule 5 was that it spoke of appointment to the service either by Promotion from Class II or by direct recruitment and therefore there could be direct recruitment only to Class I service and not to the selection grade. It was emphasised that rule 5 did not specifically provide for direct appointment to selection grade.

Rule 9(2) does not contain any restrictive word that only members of the service shall be eligible to promotion to a selection grade. The proviso to rule 9(2) contains a word of limitation and it is that no member of the service shall be entitled as of right to such promotion. To exclude appointment to selection grade would be to rob rule 5 as well as rules 9(2) and 9(3) of their content because rule 5 speaks of appointment to the service to be either by promotion or by direct recruitment. Rule 9(2) speaks of eligibility of members of the service for promotion to the selection grade and rule 9(3) speaks of the number of appointments in the selection grade not to exceed 25 per cent of appointments in the service. The service as defined in rule 2(c) means the Punjab Civil Medical Service Class I. Selection grade is the Punjab Civil Medical Service Class I. That is not disputed. Therefore rule 5 which specifically speaks of appointment to the service by direct recruitment embraces Class I and the selection grade which is a part and parcel of Class I. The word 'appointment' in rule 9(3) in

regard to selection grade as not exceeding 25 per cent of the total number of appointments in the service contemplates both promotion and direct appointments in, the service to the selection grade. The word "appointment"

cannot mean only promotion. It means appointment both by promotion and by direct recruitment. That is why the word 'appointment' is used in that sense once in relation to selection grade and again in relation to the total number of appointments to the service. Direct appointment to selection grade is not only contemplated in the rules particularly rules 5, 9 (2) and 9 (3) but is also the implicit idea inherent in the words "direct recruitment and direct appointment" in Rule 5 for the purpose of attracting able and meritorious persons to the service including the selection grade. The fallacy in the appellant's contention is that though selection grade will be within the definition of the service in rule 2(c), wherever the word "service" occurs, in rules 5 and 9, the construction put upon the words 'service' is members of the service who are in Class I on time scale appointment and who alone can be promoted to the selection grade and that there cannot be any direct appointment to selection grade.

There is another reason as to why the rules contemplate direct appointment to selection grade in proper cases. If it appears that there are not suitable persons in Class I time scale who can be promoted to the selection grade persons of ability will have to be brought in to the selection grade from outside.

A contention was advanced by counsel for the appellant that rule 3 contemplated appointment by the Government on the advice of the Public Service Commission and that the appointment of Dr. Pritam Singh was not made on such advice. The recruitment of Dr. Pritam Singh to the post of Chief Medical Officer was in consultation with the Punjab Public Service Commission. That appointment was made in the month of May, 1963. Being a direct recruit he was on probation for two years. He was confirmed thereafter. His starting salary was higher and at the time of confirmation he was getting a salary of Rs. 1,250 p.m. in the scale of Rs. 800- 50-1500. Dr. Pritam Singh prior to his appointment to the selection grade in the Punjab Civil Medical Service Class I was getting a salary of Rs. 1,250 p.m. which was higher than the limit of time scale pay in Class I service.

The other contention on behalf of the appellant was that Dr. Pritam Singh should not have got seniority, over the appellant and the respondent Dr. Sekhon in the selection grade. Prior to the appointment of Dr. Pritam Singh to the selection grade the seniority list of Class I service to which the appellant and the two respondents belonged was not fixed because of representations made by various persons including the appellant and Dr. Sekhon. We are not called upon to go into the seniority list of Class I service because the only controversy now is with regard to the seniority list of the selection grade.

The appointment of Dr. Pritam Singh to the selection grade was earlier than that of the appellant and Dr. Sekhon. Therefore, there cannot be any cause for complaint on ground of seniority. When Dr. Pritam Singh was appointed to the selection grade his position was last in the list. That was on 20 October, 1966. The appellant and Dr. Sekhon were promoted to the selection grade 10 days thereafter and their position would be in the ordinary course below Dr. Pritam Singh. It would be

unjust to hold that the appellant and Dr. Sekhon would be put at a place higher than Dr. Pritam Singh, in the selection grade.

The High Court correctly expressed the view that there are no specific rules in regard to the fixation of seniority in the selection grade in the case of a direct appointment. If there are, no relevant rules with regard to fixation of seniority in the case of a direct appointment to the selection grade, Dr. Pritam Singh having been recruited by direct appointment earlier than the appellant and Dr. Sekhon, Dr. Pritam Singh's seniority cannot be disturbed. That will be unjust.

For these reasons, the appeal fails and is dismissed. The parties will pay and bear their own costs.

V.P.S.

Appeal dismissed.