

J.C. Yadav & Ors vs State Of Haryana & Ors on 20 February, 1990

Equivalent citations: 1990 AIR 857, 1990 SCR (2) 470, AIR 1990 SUPREME COURT 857, 1990 (2) SCC 189, 1990 LAB. I. C. 727, (1990) 1 JT 278 (SC), 1990 (1) JT 278, (1990) 1 CURLR 500, (1990) 2 UPLBEC 898, (1990) 2 LABLJ 138, 1990 UJ(SC) 1 636, (1990) 1 LAB LN 732, (1990) 1 SERVLR 860, (1990) 60 FACLR 523, 1990 SCC (L&S) 218

Author: K.N. Singh

Bench: K.N. Singh, T.K. Thommen, N.M. Kasliwal

PETITIONER:

J.C. YADAV & ORS.

Vs.

RESPONDENT:

STATE OF HARYANA & ORS.

DATE OF JUDGMENT 20/02/1990

BENCH:

SINGH, K.N. (J)

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SINGH, K.N. (J)

THOMMEN, T.K. (J)

KASLIWAL, N.M. (J)

CITATION:

1990 AIR 857 1990 SCR (2) 470

1990 SCC (2) 189 JT 1990 (1) 278

1990 SCALE (1) 229

CITATOR INFO :

R 1990 SC1069 (5,6,7)

ACT:

Haryana Service of Engineers Class I PWD (Public Health Branch) Rules, 1961: Rule 22--Power of Government to relax requirement of any of the Rules-Scope and interpretation of--Meaning of expression "in any particular case"---Whether power to grant relaxation may be exercised in case of an individual to remove hardship caused to him or to a number of individuals who all may be similarly placed-Relaxation of requirement of Rule 6(b) granted to a group of individuals to meet a particular situation--Validity of.

Words and Phrases-- 'In particular case'--Meaning of.

HEADNOTE:

The appointment and promotion to Class I Engineering Service in the State of Haryana are regulated by the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules, 1961. Rule 5 provides for appointment to Class I Service, inter alia, by promotion from Class II Service. Rule 6(b) prescribed that no person shall be promoted unless he has completed eight years service in Class II and has passed professional examination to the department. Rule 22 confers power on the Government to relax any of the Rules it may consider necessary.

The appellants and the contesting respondent were members of the Haryana Service of Engineers Class II in the Public Health Branch. In 1971 the appellants were promoted to the post of Executive Engineers in the cadre of Class I service on ad hoc basis while the respondent was not considered for promotion. Later, a Committee constituted under Rule 8 for selecting suitable candidates for promotion to Class I post, considered the names of the appellants and the respondent but did not find the respondent suitable. Hence it included the appellant's names only in the select list. The appellants did not possess the requisite minimum period of service of 8 years in Class II service but since no other suitable candidates were available, the Committee recommended to the Govt. for granting relaxation to the appellants. The State Public Service Commission approved the recommendations. The State Government accepted the recommendations and appointed the appellants to Class I service by a Notification dated May 3, 1973.

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The contesting respondent filed a Writ Petition before the High Court challenging the validity of the appellants' promotion on the ground that since the appellants did not possess the requisite qualification for promotion to Class I Service their promotions were contrary to rules.

A Single Judge of the High Court dismissed the petition holding that since the Government had relaxed Rule 6(b) in appellants' favour, their promotions were sustainable in law. On appeal, the Division Bench quashed the appellants' promotion on the ground that the State Government had no authority in law to grant relaxation to the appellants under Rule 22 in a general manner as the power of relaxation could be exercised only in individual cases to mitigate hardship caused to an individual. Hence the appeal by special leave. Allowing the Appeal, this Court,

HELD: 1. Power to grant relaxation may be exercised in case of an individual to remove hardship being caused to him or to a number of individuals who all may be similarly placed. This power may also be exercised to meet a particu-

lar situation where on account of the operation of the rules hardship is being caused to a set of individual officers. [477G-H]

2. I Rule 22 of the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules 1961 confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case. If the Rules cause undue hardship or operate in an inequitable manner, the State Government has power to dispense with or to relax the requirement of Rules. The Rule does not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of Rules to meet a particular situation. [477A-B]

2.2. The expression "in any particular case" does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression "particular" means "peculiar or pertaining to a specified person--thing--time or place--not common or general". The meaning of the word 'particular' in relation to law means separate or special, limited or specific. The word 'case' in ordinary usage means

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'event', 'happenings', 'situation', 'circumstances'. The expression 'case' in legal sense means 'a case'. 'suit' or 'proceeding in Court or Tribunal'. Having regard to these meanings the expression 'in any particular case' would mean in a particular or pertaining to an event, situation or circumstance. [477C-D]

2.3. Rule 22 postulates relaxation of Rules to meet a particular event or situation, if the operation of the Rules causes hardship. '[he Scope of the said Rule is wide enough to confer power on the State Government to relax the requirement of Rules in respect of an individual or class of individuals to the extent it may consider necessary dealing with the case in a just and equitable manner. [477E-F]

2.4 The power of relaxation is generally contained in the rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation, the Government has power to relax requirement of rules. The state Government may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the service of requisite officers. The relaxation even if granted in a general manner would enure to the benefit of individual officers. [477F-G]

2.5 Rule 22 is a beneficial one. It must be construed in

a liberal manner and should not be interpreted in a manner to defeat the very object and purpose of such power. A narrow construction would nullify Government's power of relaxing rules of meet a particular situation. [480C]

Jit Singh & Ors. v. State of Punjab & Ors., [1979] 3 SCR 194 differed;

Ashok Gulati v. B.S. Jain, AIR 1987 SC 424 referred to.

In the instant case, the non-availability of Class II officers in Engineering Department possessing the necessary and prescribed qualifications for promotion to Class I posed a problem for the State Government, as on account of the large scale expansion of Engineering Department a number of posts in Class I service were lying vacant. A similar situation prevailed in the Building and Road Branch of Public Works Department. In the circumstances, the State Government with a

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view to meet the particular situation decided to relax the qualifying length of service to such officers who had completed four years of service in Class II. It, therefore, relaxed the requirement of Rule (b) to the extent that a member of Class II service having four years service was qualified for being considered for promotion in Class I service. These facts would clearly show that the relaxation had been granted to particular individuals with a view to meet the situation which was in public interest. There is no legal infirmity in the order of relaxation. [478D-F]

3. I If power of relaxation is exercised on extraneous consideration for oblique purposes or mala fide, the Court has power to strike down the same, but bona fide exercise of power of relaxation to meet a particular situation cannot be held to be arbitrary or illegal. [479A]

3.2 Since the appellants were found suitable for promotion by the screening committee, the Commission and the State Government, and as the contesting respondent was not found suitable even otherwise for promotion, the State Government granted relaxation of Rule (b) in favour of the appellants. In such a situation, it cannot be said that the power of relaxation under Rule 22 was exercised arbitrarily or that it caused hardship to any one. In the absence of relaxation, there could be no promotion to the post of Executive Engineer and the officers who were found suitable would have suffered great hardship. Therefore, the State Government with a view to meet the particular situation exercised its power of relaxation in appellants' favour. Having regard to the facts and circumstances of the case, there is no illegality in the appellants' promotion, pursuant to the relaxation granted by the State Government. [480D-E; G-H]

Ashok Gulati v. B.S. Jain, AIR 1987 424; Jit Singh & Ors. v. State of Punjab & Ors., [1979] 3 SCR 194 and Ram Sarup v. State of Punjab, [1979] 1 SCC 168 referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1009 of 1980.

From the Judgment and Order dated 15.1.80 of the Punjab and Haryana High Court in L.P.A. No. 592 of 1975. P.P. Rao and Jitender Sharma for the appellants. Rajinder Sachhar, Govind Mukhoty, Dr. Shankar Ghosh, S.C. Mohanta, Mahabir Singh, T.C. Sharma, P.P. Singh, S.K. Verma, C.M. Nayyar and C.V.S. Rao for the Respondents. The Judgment of the Court was delivered by SINGH, J. This appeal by special leave is directed against the order of the High Court of Punjab and Haryana dated 15th January, 1980 quashing the Notification dated 3rd May, 1973 issued by the State Government of Haryana promoting the appellants to the Haryana Service of Engineers Class I post (Public Health Branch).

The facts giving rise to this appeal are that the appellants S/Sh. J.C. Yadav, B.R. Batra, O.P. Juneja, S.L. Chopra, M.S. Miglani, C.P. Taneja, Surjit Singh and V.P. Gulati and respondents Vyas Dev were members of the Haryana Service of Engineers Class II in the Public Health Branch. Members of the Class II service are eligible for promotion of Class I posts in accordance with the provisions of the Haryana Service of Engineers Class 1 Public Works Department (Public Health Branch) Rules 1961 (hereinafter referred to as 'the Rules'). In 1971 the appellants were promoted to the post of Executive Engineers in the cadre of Class 1 on ad-hoc basis while Vyas Dev respondent was not considered for promotion. He made representation but nothing came out in his favour. Later a Committee was constituted under Rule 8 for selecting suitable members of Class 12 service promotion to Class I post. The Committee considered the case of appellants and Vyas Dev respondent, but it did not find the respondent suitable for promotion, his name was not included in the select list prepared by the Committee while the names of the appellants were included therein. The Selection Committee's recommendation was approved by the Public Service Commission and it was forwarded to the State Government. Since the appellants did not possess the requisite minimum period of service of eight years in Class II service as required by Rule 6(b) and as no other suitable candidates were available, the Selection Committee made recommendation to the State Government for granting relaxation to the appellants. The Committee's recommendation was reiterated by the Public Service Commission. The State Government accepted the recommendations and appointed the appellants to Class I service by the Notification dated May 3, 1973.

Vyas Dev, respondent challenged validity of the appellants' promotion by means for a writ petition under Article 226 of the Constitution before the High Court of Punjab and Haryana on the ground that the appellants did not possess requisite qualification for promo-

tion to Class I service, therefore their promotions were contrary to Rules. His further grievance was that he was not considered along with the appellants for promotion and he was not afforded opportunity of hearing before he was superseded. A learned single Judge of the High Court dismissed the petition on the finding that the Selection Committee had considered the case of Vyas Dev along with the appellants for promotion but he was not found suitable. As regards the appellants' promotions the learned Judge held that since the State Government had relaxed Rule

6(b) in their favour their promotions were sustainable in law. The learned Judge further held that no personal hearing was necessary to be afforded to Ved Vyas before his supersession. On appeal by the respondent a Division Bench of the High Court set aside the order of the single Judge and quashed the appellants' promotions on the sole ground that the State Government had no authority in law to grant relaxation to the appellants under Rule 22 in a general manner, as the power of relaxation could be exercised only in individual cases to mitigate hardship caused to an individual. On these findings the Division Bench set aside the appellants' promotions. The appointment and promotion to Class I Engineering Service in the State of Haryana are regulated by the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules 1961. Initially these Rules had been framed by the Governor of Punjab before the formation of the Haryana State. There is no dispute that subsequently the State of Haryana had adopted these Rules and the recruitment to Class I service of Engineers in PWD (Public Health Branch) is regulated by the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules, 1961 as amended from time to time. Rule 5 provides for appointment to Class I service by direct appointment, by transfer of an officer already in service of the State Government or of the Union Government, or by promotion from Class II Service. Rule 6 prescribes qualifications for appointment to Class I service. The relevant provisions of the Rule are as under:

"6. Qualifications: No person shall be appointed to the service, unless he:

(a) possesses one of the University Degree or other qualifi-

cations prescribed in Appendix 8 of these rules:

Provided that Government may waive this qualification in the case of particular officer belonging to Class II Service:

(b) in the case of an appointment by promotion from Class II Service, has eight years completed Class II and has passed the professional examination of the department Rule 8 provides for constitution of the Committee for making selection for appointment to Class I service by promotion.

The Committee is required to prepare a list of officers suitable for promotion on the basis of the criteria of merit and suitability with due regard to seniority. Rule 9 lays down, field of eligibility as well as criteria for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. Rule 15 provides for departmental examinations, according to this Rule the officers appointed to the Service, Unless they have already done so, shall pass such departmental examination and within such period as may be prescribed by the Government. The Rule confers power on the Government to prescribe for any other test in addition to the departmental examination for promotion or appointment to any rank in the service. Rule 22 confers power on the Government to relax any of the Rules as it may consider necessary. There is no dispute that none of the appellants had completed eight years' service in Class II service as required by Rule 6(b) and as such they were not eligible for promotion to the post of Executive Engineer. On the recommendation of the Selection Committee and with the approval of the Public Service Commission the

State Government re- lax ed the requirement of eight years' service so far as the appellants were concerned. Consequently, the appellants were promoted and appointed as Executive Engineers under the Notification dated 3rd May, 1973.

The sole question for consideration is whether the relaxation granted by the State Government in favour of the appellants is valid. Rule 22 which confers power on the Government to relax requirement of Rules, is as under:

"Rule 22. Power to relax Where Government is satisfied that the operation of any of these Rules causes undue hardship to any particular case, it may by order dispense with or relax the requirements of that Rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner.

The Rule confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the Rules cause undue hardship or Rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of Rules. The Rule does not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of Rules to meet a particular situation. The expression "in any particular case" does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression "particular" means "peculiar or pertaining to a specified person--thing--time or place--not common or general". The meaning of the word particular in relation to law means separate or special, limited or specific. The word 'case' in ordinary usage means 'event', 'happening', 'situation', 'circumstances'. The expression 'case' in legal sense means 'a case', 'suit' or 'proceeding in Court or Tribunal'. Having regard to these meanings the expression 'in any particular case' would mean; in a particular or pertaining to an event, situation or circumstance. Rule 22 postulates relaxation of Rules to meet a particular event or situation, if the operation of the Rules causes hardship. The relaxation of the Rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of Rule is wide enough to confer power on the State Government to relax the requirement of Rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a times strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax

requirement of Rules. The State Government may in exercise of its powers issue a general order relaxing any particular Rule with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would enure to the benefit of individual officers.

The State of Haryana was formed in March, 1966 prior to that it was part of the State of Punjab. The service rules relating to Public Works Department as applicable to the State of Punjab were made applicable to Haryana. Rule 6(b) which prescribed qualification for appointment to Class I service lays down that no person shall be appointed to the service by promotion from Class II service unless he has completed eight years' service in Class II and has passed departmental examination prescribed under Rule 15. None of the appellants had completed eight years' service in Class II. In fact no other member of Class II service possessing the requisite qualifications was available for selection to Class I post. The respondent no doubt possessed the requisite qualification with regard to the eight years length of service in Class II but he did not possess requisite educational qualification. Thus no qualified officer of Class II service was available for promotion to Class I service although a number of vacancies were existing in Class I service. Having regard to these facts the Selection Committee made recommendation for the relaxation of Rule 6(b) in favour of the appellants, who were found otherwise suitable. The Public Service Commission also agreed with the recommendation made by the Selection Committee. The non-availability of suitable Class II officers in Engineering Department possessing the necessary and prescribed qualifications for promotion to Class I posed a problem for the State Government, as on account of the large scale expansion of Engineering Department a number of posts in Class I service were lying vacant. A similar situation prevailed in the Building and Road Branch of Public Works Department. In the circumstances, the State Government with a view to meet the particular situation decided to relax the qualifying length of service to such officers who had completed four years of service in Class II, it therefore relaxed the requirement of Rule 6(b) to the extent that a member of Class II service having four years' service was qualified for being considered for promotion to Class I service. These facts would clearly show that the relaxation had been granted to particular individuals with a view to meet the situation, which was in public interest. We find no legal infirmity in the order of relaxation. In *B.S. Bansal v. State of Punjab and Ors.*, [1978] 2 SLR 553 a Bench of the Punjab and Haryana High Court held that if the power of relaxation could be exercised in order to meet a general situation, then the whole purpose of the Rule would be frustrated and the Government would be armed with an arbitrary power which could cause great hardship to some officers. We have already referred to the relevant facts which show that in the instant case, power of relaxation was exercised by the State Government to meet a particular situation, it did not result into any injustice or cause hardship to any one. If power of relaxation is exercised on extraneous consideration for oblique purposes or mala fide, the court has power to strike down the same but exercise of power of relaxation to meet a particular situation cannot be held to be arbitrary or illegal. In *B.S. Jain v. State of*

Haryana, [1981] 1 SLR 233 the High Court set aside the promotions made in pursuance of the relaxation granted under Rule 22 placing reliance on the decision of the Division Bench in B.S. Bansal's case. On appeal, this Court in *Ashok Gulati v. B.S. Jain*, AIR 1987 SC 424 observed that the findings of the High Court that the State Government could not have relaxed the condition of passing the departmental professional examination by taking recourse to Rule 22 which conferred power of relaxation on the State Government could hardly be sustained. In *Jit Singh & Ors. v. State of Punjab & Ors.*, [1979] 3 SCR 194 the State Government's order granting relaxation under Rule 14 of the Punjab Police Service Rules 1959 in respect of the period of service, was questioned. Rule 14 was almost identical in terms as Rule 22 of the instant case. In *Jit Singh's* case (supra) promotion of Inspectors to the post of Deputy Superintendent of Police was involved. Under the Police Service Rules 1959 a Police Inspector having six years' continuous service was eligible for promotion to the post of Deputy Superintendent of Police. The State Government in exercise of its power under Rule 14 granting relaxation to Inspectors who had been found fit for promotion, as a large number of vacancies had occurred in the cadre of Deputy Superintendent of Police and no suitable persons having the requisite period of service were available. Promotions made pursuant to the relaxation were challenged before the High Court. The High Court dismissed the writ petition on the ground that the petitioners before it were not qualified for promotion. On appeal before this Court, the High Court's judgment was upheld. This Court took the view that since the appellants before it were not eligible for promotion as their names were not included in the Select List prepared by the Public Service Commission and further as they had not completed six years' of continuous service prior to the respondents, they were not entitled to any relief. The appeal was accordingly dismissed by this Court. While considering the question of validity of relaxation, the Court made observation that Rule 14 did not permit any general relaxation of the nature ordered by the State Government. The Court, however, did not examine the matter in detail as it was of the view that since the appellants in that case were not eligible for promotion they could not question the validity of the appointment of those who had been promoted on the basis of relaxation being granted by the State Government. The Court upheld the promotions in view of the extraordinary situation in which the State Government made appointments in derogation of requirement of Rules. On a careful scrutiny of the Rules in its various aspects we do not agree with the observations made in *Jit Singh's* case (supra). Though Rule 22 is not happily worded, as apparently it gives an impression that no general relaxation can be granted by the State Government, out on a close scrutiny of the scope of the power we find that a narrow construction of the Rules would nullify the Government's power of relaxing Rules to meet a particular situation. Rule 22 is beneficial in nature it must be construed in a liberal manner and it should not be interpreted in a manner to defeat the very object and purpose of such power. Power to grant relaxation may be exercised in case of an individual to remove hardship being caused to him or to a number of individuals who all may be similarly placed. This power may also be exercised to meet a particular situation where on account of the operation of the

Rules hardship is being caused to a set of individual officers. In the instant case the appellants were found suitable for promotion by the screening committee, the Commission and the State Government, and the contesting respondent Yvas Dev was not found suitable even otherwise for promotion, the State Government granted relaxation of Rule 6(b) in favour of the appellants. In such a situation, it is beyond comprehension that the power of relaxation under Rule 22 was exercised arbitrarily or that it caused hardship or injustice to any one. On the formation of the new State of Haryana no promotion from Class II officers could be made to Class I service without granting any relaxation since 1966 to 1978. In 1971-72 eleven vacancies in the post of Executive Engineers were filled by promotion from Class II officers although none of them had completed requisite period of service prescribed by the Rules for promotion. In 1976-77 and 1977-78 sixteen and nine vacancies respectively in the post of Executive Engineers were filled by promotion by granting relaxation as no officer of Class II service possessing requisite number of years of service was available for promotion. In 1978-79 seven officers of Class II service were promoted to the post of Executive Engineer but only one of them possessed the requisite period of service and all others were granted relaxation. These facts clearly show that in the absence of relaxation there could be no promotion to the post of Executive Engineer and the officers who were found suitable would have suffered great hardship. In 1973 also the State Government with a view to meet the particular situation exercised its power of relaxation in appellants' favour. Having regard to these facts and circumstances, we find no illegality in the appellants' promotions, pursuant to the relaxation granted by the State Government.

In Bansal's case (supra) the High Court, and even in Jit Singh's case (supra) this Court did not set aside the promotions made by the Government pursuant to relaxation of Rules on the ground that the petitioner who challenged the promotions was himself not qualified, and he had no legal right to hold the post in dispute, although in both these cases Government's order granting general relaxation was held to be outside the scope of Rule 22 and Rule 14 of the Punjab Police Service Rules 1959. In the instant case the High Court has set aside the appellants' promotions following Bansal's case interpreting Rule 22 but it failed to notice that in that case the High Court did not set aside the promotions instead it dismissed the petition on the ground that the petitioner therein was not qualified and none of his rights were affected. The High Court failed to notice that Vyas Dev respondent was considered for promotion but he was not found suitable, therefore he was not entitled to any relief. Since no legal right of the respondent was adversely affected the High Court should not have quashed the appellants' promotions.

On behalf of the appellants an alternative submission was made that since the appellants had already completed eight years' of service in Class H service during the pendency of the writ petition their appointment stood regularised. To support this submission reliance was placed on the decision of this Court in *Ram Sarup v. State of Punjab*, [1979] 1 SCC 168. In that case appointment to the post of

Labour-cum-Conciliation Officer was made in breach of Rule 4 Clause (I) of the Punjab Labour Service Class I and II Rules 1955 as Ram Sarup did not possess five years' experience, required by sub-clause (I) of Rule 4, In spite of that he had been appointed to the post of Labour-cum-Conciliation Officer. Subsequently, Ram Sarup was reverted on the ground that he was not qualified to be appointed as a Labour-cum- Conciliation Officer as he did not possess the minimum qualification of length of service. This Court held that the appointment of Ram Sarup made in breach of Rules was irregular, but not wholly void and since Ram Sarup had completed five years of experience of working of labour laws before his reversion, his appointment to the post of Labour-cum- Conciliation Officer stood regularised with effect from the date he completed five years of service. On these findings order of reversion was set aside by this Court. Undisputedly, the appellants completed eight years of service before January 15, 1980, the date on which the Division Bench of the High Court set aside their promotions. In view of the principles laid down in Ram Sarup's case (supra) the appellants' appointment, even if irregular, stood regularised on the date they completed eight years of their service and thereafter their promotions could not be set aside. We accordingly allow the appeal, set aside the judgment and order of the Division Bench dated 15.1.1980 and restore the order of the learned single Judge dismissing the respondents' writ petition. There will be no order as to costs.

N. P. V.
allowed.

Appeal allowed.