

Haryana State Electricity Board vs State Of Punjab And Haryana And Ors. on 17 April, 1972

Equivalent citations: AIR1972SC2516, 1973LABLC1, (1974)3SCC96

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Bench: A.N. Grover

JUDGMENT

A.N. Grover, J.

1. This is an appeal by Special Leave from a Judgment of the Punjab & Haryana High Court. One of the main points relates to the interpretation of Rule 7A of the Punjab Service of Engineers (Electricity Branch) (Conditions of Service) Rules, 1939 (hereinafter called the Rules).

2. The facts may be set out. On April 10, 1948 Respondent No. 21 Pritam Singh was appointed as an Apprentice Engineer (Electricity Department). On February 28, 1949, he was appointed as an Assistant Engineer Class II. On November 19, 1952, he was confirmed as an Assistant Engineer Class II. Respondents Nos. 3 to 17 (wherever the word Respondents is used hereafter it will refer to them and Respondent No. 20) joined as Assistant Engineers Class II and were admittedly confirmed after Pritam Singh was confirmed. In July, 1953 Respondents Nos. 3 to 9 with the exception of Respondent No. 6, K. S. Bharadwaj, who came on integration from the erstwhile PEPSU State, were selected and appointed as officiating Assistant Engineers Class I (Junior). This was done in consultation with the Punjab Public Service Commission. In September, 1953, Respondents Nos. 10 to 13 and in March 1954 Respondents Nos. 14 to 17 and Respondent No. 20 were similarly selected and appointed as officiating Assistant Engineers Class I (Junior). According to the present appellant, Pritam Singh was also considered for selection and promotion on all the three occasions but was superseded on the ground of unsuitability. It is alleged that no representations were made by him against his supersession. Respondents Nos. 3 & 4, R. D. Gupta and T. S. Virdi were appointed as officiating Executive Engineers on 14-10-1955 and 5-11-1955 respectively. They were confirmed as Executive Engineers on June 13, 1961 with effect from 7th February, 1958 and September 18, 1960.

3. On April 10, 1956, Pritam Singh was selected and appointed as an officiating Assistant Engineer Class I (Junior). On July 15, 1956, he made a representation for the first time against his supersession and loss of seniority. This representation was rejected by the Government in September, 1956. On November, 1956 the erstwhile States of Punjab and PEPSU were merged and the new State of Punjab was constituted under the provisions of the States Re-organisation Act 1956. Punjab Service Integration Rules 1957 were framed under Article 319 of the Constitution. A joint

seniority list was prepared and according to the appellant, it was circulated in the year 1958. It was, however, not gazetted until April 29, 1956 owing to various objections and other matters which had to be decided by the Central Government.

4. On May 9, 1957, Pritam Singh submitted another memorial to the Governor of the State against his supersession for selection and promotion to the post of officiating Assistant Engineer Class I (Junior) but it was rejected. On March 3, 1958 Respondent No. 20 was appointed as officiating Executive Engineer. All the other Respondents were also promoted as officiating Executive Engineers before Pritam Singh was promoted as such on June 9, 1959. However, on March 21, 1958 Respondents Nos. 3 to 16 including Pritam Singh were confirmed by one composite Order as Assistant Engineer Class I (Junior) w.e.f. September 1, 1956. In that Order the name of Pritam Singh was shown below the other Respondents. Respondent No. 17 was confirmed in that post by an order dated 13-1-1960 with effect from 1-9-1956. On July 18, 1958, Pritam Singh made a representation which according to the appellant was given full consideration and was even referred to the Punjab Public Service Commission for its opinion and advice. This representation seems to have been rejected in November, 1959. The order of rejection of that representation was communicated to Pritam Singh on November 30, 1959. On June 13, 1961 Respondents Nos. 3 to 5 were confirmed as Executive Engineers with effect from February 7, 1958, September 18, 1960 and November 4, 1960 respectively. On June 1, 1963 Respondents Nos. 6 to 11 were confirmed as Executive Engineers w.e.f. various dates in the year 1961. On April 22, 1964 Respondents Nos. 12 to 14, 17 and 20 were confirmed as Executive Engineers w.e.f. various dates in the years 1962 and 1963. Pritam Singh and Respondent No. 16 were confirmed as Executive Engineers w.e.f. January 1, 1966. Respondent No. 16 was also confirmed as Executive Engineer subsequent to them but w.e.f. December 17, 1963.

5. On March 11, 1966, Respondent No. 3, R. D. Gupta was promoted as officiating Superintending Engineer. On March 23, 1966, Respondent No. 4, T. S. Viridi was promoted in the same capacity. On April 29, 1966, the inter se seniority of officers of the old States of Punjab & Pepsu was gazetted as stated before. In May, 1966, Pritam Singh filed a petition under Article 226 of the Constitution out of which the appeal has arisen.

6. At this stage it is necessary to refer to the rules by which the service of the Respondents was governed at the material time. Rule 2(a) defines "the Service" to mean the Punjab Service of Engineers in the Electricity Branch. According to Rule 3, the cadre of "the service" was to be as set out in Appendix 'A' which could be -altered from time to time by the Government. Rule 5 dealt with probation. Rules 7 and 7A are set out below:

7 (1) Except as provided in Rule 7-A. The Seniority of members of the Service shall be determined as follows:

(a) Members appointed to a higher scale of pay shall be senior to those appointed to a lower scale.

(b) In the case of members appointed to posts on the same scale of pay seniority shall be determined, in the first instance, by the date on which they joined their posts in

that scale of pay, provided.

(i) that if two or more members appointed to posts on the same date, the older member shall be considered senior to the other, unless the younger member has been first confirmed in the Service, in which case the younger member shall be considered senior to the older, and

(ii) *** Rule 7-A. The order of Seniority of members of the service serving in any class of appointment specified in Appendix 'A' and appointed substantively to a post in the service on or after the 17th November 1948, shall be determined as follows:

Firstly: Those who have been confirmed in such class, according to their respective dates of confirmation provided that where two or more members were confirmed on the same date, they shall retain the order in which they stood with respect to each other immediately prior to confirmation:

Secondly: Those who have not been confirmed in the order of their dates of appointments or if such dates be the same for two or more members, in the order of the salaries allowed to them on such date, the higher paid being placed above the lower paid, or if both the date of appointment and the salary be the same, in the order of age, the older being placed above the younger.

Provided that the members of the Service and holders of Subordinate posts in the Electricity Branch (hereinafter referred to as "Subordinates") who are promoted whether substantively or temporarily to the posts in the same class shall take rank, inter se, according to their relative seniority in the class or classes from which they were promoted unless it be that a member or subordinate is substantively promoted earlier than another member or subordinate who is senior to him and has been passed over on the score of inefficiency in which case the member or subordinate first promoted shall take rank in the higher class above such other member or subordinate if and when the latter is promoted to the same class.

Note: The relative seniority of members or subordinates serving in different classes prior to promotion shall be determined by Government. If any doubt arises whether two or more posts are in the same class, the matter shall be decided by Government.

Provided further that member of the service who is reduced to a post in a lower class shall take such rank in such class as may be ordered by Government.

(2) Promotion to posts on a higher scale of pay will not be made on consideration of seniority alone but by selection.

7. The controversy before the High Court centered on a true interpretation of Rule 7-A which admittedly applies for the purpose of determination of seniority to Pritam Singh and the

Respondent. The case of Pritam Singh was that for the purpose of determining seniority among the engineers confirmed as Assistant Engineers Class I (Junior) the seniority in Class II had to be seen. Under Rule 7-A Firstly, in respect of those who were confirmed in the same class on different dates, it would be those dates which would govern their seniority but where two or more members were confirmed on the same date as was admittedly the case of all the Engineer Respondents including Pritam Singh, their seniority was to be regulated by their position in Class II. In other words, reading clause Firstly of Rule 7-A with the proviso which follows clauses firstly and secondly and which governs both the clauses, the seniority in Class II was to be reflected in Class I irrespective of the dates of selection and promotion in officiating appointments. On the other hand, it has been maintained on behalf of the appellant that clause Firstly provides that where two or more members are confirmed on the same date, they shall retain the order in which they stood with respect to each other immediately prior to confirmation. Rule 7(i) (b) has then to be looked at. According to that rule the date of officiating appointment in the higher post will govern the position in the seniority list. To put it differently, the position or relative seniority in Class II is not the governing factor for determining seniority in Class I, but it will be the date of officiating appointment in Class I, which will regulate the seniority of the members of the service. The clear language of the proviso according to which the relative seniority in the class or classes from which the Engineers were promoted has been sought to be explained on behalf of the appellant by suggesting that the proviso is not at all applicable to clause Firstly and further that the proviso deals with a situation where the seniority has to be determined between the members of the service and the holders of subordinate posts in the Electricity Branch who were promoted therefrom to the service.

8. The High Court was clearly of the view that the proviso dealt with inter se seniority of two categories of persons viz. members of the service and holders of subordinate posts when they were promoted. On their promotion both the categories were to retain their seniority as it obtained in the Class from which they were promoted. The proviso was thus not restricted to the fixing the inter se seniority between the members of the service and the subordinates. Such an interpretation would also restrict the application of the proviso to fixation of seniority inter se between the two categories upto Class II only. On the question whether the seniority of the members of the service would depend on their promotion in officiating capacity, the High Court found that the rule had not been interpreted uniformly even by the authorities concerned in that manner.

9. In our judgment, the question of seniority between Pritam Singh and the Respondents had to be determined with reference to Rule 7-A which was applicable to them as they were substantively appointed to a post in the service after November 17, 1948. Rule 7-A deals with those who have been confirmed in a particular class and those who have not been confirmed. Clause Firstly relates to those who have been confirmed in a particular class. The proviso appearing in that clause makes it clear that where two or more members are confirmed on the same date, they shall retain the order in which they stood with respect to each other immediately prior to confirmation. Clause Secondly, deals with members of the service who have not been confirmed. In the present case we are not concerned with that clause and nothing more need be said about it. The first main proviso to both the clauses cannot be confined only to clause Secondly, but it is also applicable to Clause Firstly. The proviso explains what is meant by the words "retain the order in which they stood with respect to each other immediately prior to confirmation." In clear terms, it provides that whenever members of

the Service as well as holders of subordinate posts in the electricity branch are promoted their seniority in the same class has to take rank according to the relative seniority in the Class from which they were promoted. In other words, if a member of the service from Class II is promoted to Class I his seniority will be determined according to his position in the seniority list of Class II. The only exception contained in the proviso is that if anyone has been substantively promoted earlier than another who is senior to him but has been passed over on the ground of inefficiency, the member who has been promoted first shall take the rank in the higher class above the other member who has been passed over on the score of inefficiency. Sub-Rule 2 of Rule 7-A incorporates the general principle that promotion to posts on a higher scale shall be made on seniority-cum-merit basis by selection.

10. In order to find out how the authorities concerned have been dealing with the question of seniority, we got a Chart prepared relating to all the respondents containing the various relevant dates. It appears therefrom that it was not the officiating date of appointment in Class I of the officers by which seniority was shown in the final seniority list but it was the date of their confirmation in Class II from which they were promoted and which determined their seniority in Class I. Starting with R. D. Gupta, Respondent No. 3, he was confirmed as Assistant Engineer Class II on May 11, 1956 w.e.f November 19, 1952. Respondent No. 4 T. S. Viridi was also confirmed on the same date as well as Respondent No. 5 although both of them were confirmed w.e.f. the 1st March, 1955. Gupta was promoted as officiating Assistant Engineer Class I on August 13, 1953, Viridi on August 10, 1953 and Malik on August 9, 1953. In other words, Malik was given the officiating appointment in Class I prior to both Viridi and Gupta and Viridi was appointed in an officiating capacity prior to Gupta. All these three Respondents were confirmed w.e.f. September 1, 1956 as Assistant Engineers Class I. Gupta was shown in the seniority list as senior to both Viridi and Malik. This could be so only if the date of his confirmation in Class II was to be taken into consideration and not the date of his appointment as officiating Assistant Engineer Class I. Indeed owing to that seniority, Gupta was confirmed as Executive Engineer on June 13, 1961 w.e.f. February 7, 1958 whereas Viridi and Malik were confirmed w.e.f. September 18, 1960 and November 4, 1960 respectively as Executive Engineers. There are many other instances in this Chart which appear to indicate that it was the date of confirmation in class II by which seniority was determined and not the date of officiating appointment as Assistant Engineer Class I. Shri S. V. Gupte very fairly and properly agreed that the interpretation of Rule 7-A. which he was supporting on behalf of the appellant could not be supported consistently according to what had been done by the predecessors of the appellant as also appellant in certain cases.

11. It has been brought to our notice that it is not unusual to provide that the seniority in higher class should be governed by the relative seniority in the lower class from which the promotion is made to the higher class when confirmation is made with effect from the same date. This would be particularly so when the question is of determining the relative seniority of members of the service who have been confirmed hold the posts in a substantive capacity. Our attention has been invited to such provisions being made in rules governing other services in Punjab and Haryana. For instance, in Punjab Civil Medical Service Class I (Recruitment and Conditions of Service). Rules 1940, Rule 8 stands thus:

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.

12. The above rule in terms lays down that in case of persons promoted from class II service, seniority shall be determined according to their seniority in that service if they are confirmed on the same date.

13. For all these reasons, we have no manner of doubt that according to Rule 7-A the seniority of Pritam Singh had to be fixed according to his relative seniority in Class II. It is common ground that he was a senior to all the other respondents in that class and, therefore, ordinarily and in normal circumstances there was no reason why in the 1966 list he should not have been shown as senior to the respondents in the list of the Assistant Engineers Class I.

14. There are still two hurdles which Pritam Singh has to cross before a proper writ and direction can be issued under Article 226 of the Constitution to give him the seniority according to his position in Class II leading to consequential promotions or demotions with regard to the respondents in the matter of their higher appointments which they are holding now. The first is the contention raised on behalf of the appellant that it was under the advice of the Public Service Commission that he was superseded by the respondents for promotion as officiating Assistant Engineer Class I and, therefore, according to the main proviso in Rule 7-A, those members who were promoted earlier to the higher class were to retain their seniority over him. The High Court read this part of the proviso in a way which does not support that contention. According to the High Court it is only when a member or subordinate is promoted substantively earlier than another member or subordinate who is senior to him and who has been passed over on the score of inefficiency that a member or subordinate so promoted, shall take the rank in the higher class. All the respondents other than Pritam Singh were certainly promoted in an officiating capacity as Assistant Engineers Class I before Pritam Singh was promoted as such but they were not promoted in a substantive capacity. The proviso refers only to promotion in a substantive capacity which took place with effect from the same date of all the respondents including Pritam Singh, viz. September 1, 1956. The decision of the High Court appears to be correct on this point and we do not consider that the case of Pritam Singh was covered by the aforesaid part of the proviso. His being passed over for promotion in an officiating capacity, therefore, cannot be a hurdle to his taking seniority above the others when they were all confirmed on the same date and when he was admittedly senior to them in Class II.

15. The second hurdle seems to be more formidable. It is true as would be apparent from the facts already stated that Pritam Singh made representations against his supersession in July, 1956 for the first time and later on in May, 1957 and July 1958. But all these representations were rejected. After he was promoted and appointed as officiating Executive Engineer in June, 1959, he made another representation on 13-2-1959 which was also rejected. Thereafter, various Respondents out of Respondents Nos. 3 to 17 and Respondent, No. 20 were confirmed as Executive Engineers on different dates from 1961 to 1964. On May, 11, 1965, Respondent No. 16 and Pritam Singh himself were ordered to be confirmed w.e.f January 1, 1965. Only Respondent No. 15 was confirmed by an order dated August 1, 1968 but with effect from December 17, 1963. Pritam Singh took no steps by making any effective representation whatsoever or by filing any petition in the High Court to challenge the confirmation of those respondents who were confirmed by orders made on the various dates from 1961 to 1964, the last order being of April, 22, 1964. The question is whether he would be justified in getting any relief and disturbing the existing state of affairs with regard to those Respondents in respect of whom the orders of confirmation as Executive Engineers were made upto the end of April, 1964. The High Court was not oblivious of the situation but felt that Pritam Singh was justified in thinking that when he would be confirmed the order would take effect from an earlier date as was done in the case of the Respondents who were confirmed in 1961. It seems to us that the High Court did not keep in mind the way these questions were settled in *S. G. Jaisinghani v. Union of India*, . It was found therein that promotees from Class II Grade III to Class I Grade II of the Income-Tax Service were in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards. These promotees had been illegally promoted and the appellant in that case was held entitled to writ in the nature of mandamus that his seniority and that of the other officers similarly placed like him should be readjusted and a fresh seniority list be prepared in accordance with law keeping in view the quota rule. It was added:

We, however, wish to make it clear that this order will not affect such Class II officers who have been appointed permanently as Assistant Commissioners of Income-Tax. But this order will apply to all other officers including those who have been appointed Assistant Commissioners of Income Tax provisionally pursuant to the orders of the High Court.

16. Therefore, even though under the rules, Pritam Singh is entitled to be declared senior to the Respondents, no direction or writ in the exercise of discretion should be so issued as to disturb the seniority of those Respondents who were confirmed as Executive Engineers by orders made up to the end of April 1964. As regards Respondents Nos. 15 and 16 the orders of their confirmation as Executive Engineers were either made on the same date as in respect of Pritam Singh or subsequent to him in 1968. Therefore, the only relief which can be given to him is that he will be treated as senior to them or to any others who were similarly promoted and confirmed in the matter of further promotions and appointments. To that extent alone his petition under Article 226 can be allowed. The judgment of the High Court shall stand accordingly modified and an appropriate writ or direction shall issue in terms of our judgment. Costs shall be paid in accordance with the previous order of this Court, dated March 9, 1970.