

Ram Pal Malik vs State Of Haryana And Others on 4 August, 1994

Equivalent citations: AIR1994SC2481, JT1994(5)SC74, 1994(3)SCALE659, 1994SUPP(3)SCC286, 1994(2)UJ450(SC), AIR 1994 SUPREME COURT 2481, 1994 AIR SCW 3505, 1994 LAB. I. C. 2494, 1994 (2) UJ (SC) 450, (1994) 5 JT 74 (SC), 1994 (3) SCC(SUPP) 286, 1994 UJ(SC) 2 450, (1994) 28 ATC 377, (1994) 2 CURLR 840, (1994) 4 SCT 301, (1994) 69 FACLR 930, 1994 SCC (L&S) 1423, (1994) 4 SERVLR 608

Bench: B.P. Jeevan Reddy, Suhas C. Sen

ORDER

1. Leave granted. Heard the counsel for the parties.

2. This appeal is directed against the judgment of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant on the ground that it is premature. The High Court observed that inasmuch as the promotion of Respondent No. 3, which was challenged in the writ petition, has been specifically made subject to the approval of the Haryana Public Service Commission and since the Commission has not yet finally decided the matter, the writ petition was premature. It is brought to our notice that since the filing of this Special Leave Petition, the Haryana Public Service Commission has approved the promotion of the third respondent. The main question arising in this appeal is whether the action of the Government of Haryana in treating the third respondent as senior to the appellant and promoting him to the higher post of Joint Director earlier than the appellant is valid and legal?

3. The appellant was selected as a Class-I officer by direct recruitment on the recommendation of the Haryana Public Service Commission. He was appointed to Class-I post on May 17, 1978. On that date, the third respondent, Sri R.N. Sharma was already working as a Class-I officer but on adhoc basis since February 18, 1977. In the year 1988, the Government of Haryana issued a final list of Haryana Administrative Service Class-I officers as it stood on June 30, 1988 wherein the appellant was shown at Serial No. 19. His date of appointment to Class-I was shown as June 5, 1978 and the method of appointment - direct recruitment. So far as the third respondent is concerned, he was shown under the heading "Officers who are working on adhoc basis" at Serial No. 1. In the Column No. 6, his date of appointment to Class-I was shown as February 25, 1977 by promotion. In the last column relating to remarks, it was stated "date of regular promotion is to be decided". The appellant's grievance is that inspite of his being a senior in Class-I to Respondent 3 - who was indeed not even a regular member thereof - Respondent 3 has been promoted as Joint Director ignoring the appellant's seniority and his claim for promotion. He says that certain orders were passed in favour of Respondent No. 3 - and to the appellant's prejudice - regularising and giving retrospective effect to his promotion to Class-I - all of which are not only contrary to Rules but also

violative of the principles of natural justice.

4. The Respondent's case is that the third respondent was promoted to Class-II post on May 22, 1968 on an adhoc basis and had been making several representations to treat the said date of adhoc promotion to Class-II as the date of his regular promotion thereto and on that basis, regularise his promotion to Class-I. He had also approached the High Court of Punjab and Haryana more than once in that behalf. After several years of litigation and representations, the Government of Haryana acceded to his request and issued the order dated August 13, 1986 treating the date of adhoc promotion of third respondent to Class-II as the date of his regular promotion and determining his seniority in Class-II on that basis. The order reads as follows:

"HARYANA GOVERNMENT AGRICULTURE DEPARTMENT ORDER In continuation of Government order dated 03.01.1983 issued vide No. 12524- Agri. 1(1)- 82/62 dated 04.01.83 the matter regarding fixation of seniority of direct appointees and promotees as Assistant Soil Conservation Officers in HAS-II has been reconsidered in accordance with provisions in the Punjab Agricultural Service (Class-II) Rules, 1947 and it has been decided that the tentative seniority of the following officers may be fixed as under:

Name of officer Date of joining

1. Shri Balbir Singh Rathee 3-6-1967

2. Shri R. N. Sharma 22-5-1968

3. Shri Dalip Singh Dahiya 10-6-1970 4 Shri Bahadur Singh 5-7-1971

5. Shri Zile Singh 10-6-1971 Therefore, the Governor of Haryana is pleased to re fix the tentative seniority of the abovementioned officers in HAS-II in the gradation list of HAS Class-II offices as it stood on 6/80 as under-

Sl. No. Seniority No. Name of the officer

1. Shri Balbir Singh Rathee

2. 31 Shri R. N. Sharma

3. Shri Dalip Singh Dahiya

4. Shri Bahadur Singh

5. Shri Zile Singh K. K. Sharma Commissioner & Secretary to Govt., Haryana Agriculture Department.

Chandigarh dated the 13-8-1986."

5. On February 25, 1991, the Government of Haryana issued an order promoting the third respondent to Class-I with effect from July 6, 1975, the date on which his junior, Sri Ram Nath Kumar, HAS-II was promoted to HAS-I, subject to the approval of Haryana Public Service Commission. This order was stated to be consequential to the orders dated 13th/21st August, 1986 promoting the third respondent to Class-II on a regular basis with effect from May 22, 1968. By yet another order made on April 9, 1991, the third respondent was promoted to the post of Joint Director with effect from January 21, 1981, the date on which his next junior, Sri Ram Pal Malik, HAS-I was promoted to the post of Joint Director. (This Ram Pal Malik is different from the appellant, Ram Pal Malik.)

6. The appellant preferred a writ petition in the Punjab and Haryana High Court in March, 1991 questioning the validity and legality of the order dated February 25, 1991 aforesaid. The writ petition was dismissed observing that inasmuch as no order of appointment to the post of Joint Director has yet been made and since the matter was only at the stage of consideration of the third respondent for such promotion, there was no cause of action for filing the writ petition. The date of dismissal of the writ petition is March 12, 1991.

7. After the order dated April 19, 1991 was passed, the appellant filed a fresh writ petition (C.W.P. No. 7052 of 1991) challenging the said order as well as the order dated February 25, 1991 in the Punjab and Haryana High Court. The appellant submitted that by virtue of order dated February 25, 1991 the third respondent has come to occupy Serial No. 9 in the seniority list of Class-I officers far above the appellant and that the said order, based as it is on the order dated August 13, 1986 which itself is illegal, is equally illegal and void. The appellant submitted that the said order is affecting his seniority and since it has been passed without notice to him, it is bad for violation of principles of natural justice. This writ petition has been dismissed as premature, as stated at the inception of this Judgment.

8. The learned Counsel for the appellant submits that the order dated August 13, 1986 treating the date of adhoc promotion of the third respondent to Class-II as the date of his regular promotion as well as consequential order issued on February 25, 1991 are both contrary to rules besides being violative of the principles of natural justice. He submits that the third respondent who was only holding adhoc post on the date of appellant's regular appointment to Class-I cannot suddenly be made senior to him without notice to him nor the third respondent be promoted to the post of Joint Director earlier than him. On the other hand, the learned Counsel for the Government of Haryana and the learned Counsel for the third respondent submit that the question relating to the date of regular promotion of the third respondent to Class-II as well as Class-I was pending consideration of the Government since 1968 and that after a prolonged fight, justice was done to the third respondent by treating his date of adhoc promotion as Class-II as the date of his regular promotion and on that basis, regularising his promotion to Class-I. Learned counsel pointed out that whereas the appellant was appointed to Class-I in May, 1978 the third respondent was already working in Class-I since February, 1977. It is only because the dispute relating to his later regular promotion to Class-II was pending consideration, his promotion to Class-I was treated as adhoc. The said

circumstance, it is submitted, cannot mean that the third respondent, though senior to appellant in all respects, should be placed below the appellant in the seniority list. It is also pointed out that the appellant was also a member of Class-II before he was directly appointed to Class-I and that in Class-II he was far junior to the third respondent. It is pointed out that once the third respondent's regular promotion to Class-II is taken to have been effected on May 22, 1968, his placement above Sri Ram Nath Kumar, who was promoted to Class-II from July 4, 1968 was merely consequential. Counsel submitted that inasmuch as the said Sri Ram Nath Kumar was promoted to Class- I on July 6, 1975, the third respondent's date of promotion to Class-I was also determined with effect from the said date. Counsel submitted that in the said circumstances the appellant is not entitled to any notice. Yet another circumstance brought to our notice is that the third respondent is reaching the age of superannuation in about six months and that the appellant too has since been promoted as Joint Director in October, 1993 and has a number of years to go before he retires.

9. From the factual narration, two facts emerge prominently: viz., (1) that the third respondent was actually promoted to Class-II on May 22, 1968 and then to Class-I on February 18, 1977 and (2) his representations were pending consideration of the Government to treat the date of his adhoc promotion to Class-II as regular promotion and to determine his seniority on that basis. More than one writ petition was filed by him for vindicating his claims. They bore fruit on August 13, 1988 when the Government of Haryana acceded to his claim and treated May 22, 1968 as the date of regular promotion to Class-II. The petitioner was not entitled to notice before the said order was passed inasmuch as the appellant is not concerned with the third respondent's date of regular promotion to Class-II. Once the order dated 13th August, 1986 is taken to be good, it must follow that the third respondent is entitled to regular promotion to Class-I with effect from an appropriate date, viz. the date on which his junior was promoted to Class-I. The note in Column No. 10 of the Seniority List of Class-I officers against the name of the third respondent bears out the fact that the question of his date of promotion to Class-I was under consideration of the Government on that date. The appellant was fully aware of the above facts and of the said note in Column No. 10 of Seniority List. It is therefore not correct to say that Respondent No. 3 was suddenly made senior to the appellant without any basis. Assuming that the appellant is entitled to challenge the order promoting Respondent No. 3 to Class-I on a regular basis with effect from a date anterior to his own date, even so we are unable to see any illegality in the said order. Similarly, the order dated April 9, 1991 promoting the third respondent to the post of Joint Director with effect from January 27, 1981 (the date on which his next junior was promoted to the post of Joint Director) is also consequential in nature. Learned counsel for the appellant could not point out any service rule which can be said to have been violated by the said orders, though he asserted that they were contrary to the Rules governing promotion to Class-II as well as Class- I of Punjab Agriculture Service. (The Punjab Rules are applicable in Haryana also). It is not pointed out that the third respondent was not qualified or was not eligible for promotion to Class-II on the said date. The mere fact that he was promoted initially on adhoc basis did not preclude the government from treating the said date as the date of regular promotion if it was satisfied that it should be so done in the interests of justice. It may also be noticed that according to Rule 10 of Punjab Agriculture Service Class-I Rules, 1947, promotion to Class-I has to be effected by selection on the advice of the Commission on the basis of (i) merit (ii) special training an experience required for the post and (iii) approved services. The third respondent's promotion has been effected in consultation with the Public Service Commission and

we must presume that the Commission must have been satisfied with the reasons for the regularisation and retrospective promotion given to him.

10. Learned counsel for the appellant pointed out that in the seniority list pertaining to Class-II (as on 31st October, 1971) while Ram Nath Kumar aforesaid is shown at SI. No. 31 and his date of promotion to Class-II is shown as July 4, 1968, the name of the third respondent is shown at SI. No. 67 and in the column relating to the date of his promotion to Class-II, there is a blank. Undoubtedly so. But this was because the third respondent's initial promotion was an adhoc once and his representations for treating it as a regular promotion were pending consideration. It is for this reason that his date of promotion was kept blank on the date of the said Seniority List. The fact remains, and it is not disputed, that the third respondent was promoted to Class-II on adhoc basis on May 22, 1968 and ultimately he succeeded in having the said date accepted as the date of the regular promotion to Class-II from the government. It is not possible in this writ petition-appeal to investigate all the facts and circumstances in which the third respondent was promoted on adhoc basis to Class-II on May 22, 1968 and the facts concerning the government's order treating the said date as the date of his regular promotion. The material relating to the said aspect was not before the High Court and we do not propose to widen the scope of enquiry in this appeal. Moreover, in view of the fact that the third respondent is retiring within a period of six months and in view of the further fact that the appellant has also since been promoted a Joint Director and he has a number of years to go in service, it would not be appropriate to launch upon an investigation of facts and circumstances relating to the third respondent's adhoc promotion to Class-II and his regularisation therein.

11. The appeal accordingly fails and is dismissed. No order as to costs.