

FULL BENCH

Before S. B. Kapoor, Inder Dev Dua and H. R. Khanna, JJ.

BRIJ LAL GOSWAMY,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 1088 of 1962

Punjab Services Integration Rules, 1951—Rule 16—Order of the Punjab Government, dated 29th September, 1961, bifurcating P.E.S. (Class II) into School and College Cadres—Whether violative of rule 16—Constitution of India (1950)—Art. 16—Whether refers to initial appointment only—Promotion of junior officers in P.E.S. (Class II) after bifurcation in preference to those who were seniors in the joint list on the sole ground of nature of vacancy in P. E. S. (Class I)—Whether violative of the aforesaid rule 16 and Article 16 of the Constitution—Punjab Educational Service (Class I) Rules, 1931—Rule 7—Whether applicable.

1964

September, 11th

Held, that the order of the Punjab Government, dated 29th September, 1961, bifurcating the P.E.S. (Class II) into School and College cadres is violative of the principle of preserving *inter se* seniority embodied in rule 16 of the Punjab Services Integration Rules, 1957, in so far as it has affected the seniority of the petitioners *vis-a-vis* the respondents concerned.

Held also, that the promotions to P.E.S. (Class I), in the wake of the aforesaid bifurcation, of the respondents who were originally junior to the petitioners in the joint P.E.S. (Class II) List, in preference to the petitioners on the sole ground of the nature of vacancy in P.E.S. (Class I) are violative of rule 16 of the Punjab Services Integration Rules, 1957 and Article 16 of the Constitution.

Held further, that the proposition is fairly well settled that the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State is confined not only to the initial appointments but includes also the terms and conditions of service as well as promotion to selection posts, and the reason for that is obvious. If the equality of opportunity mentioned in Article 16 were confined only to the initial appointments and not to subsequent promotions and conditions of service, the equality guaranteed by that Article would, in actual practice, in a large number of cases, become illusory and lose all effectiveness, because after the initial appointments, as a result of differential treatment in the matter of promotions and conditions of service of various candidates selected at the same time, the object of securing fairplay in the services may be set at naught. Inroads would thus be made into the very conception of equality of opportunity in public services and thus open the way for worst kind of favouritism and nepotism.

Held, that rule 7 of the Punjab Educational Service (Class I) Rules, 1931, which provides for promotion by strict selection and rules out claim as of right to such promotion would have applied only if the claims of the petitioners had been considered and then on merits they had been passed over. In that case the petitioners would have had no grievance which can be sustained in law. Where, however, the claims of the petitioners, as in the present case, were not even taken into consideration in spite of their admitted seniority, and the respondents, who were junior to the petitioners, were promoted, rule 7 would not stand in the way of the petitioners getting relief. The rule has to be harmonized with Article 16 of the Constitution and not to be construed in such a way as to make it inconsistent with or violative of that Article because the inevitable effect of that would be to strike down that rule.

Case referred by the Hon'ble Mr. Justice Mehar Singh and the Hon'ble Mr. Justice H. R. Khanna, on 20th December, 1963, to a larger Bench for decision of the important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice S. B. Kapoor, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice H. R. Khanna on 11th September, 1964, after deciding the questions of law referred to them, returned the case to the Division Bench and the case was finally decided by the Hon'ble Mr. Justice A. N.

property was acquired by the Central Government. With these observations the writ petition was dismissed. A Letters Patent Appeal was preferred against this order, and it came up for hearing before G. D. Khosla, C.J., and Mahajan, J., in August, 1960. Whether under rule 26 the sole occupation should be as a result of an allotment by the Rehabilitation Department to a displaced person as such was not considered by the Bench for the decision of the controversy, but rule 26 was held not to confer any right on the petitioner to claim the transfer of the house in question.

Manohar L.
Ratna
v.
Union of India
and others

Dua, J.

The order of Gurnam Singh, J., in *Nand Lal v. The Regional Settlement Commissioner* (Civil Writ No. 1135 of 1957) decided in May, 1958, has on the other hand been relied upon by the respondents. In that case a house at Ludhiana belonging to a Muslim evacuee had been requisitioned by the District Magistrate for Nand Lal's residence. Subsequently this property vested in the Custodian who allotted the house to Nand Lal, on a monthly rent of Rs. 12 from 15th of September, 1947. The petitioner regularly paid the rent till 23rd November, 1956. Thereafter it was acquired by the Central Government and by a letter the District Rent and Managing Officer offered the same as allottable acquired property in petitioner's occupation for transfer to him under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Suddenly the District Rent and Managing Officer wrote to the petitioner to appear before him on 28th August, 1957, in connection with the transfer of the property, on which date he did appear and produced the original allotment order. He heard nothing thereafter till November, 1957, when he received a communication intimating that the property had been requisitioned by the District Magistrate and, therefore, the offer to him had been cancelled. The petitioner then wrote to the Regional Settlement Commissioner pointing out that the property stood de-requisitioned and was allottable to displaced occupants. Nothing was heard in reply to his representation. In December, 1957, the property was ordered to be requisitioned which necessitated writ proceedings in this Court. Gurnam Singh, J., set aside the order of auction observing that if the property was in the sole occupation of a displaced person and it was allottable property, then he is entitled to have it transferred to him and it is wholly unnecessary that it should

Manohar Lal originally have been allotted to the occupier by the
 Ratna department.
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Dua, J.

After hearing the learned counsel for the parties, in our opinion this writ petition must fail. It is agreed at the bar that the present case is covered by Rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, according to which where an applicant for payment of compensation is in sole occupation of an acquired property which is an allottable property, such property may be transferred to him in lieu of the compensation payable to him under the Act. Reference at the bar has been made to a Bench decision of this Court in *Sodhi Harbakhsh Singh v. The Central Government and others* (1), where Rules 25 and 26 came up for consideration. Dulat, J., who prepared the main judgment of the Bench, after reproducing Rule 26, observed that it was somewhat doubtful whether the petitioner before that Bench could legitimately be called a displaced person not holding a verified claim but without pursuing the matter further and treating the petitioner there to be a non-claimant the question was whether Rule 26 casts any obligation on the authorities to transfer allottable property to a non-claimant in whose occupation such property may happen to be or whether the rule merely vests a power in the authority concerned to make the transfer or not according to the circumstances. The counsel for the petitioner canvassed in favour of the word "may" occurring in Rule 26 being treated as "must". In support of this contention, reliance was placed on two unreported decisions of this Court, one by Shamsheer Bahadur, J., in *Shri Ramji Dass v. The Ministry of Rehabilitation, Government of India*, Civil Writ No. 40 of 1960, and another by Mehar Singh, J., in *S. Karam Singh v. The Chief Settlement Commissioner*, Civil Writ No. 685 of 1960, in which the earlier Single Bench decision was followed. The unreported decisions were, however, concerned with the construction of Rule 25 and Dulat, J., felt that the construction of Rule 25 was of no assistance to the construction of Rule 26 which deals with another category of persons and where the context is substantially different. The word "may", according to Dulat, J., ordinarily conveys an idea of the exercise of discretion and in the context of Rule 26, there appeared to