
contentions raised on behalf of the State ought to be accepted while the ones raised on behalf of the petitioner are liable to be rejected. Resultantly, the Revision Petition is dismissed. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before A.B.S. Gill & V.S. Aggarwal, JJ

SADHU SINGH & ANOTHER...*Petitioner*

versus

STATE OF HARYANA & OTHERS...*Respondents*

C.W.P. No. 15941 of 2000

16th January, 2001

Constitution of India, 1950—Art. 226—Promotion of the reserved category candidates upto level 4 (Superintendent) on the basis of accelerated seniority ignoring the seniority of senior general category candidates at level 3—General category candidates regaining their original seniority over such earlier promoted reserved category in the lower category by virtue of the principle of catch up—Reserved category candidates erroneously promoted as Under Secretaries on the basis of accelerated reserved category candidates at level 3 placing general category candidates over them—No reservation policy in Haryana beyond the level of Class III—General category candidates becoming senior to the reserved category candidates by virtue of the rule of catch up at the level of Deputy Superintendent—Petitioners liable to be reverted to the post of Deputy Superintendent—However, their promotion as Superintendent protected as the same was made before 1st March, 1996—Writ dismissed, order reverting the petitioners to the post of Superintendent upheld.

Held, that the State has given the necessary reservation upto the level of Deputy Superintendent. In terms of the decision in the case of *Ajit Singh-II v. State of Punjab*, 1999(7)SCC 209, those promoted upto 1st March, 1996 are protected and there is no reservation. There may be no reservation but there is no further promotion that they can claim seniority over general candidates by any stretch of imagination. If by wrong assumption of the principle of reservation, certain reserved category candidates had been promoted after 1st March, 1996, they had to slide down and come back to the post regarding which they seek

protection. This is so because the Supreme Court in the case of Ajit Singh-II had permitted the review and treated those promoted on account of reservation to be *ad hoc*. Consequently, all general category candidates who would catch up the petitioners at the level of Deputy Superintendent from where there is no reservation would become senior to the petitioners. The only silver lining would be that the petitioners would not be reverted because they had become Superintendent before 1st March, 1996. Petitioner No. 1 was promoted as Superintendent on 3rd April, 1991 on the basis of accelerated seniority ignoring the claim of senior general candidates who had been promoted later at level 3. At level 4, seniority of the petitioner had been reviewed and refixed as and when general candidates reached at level 4. In terms of the decision of the Supreme Court, he is not being reverted from the post of Superintendent because he was so promoted before 1st March, 1996. Similar is the position of petitioner No. 2. Consequently, we find no reason to interfere in the impugned order reverting the petitioners to the rank of Superintendent.

(Para 30 & 31)

Ashok Aggarwal, Sr. Advocate, and

H.S. Gill, Senior Advocate, with

Hari Chand, Advocate, *for the petitioners.*

Surya Kant, Advocate General, Haryana, with

Narender Hooda, AAG, Haryana, for the State

R.K. Malik, Advocate, for respondents No. 13, 23, 26, 27, 30,
47, 48, 53, 62 and 77.

P.S. Patwalia, Advocate, for respondents 24, 25, 29 and 78.

Rajiv Atma Ram, Advocate, with Puneet Kansal, Advocate, for
respondent No. 14.

K.L. Suneja, Advocate, for respondents No. 55 and 56.

JUDGMENT

V.S. AGGARWAL, J.

(1) By this common judgment, we propose to dispose of Civil Writ Petitions No. 7696 and 15941 of 2000 as the questions of law and facts involved in both these writ petitions are identical.

(2) The facts as conjoled from Civil Writ Petition No. 15941 of 2000 titled Sadhu Singh and another *v.* State of Haryana and others are that Sadhu Singh petitioner was recruited as Clerk on 9th August, 1971. He was promoted as Assistant on 2nd May, 1977 and Deputy Superintendent on 21st March, 1990. B.L. Grover, petitioner No. 2, was recruited as Clerk on 12th August, 1971. He was promoted as Assistant on 28th July, 1977 and as Deputy Superintendent on 23rd November, 1990. In the Haryana State, upto the level of Deputy Superintendent, which is a Class-III post, there is a policy of reservation and not beyond that. Both the petitioners had since been promoted as Superintendent on 3rd April, 1991 and 8th July, 1991 respectively.

(3) It is asserted that after the decision of the Supreme Court in the case of *Union of India v. Vir Pal Singh Chauhan*, (1) followed by subsequent decision of the Supreme Court in the case of *Ajit Singh-II v. State of Punjab* (2) and *Sube Singh Bahmani v. State of Haryana*, (3) the respondent State had drawn the seniority list. According to the petitioner, they are senior to all the respondents except respondents No. 2 to 10 who have become senior by virtue of catch up rule. The seniority list otherwise so prepared is stated to be contrary to the judgment of the Supreme Court. The grievance of the petitioners is that the seniority list dated 17th May, 2000 that has been finalised by the State of Haryana giving seniority to all the respondents i.e. respondents No. 2 to 78, is contrary to the judgments of the Supreme Court because respondents No. 11 to 78 had not reached the level of Deputy Superintendent when the petitioners were promoted as Superintendent and thereafter as Under Secretary in the State of Haryana. It has been mentioned that the State of Haryana has promoted A.C. Kapil, respondent No. 13 and B.R. Chawla, respondent No. 14 besides Dhani Ram, respondent No. 23, who were otherwise junior to the petitioners. They had not been promoted as Deputy Superintendent when petitioner No. 1 was promoted as Superintendent on 3rd April, 1991. Similarly, it is pointed out that Som Parkash Sharma, respondent No. 26 and S.N. Chugh, respondent No. 27, were junior to the petitioners and had not been promoted as Deputy Superintendent by the time petitioner No. 2 had taken over as Superintendent. By way of illustration, the petitioners have stated that so far as petitioner No. 1 is concerned, by the principle of catch up rule, only the persons mentioned as respondents No. 1 to 10 i.e. R.D. Gupta to Soma Devi, would catch up. So far as the seniority of petitioner No. 1 is concerned,

(1) 1995 (6) SCC 684

(2) 1999 (7) SCC 209

(3) 1999 (8) SCC 213

it has been demonstrated as under:—

Sr. No.	Name	Date of promotion as Dy. Supdt. (Class III)	Date of Promotion as Superintendent (Class II)	Sl. No. in the seniority list.
1.	Sadhu Singh (petitioner No. 1)	21-3-1990	3-4-1991	312
2.	R.D. Gupta	30-4-1990	3-4-1991	313
3.	K.L. Sharma	8-10-1990	3-4-1991	314
4.	Dharam Pal Kaushik	23-11-1990	3-4-1991	315
5.	M.L. Ghai	23-11-1990	3-4-1991	316
6.	S.N. Batra	23-11-1990	8-7-1991	317
7.	H.C. Chhabra	7-1-1991	8-7-1991	319
8.	K.L. Bhandula	7-1-1991	29-7-1991	320
9.	Atam Lal Bajaj	7-1-1991	29-7-1991	321
10.	H.C. Hooda	7-1-1991	29-7-1991	322
11.	O.P. Sharma	22-2-1991	29-7-1991	325
12.	Soma Devi Sehgal	22-3-1991	29-7-1991	326

(4) So far as respondent No. 2 is concerned, only persons mentioned upto B.R. Chawala would catch up. He demonstrated as under :—

Sr. No.	Name	Date of promotion as Dy. Supdt. (Class III)	Date of Promotion as Superintendent (Class II)	Sl. No. in the seniority list.
13.	B.L. Grover (S/C Petitioner No. 2)	23-11-1990	8-7-1991	318
14.	H.C. Chhabra	7-1-1991	8-7-1991	319

Sr. No.	Name	Date of promotion as Dy. Supdt. (Class III)	Date of Promotion as Superintendent (Class II)	Sl. No. in the seniority list.
15.	K.L. Bhandula	7-1-1991	29-7-1991	320
16.	Atam Lal Bajaj	7-1-1991	29-7-1991	321
17.	H.C. Hooda	7-1-1991	29-7-1991	322
18.	O.P. Sharma	22-2-1991	29-7-1991	325
19.	Soma Devi Sehgal	22-3-1991	29-7-1991	326
20.	Bawa Singh	22-4-1991	18-9-1991	327
21.	Lehna Singh	22-4-1991	18-9-1991	328
22.	K.S. Guleria	22-4-1991	18-9-1991	329
23.	R.D.S. Grewal	24-4-1991	18-9-1991	330
24.	A.C. Kapil	22-4-1991	18-9-1991	331
25.	B.R. Chawla	22-4-1991	24-10-1991	332

(5) In addition to that, the grievance of the petitioners is that respondent No. 1 had passed order dated 6th October, 2000 whereby the petitioners have been reverted to the rank of Superintendent on the basis of the judgments of the Supreme Court referred to above. The petitioners claimed that, in fact, this is misreading of the judgment and they are senior to other private respondents and the order is being questioned in the present writ petition.

(6) In the connected writ petition filed by Sammat Singh and others, identical questions have been raised therein. The seniority list so drawn, as referred to above, is being assailed.

(7) Needless to state that both the writ petitions are being contested. All the respondents claimed that there is no merit in the contention of the petitioners. They assert that, as per petitioners, in

the writ petition filed by Sadhu Singh and another, respondents upto respondent No. 14 would regain seniority over the petitioners, but that is not correct. It is asserted that when petitioner No. 1 Sadhu Singh was promoted as Superintendent on 4th March, 1991 and petitioner No. 2 B.L. Grover was promoted as Superintendent on 8th July, 1991. Thereafter, many other respondents, who were general candidates, had become senior by virtue of the principle of catch up because the Supreme Court has held that in cases where the reserved category candidate had gone upto level-4 (Superintendent) ignoring the seniority of senior general candidate at level-3, the seniority at level-4 has to be refixed on the basis of when the time of reserved candidate for promotion would have come. The respondent-State has claimed that it had strictly followed the said rule enunciated in the case of Ajit Singh-II (supra). It has been pointed out that petitioner No. 1 was promoted as Assistant by way of accelerated promotion. He stole a march over 13 seniors of general category. Thereafter, he was promoted as Deputy Superintendent by way of accelerated promotion. He crossed over 158 general candidates who were senior to him at level-2. There is no reservation at level-4 i.e. of Superintendent. Promotion to level-4 is a consequence of seniority at level-3. In terms of the said decision, at level-3 the seniority of Sadhu Singh petitioner had been reviewed and refixed by placing general candidates over him time and again as and when they reach at level-3. Sadhu Singh petitioner was promoted as Superintendent on 3rd April, 1991 on the basis of accelerated seniority ignoring the claim of general candidates who would have been promoted if the case of senior general candidate was considered at level-3. At level-4, seniority of Sadhu Singh petitioner had to be reviewed and refixed as and when general category candidate will reach at level-4 in terms of the aforesaid law laid down by the Supreme Court. Promotions made before 1st March, 1996 had to be protected but seniority has to be refixed. Since Sadhu Singh petitioner was promoted to the post of Superintendent on 3rd April, 1991, therefore, that promotion is being protected. In similar manner, it is stated that petitioner No. 2 would lose his seniority though his promotion as Superintendent is being protected.

(8) It has further been pointed out that promotion of petitioner No. 1 to the post of Deputy Superintendent was made in excess of reservation quota on account of misapplication of roster and accelerated seniority. He was therefore, erroneously promoted as Under Secretary on 19th February, 1997 i.e. after 1st March, 1996 and, therefore, he is liable to be reverted. Similar was the position of petitioner No. 2. Since they both were promoted as Superintendent before 1st March, 1996, therefore, they were not being reverted to the post of Deputy

Superintendent. Consequently, the assertions of the petitioners have been controverted.

(9) During the course of arguments, it was pointed out that petitioners Sadhu Singh and another had earlier filed a writ petition which was dismissed and, therefore, the present petition is not maintainable. During the arguments, it transpired that by that time the impugned order reverting both the petitioners had not been passed. Necessarily, it was premature. Therefore, we are of the considered opinion that the present writ petition is not barred by the principle of *res judicata* or even constructive *res judicata*.

(10) Shri Ashok Aggarwal, Senior Advocate, appearing on behalf of the petitioners, besides challenging the impugned order, had argued vehemently that the principles of natural justice have been violated. He urged that show cause notice was defective and, secondly, no proper hearing even had been given.

(11) There is no controversy that the principles of *audi alteram partem* are well recognised in all civilised countries and still more in our jurisprudence. However, whenever such a question arises, it has to be examined on the touchstone of prejudice. If any prejudice is caused, obviously, the order could not be sustained. But merely if there is a slight defect in the show cause notice but the person concerned was fully conscious of the nature of the controversy and he contests it knowing well as to which controversy he has to contest, it would be totally not proper to state that the principles of natural justice have been violated.

(12) Herein, a show cause notice, indeed, had been served and the same had been contested. It is not shown as to what prejudice, if any, had been caused. In the absence of it being shown as to how the petitioners could not defend themselves properly, we find no reason to hold that the show cause notice had caused prejudice and, therefore, should be quashed. Otherwise also, during the course of arguments, all that was to be urged had been argued before us. The arguments were heard at length. The controversy was the same which was to be raised at that time. Therefore, we deem it unnecessary to relegate them back in any event to the authorities. Looking at from either angle, the said argument so much thought of by the learned counsel is of no avail.

(13) Reverting back to the main controversy in the present case, we deem it necessary to state that our task has become easy because we are basically concerned with the pronouncements of the Supreme

Court. Concededly, from either end the questions have to be considered in the light of the decisions of the Supreme Court in the cases of *R.K. Sabharwal and others v. State of Punjab and others*, (4) *Vir Pal Chauhan's case* (supra); *Ajit Singh-II's case* (supra); and that of *Sube Singh Bahmani and others v. State of Haryana*, (5). We must mention at this stage that all that we require to see is as to whether the seniority list and the impugned order in question have been passed keeping in view the principles enunciated in the abovesaid pronouncement or not. Since the matter in controversy had already been adjudicated by the Supreme Court, we are nothing to add except to see the proper implementation thereto.

(14) Annexure P-4 is the impugned order passed by the State of Haryana by virtue of which both the petitioners Sadhu Singh and B.L. Grover have been reverted to the post of Superintendent. The relevant portion of Annexure P-4 reads as under:—

- “2. In pursuance of the judgment, the seniority and promotions of the reserved category employees promoted on the basis of accelerated seniority vis-a-vis general category employees was reviewed, refixed and deemed dates of promotions were assessed and circulated amongst the officers/officials for pointing out discrepancies, if any within ten days. After considering the discrepancies pointed out by some officers/officials, which were of clerical nature and having no law point involved therein, the deemed dates were finalised *vide* letter No. 22/7/97-Estt-I, dated 30th June, 2000.
3. After considering the revised seniority and deemed dates of promotions, it was found that S/Shri Sadhu Singh, B.L. Grover, Bharat Singh, Tara Chand, Puran Mal, Sumer Chand and Sube Singh who were promoted to the post of Under Secretary after 1st March, 1996 on the basis of accelerated seniority are liable to be reverted to the post of Superintendents which they were holding as on 1st March, 1996. Therefore, these officers were served with show cause notices *vide* memo No. 14/4/99-Est-I, dated 21st June, 2000, as to why they should not be reverted to the post of Superintendents. Even before issuance of the said show cause notice, these Under Secretaries were heard by a committee and the submissions made by these Under Secretaries were thoroughly considered by the committee

(4) 1995 (2) R.S.J. 895

(5) 1994 (4) R.S.J. 171

and their submissions being devoid of merit, it was felt that they are liable to be reverted as per law laid down by the Hon'ble Apex Court and show cause notices could be served upon them.

4. The replies to the show cause notice of the above Under Secretaries have been considered. After through consideration of the issues raised by them and in view of the revised seniority, deemed dates of promotion and judgment of the Hon'ble Apex Court, the Government has come to the conclusion that there is no substance in the submissions made by these Under Secretaries and they are liable to be reverted to the post of Superintendents.
5. Accordingly, the Governor of Haryana is pleased to revert the following Under Secretaries to the post of Superintendents in the pay scale of Rs. 6500—10,500 plus of 200 Special Pay with immediate effect.
 1. Shri Sadhu Singh
 2. Shri B.L. Grover
 3. Shri Bharat Singh
 4. Shri Tara Chand
 5. Shri Puran Mal
 6. Shri Sumer Chand
 7. Shri Sube Singh
6. They are directed to report in Establishment-I Branch.”

(15) Similarly, in the connected writ petition, the impugned seniority list had been annexed and is being assailed on identical grounds.

(16) In the case of *R.K. Sabharwal and others case* (supra), the Supreme Court held as under :—

“.....Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the “running account” must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will post no difficulty.....”

(17) However, keeping in view the interpretation that had been given, the Supreme Court further directed that the interpretation was given as to the working of the roster which only operate prospectively. The conclusions from the decision of *R.K. Sabharwal's case* (supra) are obvious. In case of reservation for Scheduled Castes and Scheduled Tribes, the Supreme Court held that the reservation is to the posts rather than vacancies. The difference between the expressions "posts" and "vacancies" was drawn and it was held that there must be a post in existence to enable the vacancy to occur. The cadre-strength should be measured by the number of posts comprising the cadre. Thus, the earlier thinking was not approved and it was held that the said implementation that reservation should be as per post shall only be drawn prospectively.

(18) It was followed by the decision in the case of *Union of India and others vs. Virpal Singh Chauhan and others* (6). For the first time the controversy pertaining to seniority vis-a-vis general candidates and those of reserved candidates was gone into. The principle which now is being described catch up rule has been mentioned. We are presently not concerned with the facts of Virpal Singh Chauhan's case (supra). We are basically concerned with the principles that were laid down. It was held as under :—

"..... The seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their *inter se* seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidates and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion to the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category."

(19) Broadly speaking, the principle was that if by way of accelerated promotion, where there is reservation to the post, a reserved candidate is promoted, then it does not disturb their *inter se* seniority in the basic post. If later on, a general candidate is also promoted to the same post, then he regains his original seniority. However, in the case of *Ajit Singh and others v. The State of Punjab and others* (7), known as Ajit Singh-II, the Constitution Bench was concerned with the said controversy. The Supreme Court formulated the following four points for consideration:—

- “(1). Can the roster point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-a-vis general candidates who were senior to them in the lower category and who were later promoted to the same level?
- (2) Have Virpal, Ajit Singh been correctly decided and has Jagdish Lal been correctly decided?
- (3) Whether the ‘catch up’ principles contended for by the general candidates are tenable?
- (4) What is the meaning of ‘prospective’ operation of Sabharwal and to what extent can Ajit Singh be prospective?

(20) The Supreme Court approved the decision rendered in the *Union of India v. Virpal Singh* (8) and the earlier decision in *Ajit Singh Janjua v. State of Punjab* (9) but disapproved that of *Jagdish Lal V. State of Haryana* (10). In other words, the rule of catch up was approved by the decision of the Constitution Bench of the Supreme Court in the case of Ajit Singh-II. The Supreme Court held that there has to be proper balancing of rights and concluded that general candidates who are senior at Assistants’ (Level 2) and who had reached Superintendent Grade II (Level 3) before the reserved candidate moved to Level 4 (Superintendent Grade-I), will have to be treated as senior at Level 3. It is on that basis that promotion to Level 4 must be made, first considering the cases of the senior general candidates at Level 3. While deciding points 1 and 2, the Supreme Court held as under:—

“We, therefore, hold that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the

(7) J.T. 1999 (7) S.C. 153

(8) J.T. 1995 (7) S.C. 231

(9) J.T. 1996 (2) S.C. 727

(10) J.T. 1997 (5) S.C. 387

promoted post,—vis-a-vis the general candidate who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate, he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level...”

(21) But it was held that if a reserved candidate has gone up to Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed when the senior general candidate is promoted to Level 4. The Supreme Court concluded as under:—

“...In cases where the reserved candidate has gone upto Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to Level 4 would have come, if the case of the senior general candidates was consider at Level 3 in due time. To the above extent, we accept the first part of the contention of the learned counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidtes.”

(22) In this regard, following pertinent findings were further arrived at:—

“.....In our view, while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10th February, 1995 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10th February, 1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post

previously occupies by a reserved candidates. That disposes of the 'prospectivity' point in relation to Sabharwal."

(23) As regards point 3 and 4, the Supreme Court held as under:—

"We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved up to Level 4. The general candidate has to be treated as senior at Level 3.

Where, before 1st March, 1996, i.e. the date of Ajit Singh's judgment, at the Level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later, (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to Level 4—without considering the fact that the senior general candidate was also available at Level 3—then, after 1st March, 1996, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the same (without causing reversion to the reserved candidate who reached Level 4 before 1st March, 1996). As and when the senior reserved candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidate at Level 3. *Chander Paul v. State of Haryana* (1997 (10) SCC 474) had to be understood in the manner stated above."

(24) Though we have reproduced in extenso the conclusions arrived at by the Supreme Court, but in few words they are that (i) the reserved candidates cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post vis-a-vis the general candidates who were senior to them in the lower category and who were promoted later on. (ii) It was further held

that once there is no reservation beyond Level 3, in other words when there is no reservation for the post of Superintendent, the promotion must be on the basis of modified seniority at Level 3. (iii) Seniority in the promotional cadre of such excess roster point promotees have to be reviewed after 10th February, 1995 i.e. after the decision in *R.K. Sabharwal's case* (supra). It would be counted only from the date on which they would have otherwise got normal promotion in any future vacancy. (iv) If any reserved candidates, even on erroneous promotion, has been so promoted to Level 4, he shall not be reverted. (v) As and when the senior reserved candidate is later promoted to Level 4, seniority at Level 4 had to be refixed. In other words, the seniority has to be redrawn as and when general category candidate catch-up the reserved candidate upto the level where reservation is prescribed. If he was senior to the reserved candidate at the earlier level, he would be again treated as senior even though he may be promoted later.

(25) On the same date, case of Haryana Officers including that of the petitioners and others, known as *Sube Singh Bahmani and others v. State of Haryana (11)*, was pronounced. It was specifically noted that in Haryana there is no reservation, as referred to above, beyond the Level of Deputy Superintendent. The principles so referred to above were reiterated and in paragraph 19 and 20 of the judgment the Supreme Court while dealing with the case of Sadhu Singh and B.L. Grover petitioners held as under:—

“19. However, so far as the reserved candidates Sadhu Singh and B.L. Grover are concerned, by the time they were promoted as Superintendents on 3rd April, 1991 and 8th July, 1991, all the 4 writ petitioners became Dy. Superintendents. Sammat Singh appears to be in like position. Writ petitioners 1 to 4 reached the level of Dy. Superintendent on 6th May, 1985, 30th April, 1990 and 7th January, 1991. The four writ petitioners have, therefore, a rightful claim for seniority over Sadhu Singh, B.L. Grover and Sammat Singh at the level of Dy. Superintendent. In that event, even if the above reserved candidates have been earlier promoted as Dy. Superintendents, they have to be treated as juniors to the 4 writ petitioners at that level. True, promotions made before 1st March, 1996 when Ajit Singh No. 1 was decided will stand and there will be no reversions. But the seniority of

the general candidates at the level of Dy Superintendents is to be fixed as stated above.

20. If the seniority of these four general candidates has not been taken into account when the reserved candidates were promoted as Superintendents and above, the same has to be reviewed. The promotion to and the seniority at the level of Superintendent and Under Secretary between the 4 writ petitioners (general candidate) and Sadhu Singh, B.L. Grover and Sammat Singh has, therefore, to be reviewed because their case is not like the case of Gian Singh. Ajit Singh No. II will have to be implemented. Points 1 to 3 as decided there will govern seniority and Point 4 there will govern the prospectivity of Sabharwal and the prospectivity of Ajit Singh No. 1. The respective cut off dates have to be adhered to. This appeal is disposed of accordingly.”

(26) On behalf of the petitioners, it was urged that in *Sube Singh Bahmani's case* (supra) it was specifically noted that Sadhu Singh and B.L. Grover would rank junior to certain other persons and that it was inter party decision and now certain other persons who are stated to be the contesting respondents cannot steel a march over the petitioners.

(27) It must be taken that the judgment in the case of Ajit Singh-II and Sube Singh Bahmani are read together and one cannot be read in isolation of the other. We have already noted that in the case of *Ajit Singh-II* (supra) the Supreme Court has categorically held that when a reserved candidate has gone upto Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed. In other words, the contention of the general candidates to the contrary was rejected. In *Sube Singh Bahmani's case* (supra), decision on Points 1 to 3 had not been touched. They had been accepted. Therefore, the question of taking any other view as is being asserted does not arise.

(28) In *Sube Singh Bahmani's case* (supra), while the Supreme Court held that the petitioners were senior at the level of Deputy Superintendent to the others who are contesting respondents

would not imply that for all practical purposes the catch-up rule had been put to an end. The reason being that the Supreme Court was only deciding the seniority upto the level of Deputy Superintendent. It is a post upto which reservation was permitted. When at Level 4 i.e. post of Superintendent, there is no reservation, obviously, any promotion so made ignoring the principle of seniority would be in excess of the roster point because there is no roster point at that level.

(29) To urge that since the petitioners had been promoted and the question of reversion does not arise would be totally incorrect. Supreme Court in the case of Ajit Singh-II (supra) had held that those who erroneously had been promoted, their seniority has to be redrawn. The protection is only available if the promotions were made before 1st March, 1996. Otherwise, once the seniority is redrawn, they had to slide down. It is exclusively termed so in the case of Ajit Singh-II. Thus, the contention that there is a decision between the parties in *Sube Singh Bahmani's case* (supra) giving them some advantage must fail.

(30) Reverting back to see as to what the State has done, it is conceded that the State has given the necessary reservation upto the level of Deputy Superintendent. In terms of the decision in the case of Ajit Singh-II, those promoted upto 1st March, 1996 are protected and there is no reservation. There may be no reservation but there is no further promotion that they can claim seniority over general candidates by any stretch of imagination. If by wrong assumption of the principle of reservation, certain reserved category candidates had been promoted after 1st March, 1996, they had to slide down and come back to the post regarding which they seek protection. This is so because the Supreme Court in the case of Ajit Singh-II had permitted the review and treated those promoted on account of reservation to be *ad hoc*. Consequently, all those private respondents who are contesting, who would catch up the petitioners at the level of Deputy Superintendent from where there is no reservation as has been taken note of by the State, would become senior to the petitioners. At our asking as to what has been done by the State had been described in a chart from petitioner Sadhu Singh. We are reproducing a part of it upto serial No. 129 Guru Sarup.

Sr. No.	Name of employee	Date of appointment as Clerk	Date of promotion as Assistant	Actual date of promotion/promotion on roster as Dy. Supdt. on basis of accelerated seniority.	Deemed date of promotion as Dy Supdt. as per Ajit Singh-II	Actual date of promotion/ date of promotion on accelerated seniority as Supdt.	Deemed date of promotion as Supt. as per Ajit Singh-II	Actual date of promotion/ date of promotion on accelerated seniority as Under Secy.	Deemed date of promotion as under Secy. as per Ajit Singh-II	Date of retirement
1	2	3	4	5	6	7	8	9	10	11
1 to 92	XX	XX	XX		XX		XX		XX	XX
93	Sadhu Singh (SC)	9-8-71	2-6-77	21-3-90	15-2-99	3-4-91	Turn not come	19-2-97	Turn not come	31-5-2006
94	R.D. Gupta	7-4-60	15-6-70	30-4-90	24-6-88	3-4-91	26-10-89	19-2-97	18-6-93	31-3-98
95	K.L. Sharma	7-4-60	15-6-70	8-10-90	24-6-88	Retired	--	--	--	31-10-90
96	Dharam Paul Kaushik	8-9-60	15-6-70	23-11-90	24-6-88	3-4-91	16-3-90	Not joined	--	31-10-93

1	2	3	4	5	6	7	8	9	10	11
97	M.L. Ghai	17-10-60	16-6-70	23-11-90	1-12-88	3-4-91	16-3-90	19-2-97	18-6-93	31-10-98
98	S.N. Batra	18-10-60	15-6-70	23-11-90	1-12-88	8-7-91	16-3-90	Not promoted	--	31-05-96
99	B.L. Grover (SC)	12-8-71	28-7-77	23-11-90	15-2-99	8-7-91	Turn not come	19-2-97	Turn not come	31-3-2005
100	Hari Chand Chhabra	27-6-60	15-6-70	7-1-91	1-12-88	8-7-91	16-3-90	19-2-97	18-8-93	28-2-97
101	K.L. Bhandula	16-11-60	18-6-70	7-1-91	1-12-88	29-7-91	16-3-90	19-2-97	16-11-93	30-6-97
102	Atam Lal Bajaj	12-12-60	17-6-70	7-1-91	1-12-88	29-7-91	26-9-90	19-2-97	16-11-93	30-4-98
103	Hari Chand Hooda	6-1-61	18-6-70	7-1-91	1-12-88	29-7-91	26-9-90	Not promoted	--	30-6-96
104	Shamsher Singh (BC)	17-11-60	17-6-70	7-1-91	1-12-88	29-7-91	24-10-90	Not promoted	--	31-7-94

1	2	3	4	5	6	7	8	9	10	11
105	Bharat Singh (BC)	8-71	14-10-77	7-1-91	Yet to be assessed	25-7-91	Turn not come	16-10-98	Turn not come	31-8-2006
106	O.P. Sharma	13-2-61	17-6-70	22-2-91	6-1-98	29-7-91	14-11-90	19-2-97	24-3-94	31-10-99
107	Soma Devi Sehgal	8-3-61	17-6-70	22-2-91	23-6-98	29-7-91	14-11-90	Not promoted	--	31-8-94
108	Bawa Singh	9-2-59	8-8-70	22-4-91	8-8-98	18-9-91	14-11-90	19-2-97	24-3-94	31-5-99
109	Lehna Singh	20-4-61	1-7-70	22-4-91	31-10-98	18-9-91	27-12-90	19-2-97	24-3-94	31-8-97
110	K.S. Guleria	1-6-63	21-8-70	22-4-91	31-10-98	18-9-91	27-12-90	Not promoted	--	30-6-96
111	R.D.S. Grewal	25-10-61	27-11-70	24-4-91	31-10-98	Not joined	--	--	--	31-10-95
112	A.C. Kapil	27-11-61	21-11-70	22-4-91	31-10-98	18-9-91	27-12-90	19-2-97	24-3-94	31-3-2001

1	2	3	4	5	6	7	8	9	10	11
113	B.R. Chawla	28-11-61	23-11-70	22-4-91	31-10-98	24-10-91	8-2-91	19-2-97	26-8-94	30-6-2001
114	Tara Chand (SC)	8-71	14-10-77	22-4-91	Yet to be assessed	24-10-91	Turn not come	16-10-98	Turn not come	31-1-2009
115	Bhu Dev Sharma	30-1-62	15-12-70	8-8-91	31-3-90	24-10-91	8-2-91	Not promoted	--	31-3-93
116	Brij Mohan Lal	24-6-62	14-1-71	8-8-71	31-3-90	24-10-91	3-4-91	19-2-97	26-8-94	31-10-97
117	Khushal Singh Kondal	24-4-62	14-1-71	8-8-91	30-4-90	3-1-92	3-4-91	Not promoted	--	30-11-96
118	Pushpa Bhatia	26-6-62	14-1-71	8-8-91	8-10-90	3-1-92	3-4-91	Expired	--	Expired
119	Saroj Bala	19-9-62	14-1-71	8-8-91	23-11-90	3-1-92	3-4-91	Not promoted	--	31-7-97
120	Ishwar Chand	21-2-62	31-8-71	8-8-91	23-11-90	3-1-92	8-7-91	16-9-97	26-8-94	29-2-2000
121	Sudershan Garg	14-12-63	1-9-71	8-8-91	23-11-90	3-1-92	8-7-91	Not promoted	--	30--4-96

1	2	3	4	5	6	7	8	9	10	11
122	Sham Sunder Mehta	28-6-63	1-9-71	8-8-91	23-11-90	3-1-92	8-7-91	Not promoted	--	31-1-95
123	Ram Parkash	10-8-59	24-9-91	8-8-91	9-10-91	3-1-92	8-7-91	-do-	--	30-4-96
124	Om Parkash Ranga (SC)	12-8-71	14-10-77	8-8-91	Yet to be assessed	3-1-92	Turn not come	Not joined	--	31-7-2004
125	Mani Ram (SC)	12-8-71	14-10-77	8-8-91	Turn not come	4-3-92	-do-	4-12-98	Turn not come	30-9-93
126	Ram Sarup Chanana	21-8-63	24-9-71	9-10-91	7-1-91	4-3-92	29-7-91	16-9-97	6-10-94	30-11-98
127	Dhani Ram Sharma	6-9-63	24-9-71	9-10-91	7-1-91	4-3-92	29-7-91	16-9-97	10-2-95	30-4-2002
128	Nagina Singh	7-9-63	24-9-71	9-10-91	7-1-91	4-3-92	29-7-91	13-10-97	28-3-95	30-11-99
129	Guru Sarup	27-8-63	11-10-71	9-10-91	7-1-91	4-3-92	29-7-91	13-10-97	28-3-95	31-12-97
130 to 211	xx	xx	xx	xx	xx	xx	xx	xx	xx	xx

(31) While on behalf of the petitioners it has been conceded that upto serial No. 107 they would catch-up with petitioner Sadhu Singh but not in respect of others. Some of the names have been reproduced above. The contention of the petitioners is of no avail. The other persons who are private respondents in the writ petition would necessarily catch-up because the petitioner has erroneously been promoted as Superintendent and thereafter as Under Secretary on 19th February, 1997 i.e. after 1st March, 1996. All other private respondents had by virtue of the principle of catch-up come upto the level where reservation was prescribed and necessarily they would become senior to the petitioners. The only silver lining would be that they would not be reverted because they had become Superintendent before 1st March, 1996. It has been explained by the State in the reply that in terms of the decision of the Supreme Court, seniority of Sadhu Singh petitioner was reviewed and refixed by placing senior general candidates above him time and again as and when they reach Level 3. It has been pointed out that Sadhu Singh petitioner was promoted as Superintendent on 3rd April, 1991 on the basis of accelerated seniority ignoring the claim of senior general candidates who had been promoted later at Level 3. At Level 4, seniority of Sadhu Singh petitioner had been reviewed and refixed as and when general candidates reached at Level 4. In terms of the decision of the Supreme Court, he is not being reverted from the post of Superintendent because he was so promoted before 1st March, 1996. Similar is the position of petitioner No. 2 B.L. Grover. Consequently, we find no reason to interfere in the impugned order.

(32) This conclusion of ours gets fortification from the pronouncement of the Supreme Court in the case of *M.G. Badappanavar and another v. State of Karnataka (12)*, (Civil Appeal Nos. 6970-6971 of 2000 decided on 1st December, 2000). Therein also the dispute was identical. In the state of Karnataka, there was reservation upto the level of Executive Engineer. There was no rule permitting seniority to be counted on roster promotion. To the level of Superintending Engineer, there was no reservation. Obviously, certain reserved candidates were promoted to Level 4 i.e. Superintending Engineer, treating them as senior to the general category candidates. The Supreme Court clarified as under :—

“...But in *Ajit Singh II*, this aspect has since been clarified. It was held that seniority Rules like rules 2(c), 4 and 4A permitting seniority to be counted from date of initial promotion, govern normal promotions made according to rules-by seniority at basic level, by seniority-cum-merit or

by selection-but not to promotion made by way of roster. The roster promotions were, it was held, meant only for the limited purpose of due representation of backward classes at various levels of service. If the rules are to be interpreted in a manner conferring seniority to the roster point promotees-who have not gone through the normal channel where basic seniority or selection process is involved-then the rules, it was held will be *ultra-vires* of Article 14 and Article 16 of the Constitution of India. Article 16(4A) cannot also help. Such seniority, if given, would amount to treating unequals equally, rather, more than equals.”

Thereafter, the Supreme Court held as under :—

“It is, therefore, obvious that, in accordance with *Ajit Singh II*, the seniority lists in the category of Executive Engineers has to be first reviewed, treating the general candidates as seniors to such of the reserved candidates provided the senior general candidates reached Level 3 (Executive Engineer) before the concerned reserved candidate was promoted as Superintending Engineer. After reviewing the seniority and re-fixing the same at the level of Executive Engineer, the promotions to the category of Superintending Engineer have to be next reviewed. While considering the promotions of the reserved candidates at Level I (Junior Engineer called later as Assistant Engineer) and at Level 2 (Assistant Executive Engineer), the principles laid down in *R.K. Sabharwal’s* case have also to be kept in mind, as explained in *Ajit Singh II*. Once the promotions at the level of Superintending Engineers are reviewed, the further promotions to the post of Chief Engineer or equivalent posts or posts higher up have also to be reviewed.”

(33) In other words, as in the present controversy, the Supreme Court clarified and held that in accordance with the decision in the case of *Ajit Singh II*, seniority list had to be drawn upto the level where the reservation is permitted. After reviewing the said seniority list and re-fixing the same at that level, promotion to the further level of Superintending Engineer has to be reviewed. Of course, reversion was not permitted to those who had been promoted before 1st March, 1996. That is exactly what has been done in the present controversy. The seniority of the general category candidates has been restored in accordance with the decision of the Supreme Court in the case of *Ajit Singh II* and *R.K. Sabharwal* and they are being promoted from the

effective date. As a necessary consequence, unfortunately, some of the reserved candidates have to be reverted.

(34) For these reasons, we are of the opinion that there is no merit in both the writ petitions and are accordingly dismissed with no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & R.C. Kathuria, JJ

JHARMAL,—*Petitioner*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 6335 of 2000

8th March, 2001

Haryana Panchayati Raj Act, 1994—S.175(1)(q)—Constitution of India, 1950—Arts.14 & 226—Election to the post of Sarpanch—S.175(1)(q) provides that a person having more than two living children not eligible to hold the office of Sarpanch—Whether violates Art.14 of the Constitution—Held, no.

Held, that a perusal of Section 175 (1)(q) of the 1994 Act shows that a person who has more than two living children (the provision has been amended in 1995 to say more than two children) is not qualified to hold the office of village Sarpanch. The provision does not debar the petitioner from having children. It does not affect his freedom of religion. It only provides that a person like the petitioner shall be disqualified from holding the office of Sarpanch. The purpose is to send a message to the people at the grass-root level. Persons who opt to lead people in villages must set a personal example. To achieve this objective, the Legislature has provided that a person having more than two living children shall not be eligible to hold the office of Sarpanch. The impugned provision does not suffer from any legal infirmity.

(Paras 6 & 8)

Satish Chaudhary, Advocate—*for the Petitioner*