

Gurcharan Singh v. The State of Punjab, etc. (Sandhawalia, J.)

Act to the enforcement of the right by a regular suit. In that contingency, the rule laid down by the Privy Council in *Mask & Company's case* (7) (supra) would have applied. The view I have taken of the matter finds ample support from the ratio of the decision in *Kamala Mills' case* (4) (supra). It must, therefore, be held that section 4 of the Pensions Act is hit by Article 19 of the Constitution of India, and on the parity of reasoning rule 6.4 of the Punjab Civil Services Rules would also be void.

(22) For the reasons recorded above, the answer to the question referred under section 113 of the Code of Civil Procedure would be in the affirmative. The costs will abide the event.

Suri, J.—I agree.

B. S. G.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and P. C. Jain, JJ.

GURCHARAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

C.W. No. 3143 of 1969.

September 13, 1973.

Punjab Police Rules (1934)—Rules 13.12(1) and 13.16(2)—Promotion of temporary vacancies of Sub-Inspectors and Inspectors—Whether governed and controlled by consideration of seniority—Reversion of an officiating Inspector while junior officers continue to officiate as Inspectors—Whether valid.

Held, that Rule 13.16 (2) of Punjab Police Rules, 1934 provides for promotion to the temporary vacancies arising in the rank of Inspector, and such officiating promotions are to be made in accordance with the principle laid down in sub-rule 13.12 (1). The plain language of this rule shows that seniority is indeed an insignificant, if not, an irrelevant consideration for filling of temporary vacancies in the rank of Sub-Inspector. That applies *mutatis mutandis* to the case of officiating Inspectors as well, by virtue of rule 13.16 (2). The primary and the declared objective for filling these temporary vacancies is manifestly to afford an opportunity for testing all eligible

men as fully as possible by allowing them to hold independent charges. Hence promotions to the temporary vacancies of Sub-Inspectors and Inspectors are not governed and controlled by considerations of seniority.

Held, that the reversion of an officiating Inspector while the junior officers to him continue to officiate as Inspector is not invalid unless the order of reversion casts stigma or entails any evil consequences to him and observations in *Harminder Singh Sub Inspector of Police v. The State of Punjab and others*, 1971 (II) S.L.R. 304 do not lay down the correct legal position.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia,—vide order, dated 23rd October, 1972, for decision, of the important question of law involved in the case to a Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain and the Division Bench finally decided the case on 13th September, 1973.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, quo-Warranto or any other appropriate writ, order or direction be issued quashing the impugned orders, dated 22nd January, 1968 and 22nd July, 1968 contained in Annexures 'B' and 'C', respectively, and declaring the petitioner entitled to the seniority on List 'F' over and above all the persons, who have not yet been confirmed as Sub-Inspectors of Police or were confirmed as Sub-Inspectors of Police after the petitioner and declaring the petitioner senior to the persons mentioned in this petition and others who were confirmed after him.

J. L. Gupta, Karminder Singh and M. L. Bansal, Advocates, for the petitioner.

J. S. Narang, Advocate for Advocate-General, for the respondents.

JUDGMENT

Order of the Court was delivered by:—

SANDHAWALIA, J.—The interpretation of the complementary provisions of rules 13.12(1) and 13.16(2) of the Punjab Police Rules, 1934, is the primary issue in this writ petition, which has been referred for determination to the Division Bench.

(2) The facts are not in serious dispute. The petitioner enlisted as a Constable in the Punjab Armed Police on the 21st of December,

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1948. He climbed the various rungs of promotion in the Department to hold the rank of Sub-Inspector of Police and was confirmed as such on the 1st of October, 1965. It is the petitioner's case that throughout his tenure of service his record has been excellent and he has been the recipient of a number of merit certificates. On the 20th of November, 1966, the petitioner was promoted to officiate temporarily as Inspector and continued to hold the post till the 22nd of January, 1968. By an order, dated the 22nd of January, 1968 (Annexure 'B' to the petition), Gurcharan Singh, petitioner, was reverted as Sub-Inspector along with many others with a direction that they were to handover as soon as officers posted in their places assumed charge. The petitioner, however, was not actually reverted and was adjusted against other vacancies till the 27th of July, 1968, when the order, dated the 2nd of July, 1968, was communicated to him directing his reversion along with four others to the rank of Sub-Inspector. The petitioner's reversion was further directed to take effect from the 1st of June, 1968. Aggrieved thereby the petitioner challenges his reversion to the substantive rank of Sub-Inspector,—*vide* the impugned order Annexure 'C'.

(3) Shri Shamsheer Singh, I.P., Inspector-General of Police, Punjab had filed an affidavit in reply. Therein the averments in the writ petition regarding the earlier service record of the petitioner stand admitted. Regarding the previous reversion order of 22nd of January, 1968 (annexure 'B') it has been pointed out that despite the same the petitioner continued to be adjusted by the D.I.G. of the Punjab Armed Police in leave vacancies, and he was actually reverted with effect from the 1st of June, 1968. In para 11(i) of the reply, the dates on which respondents No. 3 Shri Davinder Singh, No. 5, Shri Parphool Singh and No. 6 Shri Gulzara Singh were first promoted as officiating Inspectors have been specified as 26th of January, 1966, 28th of September, 1963, and 14th of February, 1966. It has thus been pointed out that as against them the petitioner was promoted to officiate as an Inspector much later on the 20th of November, 1966. The stand taken in the affidavit is that because the petitioner was the last one to be promoted he has now been reverted first whilst the three respondents have yet continued to serve as officiating Inspectors. It is reiterated that the principle of last come and first go far from being violated has in fact been followed and observed in the reversion of the petitioner. Lastly it is averred that the petitioner and his other colleagues who were in identical circumstances had represented their case to respondent No. 2, who

referred the matter to the answering respondent and after full examination of the relevant rules it was found that the reversion was in accordance with the statutory Police Rules on the point.

(4) It may be noticed at the outset that on the petitioner's own prayer, respondent No. 4 has been dropped from the array of respondents,—*vide* order of Gujral, J. on July 22, 1971.

(5) The core of the argument on behalf of the petitioner projected by his learned counsel Mr. J. L. Gupta runs thus. The petitioner, it is pointed out stands confirmed as Sub-Inspector with effect from October 1, 1965, whilst respondents Nos. 3, 5 and 6 are either not confirmed or have been confirmed subsequently to his date of confirmation. Therefore, relying on rule 12.2(3) of the Punjab Police Rules (which provides that seniority of the police officers shall be finally settled by the dates of confirmation), it is submitted that the petitioner ranks senior in the service to the contesting respondents Nos. 3, 5 and 6. It is, therefore, contended that the reversion of the petitioner, whilst the abovesaid respondents continue to officiate in the rank of Inspector, adversely affects his seniority in the service. It is the case that this reversion impliedly casts a stigma upon the petitioner and necessarily entails evil consequences for him.

(6) Mr. J. S. Narang on behalf of the State has taken the sting out of the argument on behalf of the petitioner by unequivocally taking the stand that the petitioner undoubtedly is senior in the rank of confirmed Sub-Inspectors of the Punjab Police Force to respondents Nos. 3, 5 and 6, who are either not confirmed as such or have been confirmed later than the petitioner. It is firmly the case of the respondent—State that the innocuous reversion of the petitioner to his substantive rank does not in any way affect his seniority nor is the impugned order intended to have any such effect. The case of the State is that the principles laid down by the statutory rules for appointment of officiating Inspectors in the police are not governed or controlled by considerations of seniority. The argument on its behalf is that opportunities of officiating in the higher rank are given to all the persons so eligible.

(7) The relevant statutory provisions lend patent support to the stand taken by the respondent-State. Rule 13.16(2) is the one which is directly applicable to the petitioner's case. It provides for promotion to the temporary vacancies arising in the rank of Inspector.

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What, however, is of significance is that such officiating promotions are to be made in accordance with the principle laid down in sub-rule 13.12(1). The legal effect, therefore, is that the opportunities for temporary promotion to the rank of officiating Inspectors are made identical with the method of filling temporary vacancies in the rank of Sub-Inspectors. The latter is governed by rule 13.12(1) which, therefore, deserves to be quoted *in extenso*:—

“In filling temporary vacancies in the rank of Sub-Inspector the object shall be to test all men on list E as fully as possible in independent charges. The order in which names occur in the list should be disregarded, the opportunities of officiating in the higher rank being distributed as evenly as possible. An Assistant Sub-Inspector officiating as a Sub-Inspector should ordinarily continue so to officiate for the duration of the vacancy, and should not be reverted merely because another Assistant Sub-Inspector senior to him is not officiating. This principle may, however, be modified if in any case its observance would result in a thoroughly competent man being deprived by a man markedly his junior of an officiating appointment of more than 8 months’ duration.”

(8) It needs no argument to see that the plain language of the rule abovesaid provides that seniority is indeed an insignificant, if not, an irrelevant consideration for filling of temporary vacancies in the rank of Sub-Inspector. That applies *mutatis mutandis* to the case of officiating Inspectors as well by virtue of rule 13.16(2). The primary and the declared objective for filling these temporary vacancies is manifestly to afford an opportunity for testing all eligible men on list ‘E’ as fully as possible by allowing them to hold independent charges. That seniority is not at all the governing factor is evident from the further provisions that the order in which the names occur in list ‘E’ should be disregarded and the plum of officiating in the higher rank should be distributed as evenly and as equally as possible to the persons existing on the list. As if to put the matter beyond doubt, the rule lays down that a junior Assistant Sub-Inspector should ordinarily continue to officiate for the duration of a vacancy to which he is appointed irrespective of the fact that persons senior to him are kept out of such similar officiating posts. To our mind, there is no manner of doubt that the underlying principle of rule 13.12(1) and as a consequence of rule 13.16(2) is that promotions to the temporary vacancies of Sub-Inspectors and Inspectors

are not hide bound by seniority but by the overriding considerations of affording equal opportunities to all eligible candidates on lists 'E' and 'F' for holding an independent charge in the higher rank and to test their mettle in these posts.

(9) That being the position in law, it is apparent that the reversion of the petitioner to his substantive rank of Sub-Inspector cannot and does not in the least adversely affect his seniority. The respondent-State is categorical in admitting the seniority of the petitioner *qua* respondents Nos. 3, 5 and 6 in the substantive rank of Sub-Inspector. It is equally unequivocal in its stand that the reversion of the petitioner does not and is not intended to affect his seniority to his detriment. The petitioner's apprehension and grievance on the score of his seniority being affected by his reversion from the officiating post is thus either ill-founded or imaginary. A reference to the orders Annexures 'B' and 'C' would show that they are wholly innocuous and the remotest reference of a stigma against the petitioner cannot be derived therefrom. We are unable to see how the impugned order in any way visits the petitioner with evil consequences. It is elementary in the present case (and indeed the learned counsel for the petitioner does not even claim so) that the petitioner has no vested right either to promotion or to hold the officiating rank of Inspector because his substantive rank is that of a confirmed Sub-Inspector. As early as in *Parshotam Lal Dhingra v. Union of India* (1), their Lordships observed as follows:

"If the government servant has right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank, if, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment."

The abovesaid principle has never been departed from and indeed has been reiterated by their Lordships in innumerable decisions following *Dhingra's case*. On our present finding that the impugned order casts no stigma nor entails any evil consequences, we are unable to find any merit in the supposed grievance on behalf of the petitioner.

(10) Repelled on his primary point Mr. J. L. Gupta has then fallen back on the ratio of *Hariminder Singh, Sub-Inspector of Police v. The State of Punjab and others* (2), in support of his client's case.

(1) A.I.R. 1958 S.C. 36.

(2) 1971 (11) S.L.R. 304.

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He contends that once it is held that he is senior in the substantive rank of Sub-Inspector, then he cannot be reverted so long as the Sub-Inspectors admittedly junior to him in that rank continue to officiate in the higher rank of Inspector. Reliance is placed on the following observations in the said judgment:—

“The executive power has to be exercised justly and fairly, so that all the Government servants are treated alike, which is their fundamental right guaranteed by Article 16 of the Constitution. The reversion of a senior officer, while a junior officer is retained in the officiating rank; affects his rank, status, emoluments and further chances of promotion and is thus punitive in character although it has not been made by way of punishment. Nevertheless, evil consequences follow and in order to avoid that the well-known principle of ‘last come first go’ has to be followed in the case of reversion. At the risk of repetition, I wish to emphasize that the appointing authority has the power to select from amongst the eligible candidates that best man available who may not be the senior most man at the time of appointment or promotion but at the time of reversion, the senior man will be reverted only if he has not been found suitable for the officiating post or after occupying that post his efficiency and honesty have deteriorated. This principle has not been followed by respondent 2 while reverting the petitioner in the present case.”

Undoubtedly the abovesaid observations would lend sizeable support to Mr. Gupta’s contention. Unfortunately, however, for him an insurmountable hurdle arises in his way from the ratio of the Supreme Court decision in *Union of India v. Prem Parkash Midha* (3). It appears that the learned counsel for the parties were sorely remiss in not bringing to the notice of the learned Single Judge in *Harminder Singh’s case* (2) (supra) the clear observations in *Midha’s case* (3), abovementioned. Therein an identical argument as raised by Mr. Gupta here was advanced and repelled. In terms, which admit of no equivocation, Shah, J., then acting Chief Justice, has pronounced the law in the following terms:—

“The District Court also held that when the service of the respondent was terminated and officers junior to him were

retained in service, the respondent was denied equal opportunity to hold public service under Article 16 of the Constitution. But there is nothing in Article 16 of the Constitution which supports the view expressed by the learned District Judge. By Article 16 all citizens are entitled to equality of opportunity in matters relating to employment or appointment to any office under the State. By merely terminating the employment of the respondent, the respondent was not denied of equal opportunity to hold public service. Under Article 16 of the Constitution, it is not one of the fundamental rights that a person who is an employee of the State shall be entitled to continue in service and that his employment shall not be terminated so long as persons junior to him remain in service."

It is patent that in view of the abovesaid authoritative enunciation, the observations in *Harminder Singh's case* (2) (supra) can no longer hold the field as they directly conflict with the ratio of *P. P. Midha's* (3) judgment. With the greatest deference to the learned Single Judge, we find ourselves bound by the Supreme Court judgment above and have to hold that the observations in *Harminder Singh's case* (2) do not lay down the correct legal position and have thus to be ignored altogether.

(11) As both the contentions raised on behalf of the petitioner fail, this writ petition has consequently to be dismissed. We, however, do not make any order as to costs.

K. S. K.

REVISIONAL CRIMINAL

Before D. S. Tewatia and B. S. Dhillon, JJ.

SURINDER KUMAR,—Convict-Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Cr. Re. No. 441 of 1970.

September 20, 1973.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 7/16—Conviction under—Whether can be based on the sole testimony of the Food Inspector—Offences under the Act—Desirability of the imposition of deterrent sentences.