

# The Indian Law Reports

Before G. C. Mital, J.

SHIV DAYAL SINGH and another,—Petitioners

versus

STATE OF PUNJAB and others,—Respondents.  
Civil Writ Petition No. 2894 of 1983.

January 9, 1986.

*Constitution of India, 1950—Article 16—Determination of seniority in the absence of any rules or executive instructions—Recruitment to the service from three sources—Department fixing seniority on rotation basis in view of the percentage fixed for each source—Seniority—Whether to be determined on the basis of length of service.*

*Held*, that in the absence of any service rules or government instructions, the seniority has to be fixed on the basis of continuous length of service and not on the basis of the proportion in which recruitment could be made from three sources on rota system.

(Para 9)

*Amended Civil Writ petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) complete records of the case be summoned;*
- (ii) a Writ in the nature of Certiorari quashing the seniority list of the Block Development and Panchayat Officer dated 27th February, 1948, Annexure P-13, be quashed;*
- (iii) a Writ in the nature of Mandamus directing the Respondent Nos. 1 and 2 to re-draw the seniority list in accordance with the statutory service rules/length of service placing the petitioners senior to Respondent Nos. 3 to 9 be issued;*
- (iv) a Writ in the nature of Mandamus directing respondent Nos. 1 and 2 to consider and promote the petitioners to the post of District Development and Panchayat Officers from a date earlier to Respondent Nos. 3 to 8, who are junior to the petitioners, be issued;*

(v) *this Hon'ble Court may be placed to restrain respondents Nos. 1 and 2 from promoting respondent Nos. 3 to 9 and any other person who is junior to the petitioners ;*

(vi) *filing of certified copies of the Annexures be dispensed with ;*

(vii) *costs of the petition be awarded to the petitioners ;*

(viii) *condition regarding service of advance notice of the Writ Petition on the respondents be dispensed with.*

Kuldip Singh, Senior Advocate, with S. S. Nijjar, Advocate, for the Petitioners.

G. S. Grewal, A.G. (Punjab), with S. S. Bajwa, Advocate, for the Respondents.

M. R. Agnihotri, Senior Advocate, with Deepak Agnihotri, for respondent Nos. 3 to 8.

### JUDGMENT

*Gokal Chand Mital. J.*

(1) In the absence of Rules or Executive instructions, the seniority list of members of a service has to be fixed on the basis of length of service or it can be fixed on the basis of rota in the ratio in which person came into service from three sources, is the point to be determined in this writ petition.

(2) The cadre of Block Development and Panchayat Officers (for short BDPOs) was created in October, 1960 with effect from 1st November, 1959. Shiv Dayal Singh and Harbans Singh Gill joined as BDPO in November, 1962 as direct recruits on being selected by the Punjab Public Service Commission. Respondents Nos. 3 to 9 came into service of BDPOs between 7th September, 1963 to 11th June, 1966, not as direct recruits but from other sources. On 26th April, 1966, seniority list of BDPOs as recorded till 31st December, 1962 was issued, in which the seniority was fixed on the basis of rota system and not on the basis of length of service. The covering letter issuing the seniority list is Annexure P1. A reading of this letter shows that since recruitment to BDPOs was to be made from three different sources in the ratio of 55 per cent : 30 per cent: 15 per

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cent, rota system on the basis of the percentage was mentioned in that document and seniority was fixed accordingly. The petitioners felt aggrieved and filed representations. On 24th October, 1972, the Government again circulated seniority list, as it stood on 31st July, 1972. The same is Annexure P5, in which the petitioners were placed above respondents Nos. 3 to 9 on the basis of length of service.

(3) Thereafter, by notification dated 22nd January, 1974, the Government of Punjab published rules framed under Article 309 of the Constitution of India, regarding the recruitment, seniority and other conditions of service of the BDPOs, known as "The Punjab Development and Panchayat (Class II) Service Rules, 1974 (for short the Rules)". Rule 13 of the Rules provided for framing *inter se* seniority on the basis of continuous length of service.

(4) In the year 1975 another seniority list Annexure P8 was issued,—*vide* covering letter Annexures P7, dated 28th August, 1975. This seniority list was prepared on the basis of rota formula. The petitioners were brought down. Feeling aggrieved, petitioner No. 1 filed representation Annexure P9 on 17th September, 1975. Thereafter, without considering the representation, another tentative seniority list Annexure P1 was issued with covering letter Annexure P10, dated 21st October, 1979, in which petitioners were shown below respondents Nos. 3 to 9, on the basis of rota formula. Again, petitioner No. 1 filed representation dated 7th November, 1979, Annexure P12. When the representations were not being decided and the seniority list was not being finalised, the present petition was filed. It may be noted that Civil Writ Petition No. 1459/1977 was filed by the other persons to challenge the seniority list, which was published with the letter dated 31st March, 1975, and while that writ petition was pending, the seniority list Annexure P11 was published on 21st October, 1979. Civil Writ Petition No. 537 of 1980 was filed by another person to challenge the seniority list issued in October, 1979. As already noticed, since representation of petition No. 1 was not being decided, this writ petition was filed and during the pendency of this writ petition, the State Government finalised the seniority list and circulated the same by order dated 27th February, 1984. The same is Annexure P13, in which also the seniority was fixed on the basis of rota system. Since the petitioners were not satisfied with that seniority list, the writ petition was amended to impugn the same.

(5) Since common question of law involves in all the three writ petitions, they are being disposed of by this common judgment.

(6) In this case, since the parties to this writ petition joined service before the Rules were published in 1947, there were neither any rules nor government instructions for fixation of seniority. This position is admitted on both sides. Opportunity was given to the Advocate-General appearing for the State to show if there were any instructions issued by the State Government for fixing the seniority. In spite of this opportunity, he was not able to produce any government order in this behalf. However, he relied on letter Annexure P1, to support the fixation of seniority on the basis of rota system, since there were three sources for recruitment to the service. Therefore, it will have to be seen whether letter Annexure P1 can be given effect to as the decision of the State Government and whether the basis laid therein can be said to be reasonable for fixing the seniority.

(7) After considering the matter, I am of the view that the letter Annexure P1 cannot be said to be the decision of the State Government. It is merely a covering letter to the gradation list of the BDPOs and how the seniority has been fixed, has been pointed out in it. It is noticed in this letter that there were three sources for recruitment to the service in the ratio of 55 per cent : 30 per cent : 15 per cent and on that basis in this very letter, it was shown that the seniority was fixed on the rotation basis in view of the afore-said percentage. Therefore, it is clear that it is not a policy decision of the Government but only shows how the department fixed the seniority while publishing seniority list Annexure P2. The fact remains that the seniority has been fixed in the absence of any executive instructions of the Government.

(8) By now it is a settled rule that if there are no service rules or executive instructions, the length of service is to be the basis in fixing the seniority. Of course, the service rules or executive instructions when issued in accordance with law, can provide a different method for fixing the seniority including the rota system. But as already noticed, no such rule or executive instructions were issued giving direction for fixing the seniority on the basis of rota system. The department merely took notice of the fact that since recruitment to service was from three sources, it itself evolves the rota system and fix the seniority on that basis, which is totally without authority of law.

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(9) In a recent judgement rendered in *H. V. Pardasanie te vs. Union of India and others* (1), Ranganath Misra, J. speaking for the Supreme Court observed as follows :—

“There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining the seniority in that grade.”

Following the aforesaid dictum, it has to be held that the seniority had to be fixed on the basis of continuous length of service and not on the basis of the proportion in which recruitment could be made from three sources on rota system in the absence of any service rules or government instructions.

(10) For the reason recorded above, C.W.P. No. 2894 of 1983 is allowed and the seniority list Annexure P13 issued by the State Government in the year 1984 during the pendency of this writ petition, is hereby quashed and a direction is issued to frame new seniority list solely on the basis of continuous length of service. CWP Nos. 1459 of 1977 and 537 of 1980 also stand disposed of in the aforesaid terms. However, the parties are left to bear their own costs.

N. K. S.

Before D. V. Sehgal, J.

VIJAY SINGH RAO,—Petitioner.

versus

STATE OF HARYANA and another,—Respondents.

Civil Writ Petition No. 4461 of 1985

January 9, 1986.

*Punjab Civil Service Rules, Volume I—Rule 10.2(a) proviso—Haryana Co-operative Societies Act, 1984—Sections 20, 25 and 31—Bye-laws of the Haryana State Co-operative Supply and Marketing Federation—Bye-laws 6, 14, 16, 18, 19, 21, 24, 26, 29, 34 and 35—Government employee transferred to Haryana State Co-operative Supply and Marketing Federation (HAFED) against his will—Transfer*

(1) 1985 (2) S.L.R. 43.