

Before : Jai Singh Sekhon, J.

TEK CHAND JAIN AND OTHERS,—Petitioners

versus

THE STATE OF HARYANA AND OTHERS,—Respondents

Civil Writ Petition No. 3042 of 1980

4th June, 1990.

Constitution of India, 1950—Arts. 14 & 16—Punjab Reorganisation Act, 1966—S. 82(6)—Punjab Treasury Establishment Subordinate Service (Class III) Rules, 1962—Rl. 7—Haryana Finance Department Treasuries (Group B) Service Rules, 1980—Rl. 9—1980 Rules adversely affecting condition of service—Prior approval of Central Government not obtained—Effect of—State adopting quota rule contained in 1962 Rules—Sudden deviation from following such rule—Action of the State discriminatory.

Held, there is no escape but to hold that the respondent—State having adopted the quota rule contained in Rule 7(1) of the 1962 Rules for promotions to the posts of Assistant Treasury Officers from the departmental candidates and it having not issued any administrative instructions, it was bound to observe the same. Thus, there could not be a better case of arbitrariness or discrimination on the part of the Respondent-State in not considering the petitioners or other Assistants of Treasuries and from different sources which were eligible for being considered for promotion to the posts of Assistant Treasury Officers on the basis of Rule 7(1) of 1962 Rules, even if these were only *ad hoc* appointments.

(Para 12)

Held, that the impugned Rule 9 of the 1980 Group B Rules qua its application to the petitioners excepting petitioner No. 2, who were already in service before the appointed day i.e. 1st November, 1966 is held to be violative of Section 82(6) of the Punjab Reorganisation Act, 1966, on the ground of not taking prior approval of the Central Government.

(Para 16)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari and quo warranto thereby quashing the impugned orders (Annexures P/1 to P/3) and a writ in the nature of mandamus thereby directing the Respondent No. 1 to order posting/appointments of the petitioners against the posts of Assistant Treasury Officers, falling to the share of the Assistants and any other writ, order or direction that this Hon'ble Court

**Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)**

may deem fit and proper in the circumstances of the case, may, kindly be issued and the costs of the writ petition may also be awarded to the petitioners.

It is further prayed that pending final disposal of this writ petition, Respondent No. 1 be restrained from ordering any appointment against any of the posts of Assistant Treasury Officers from out of the Assistant Superintendent Treasuries.

It is still further prayed that issuing and serving of notices of stay/motion on the Respondents may very kindly be ordered to be dispensed with.

R. P. Bali, Advocate, for the Petitioner.

S. S. Ahlawat D.A.G. Haryana at the time of arguments and hearing and not at the time of pronouncement of judgment, for the Respondents.

JUDGMENT

J. S. Sekhon, J.

(1) The main controversy in this writ petition is, whether promotion to the post of Assistant Treasury Officer (A.T.O.) classified as Class II shall continue to be governed by Rule 7 of the Punjab Treasury Establishment Subordinate Service (Class III) Rules, 1962, hereinafter referred to as 1962 Rules as applicable to the State of Haryana, although this post was taken out of these rules with effect from 7th July, 1970, or the same will be governed by the Haryana Finance Department Treasuries (Group B) Service Rules, 1980, hereinafter referred to as 1980 Rules, are violative of the provisions of sections 82(6) of the Punjab Reorganisation Act, 1966.

(2) The brief resume of facts relevant for the disposal of this writ petition is that the petitioners are working as Assistant Superintendents (Treasury) and Assistants in different treasuries in the State of Haryana and their service conditions are governed by 1962 Rules. Rule 7(1) (a) of 1962 Rules pertaining to the recruitment for the posts of Assistant Treasury Officers was amended in the year 1969. According to Rule 7(1) (a) (i) 50 per cent of the total number of posts of Assistant Treasury Officers are required to be filled up in the following proportion:—

- (i) By selection from among the Assistant Superintendent Treasuries or Assistants in Treasuries and by transfer from

among Assistants in Treasury and Accounts Branch of Finance Department and Junior Auditors of Local Fund Department, who subject to the exception given below possess degree of recognised University and who have rendered two years service as Assistant or a Junior Auditors in the following proportions:—

| | |
|---|-----|
| (i) From Assistant Superintendents Treasuries | 7½% |
| (ii) From Assistants in Treasuries | 30% |
| (iii) From Assistants in Treasuries and Accounts Branch of Finance Department | 6¼% |
| (iv) From Junior Auditors of Local Audit Department | 6¼% |
| 50 % of total number of posts of Assistant Treasury Officers. | |

Note : Assistant Superintendents Treasury, who do not hold a degree of recognised University shall also be eligible for appointment as Assistant Treasury Officers and under this clause provided that they have rendered at least four years service as such.

(3) *Vide* Finance Department Notification, dated 7th July, 1970 the posts of A.T.Os. were converted from Class III to Class II Gazetted post, but according to the petitioners the service conditions of these posts particularly in regard to the method of recruitment including qualifications and quota of posts continued to be governed under the 1962 Rules. The petitioners contend that in the State of Haryana there are in all 58 posts of Assistant Treasury Officers and had given break-up of these posts being manned by promotions from Assistants, Assistant Superintendents (Treasury), Junior Auditors etc. In para 9 of the writ petition, the petitioners further aver that upto the end of the year 1979, when lastly Om Parkash was promoted as Assistant Treasury Officer figuring at S. No. 42, (as reproduced in para 9 of the writ petition) the respondents had been appointing Assistant Treasury Officers by promotion from the above-referred four sources in accordance with Rule 7 of the 1962 Rules. The grouse of the petitioners pertains to appointment of Assistant Treasury Officers thereafter i.e., after S. No. 42 from out of the Assistant

Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)

Superintendents (Treasury) only. It is further elaborated that Respondents 2 to 13 working as Assistant Superintendents (Treasury) had been appointed as Assistant Treasury Officers,—*vide* orders Annexures P. 1, P. 2, P. 3 and P. 10, respectively, from the month of June to September, 1980, although none of these respondents possessed the requisite qualifications of being a graduate and, therefore, they could not even be considered for the posts of Assistant Treasury Officers. It is further highlighted that the quota rule for promotion to the post of Assistant Treasury Officer from the above-referred four sources was not observed.

(4) It is further averred that with the coming into force of the 1980 Group B Rules, the chances of promotion of Assistants to the post of Assistant Treasury Officer have been completely blocked and this amounts to hostile alteration in the conditions of service of the petitioners whose legal right of consideration for promotion has altogether been snatched away by promulgation of these rules. Thus, the rules were contended to be violative of the provisions of section 82 of the Punjab Reorganisation Act, 1966 as the prior consent of the Central Government was not taken. In the alternative, it is maintained that the retrospective operation of the 1980 Rules is certainly illegal and has resulted in discrimination as well as arbitrariness and thus violative of Article 16 of the Constitution. Under these circumstances, the petitioners had sought quashment of the impugned orders Annexures P. 1 to P. 3 and P. 10 as well as 1980 Rules.

(5) This petition was contested by Respondent No. 1 contending that 1962 Rules governed the service conditions of Class III only, but in view of the conversion of the post of Assistant Treasury Officer in Class II, these rules are no longer applicable. It is further explained that the posts of Assistant Treasury Officers were decided to be filled up on *ad hoc* basis from all categories including posts for direct recruitment, but the experience of the department was that Assistants did not have sufficient experience and expertise to man these posts. The Government, therefore, decided to fill up the vacant posts of Assistant Treasury Officers from amongst the Assistant Superintendents (Treasury), who have all round experience and are mature enough to man the posts of Assistant Treasury Officers. The matter with regard to filling up these posts on regular basis shall now be sorted out according to 1980 Rules and the posts falling to the direct quota shall be filled up through the Haryana Public Service Commission. It was further stated that there is no irregularity in the promotions of the respondents which were made by

way of make-shift arrangement pending finalisation of the rules and that Assistant Superintendents (Treasury) are eligible for promotion even if they are not graduates in accordance with the note below Rule 7.1 of the 1952 Rules although these rules have become redundant due to conversion of the Assistant Treasury Officer's post to Class II post. The rich experience gained by the Assistant Superintendents (Treasury) was also stressed regarding their promotion as Assistant Treasury Officers. It was also maintained that only chances of promotion of Assistants to the posts of Assistant Treasury Officers were reduced and no approval of Central Government under section 82(6) of the Punjab Reorganisation Act, 1966, was required before framing 1980 Rules.

(6) In the replication filed by the petitioners, it is maintained that the stand of the respondent in C.W.P. No. 4608 of 1985 titled Mohan Lal v. State of Haryana etc. in paragraphs 8 and 15 (iii) was altogether different, as therein the respondents had averred that from 7th July, 1970 to 16th November, 1980, the service conditions of the posts of Assistant Treasury Officers even though converted to Class II post continued to be governed by 1962 Rules and appointments from Assistants in Treasuries and Accounts Branch of the Finance Department continued being made while regularising services of Sarvshri J. K. Khetarpal and 19 other Assistant Treasury Officers,—*vide* order dated 8th July, 1987 of Respondent No. 1. The petitioners also appended the copy of the written statement in that writ petition as Annexure P.10 besides annexing the copy of the order dated 8th July, 1987 (Annexure P.11) of the Secretary to Government, Haryana, Finance Department.

(7) After hearing the learned counsel for the parties and perusing the record, this Court felt the necessity of getting additional information regarding the dates of appointment of the petitioners as clerks and dates of their promotion as Assistants. Accordingly, the learned counsel for the petitioners had furnished this information supported by a duly attested affidavit of Jagdish Lal Petitioner No. 5. Respondent No. 1 also filed an additional affidavit to the effect that under the 1962 Rules, as amended on 17th November, 1969, the Graduate Assistants working in Treasuries were also entitled for promotion to the post of Assistant Treasury Officer against 30 per cent of the total posts of Assistant Treasury Officers and this quota was kept in tact up till 16th November, 1980 and that between 23rd June, 1979 to 9th October, 1980, promotions were made under draft

Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)

service rules which came into force with effect from 17th November, 1980. It is further explained that under the new rules, the quota of local audit department was 6½ per cent and that of Treasuries and Accounts Department (Graduate Assistants at Headquarters only) 6½ per cent was abolished and given to the Treasury Organisation, to which the petitioners belong. This clearly establishes that the promotional avenues of the petitioners have been increased from 30 per cent to 50 per cent with the only difference that they have to be channelised through the posts of Assistant Superintendents (Treasury) as per Rule 9 (1) of the Haryana Treasury Establishment Group C Service Rules, 1980. It was also highlighted that there were only 40 regular posts of Assistant Treasury Officers as against the claim of the petitioners that there were 55 posts. Out of these regular posts, only 12 posts were meant for the petitioners whereas 21 posts were being manned by the Assistants in Treasuries. Thus, they were holding only 9 posts in excess of their quota and finally these 9 persons had to be reverted on joining of the candidates recommended by the Haryana Public Service Commission. It was further stated that some of the Assistant Superintendents (Treasury) who were promoted in excess of their quota during the period from 22nd June, 1979 to 9th October, 1980 have also to be reverted because these officers of both the categories were working against the posts meant for the direct recruits. It was further maintained that due to non-availability of the candidates for the posts meant for direct recruits, some *ad hoc* arrangement had to be made under which the officers from both the categories, i.e., Graduate Assistants and Assistant Superintendents (Treasury) had to be promoted to the posts of Assistant Treasury Officers. Had the petitioners been promoted along with other Assistant Superintendents (Treasury) they would also have been reverted like others. However, it was admitted that on the revision of the seniority list due to the judgment of the Supreme Court of India in the Assistant Grade Examination, Shri Tek Chand Jain (Petitioner No. 1) had been promoted as Assistant Treasury Officer on regular basis,—*vide* order dated 24th November, 1982 (with effect from 14th June, 1980 as the deemed date of promotion).

(8) It is unfortunate that Respondent No. 1 in the present writ petition had taken an altogether different stand than the one taken by it in C.W.P. No. 4608 of 1985 (Mohan Lal v. State of Haryana etc.). In the written statement filed in the present writ petition, it is maintained that the 1962 Rules have become redundant regarding the

promotion to the posts of Assistant Treasury Officers with effect from 7th July, 1970 on the conversion of these posts to Class II posts from Class III posts and from that very date the promotions were being made during the period from 7th July, 1970 to 18th November, 1980 when the new 1980 Rules of Group B Service came into force on the basis of the Government instructions keeping in view the more suitability of the Assistant Superintendents (Treasury) for promotion to the posts of Assistant Treasury Officer, whereas in the written statement filed on behalf of the respondents in C.W.P. No. 4608 of 1985, in paragraph 4, Respondent No. 1 had taken the stand that during the period from 7th July, 1970 to 16th November, 1980 it was decided that the posts of Assistant Treasury Officers be filled from different quotas prescribed under Rule 7 of the Punjab Treasury Establishment Subordinate Service (Class III) Rules, 1962, considering them as executive instructions and in view of this decision 50 per cent posts for direct recruits and 50 per cent posts of Assistant Treasury Officers which fell vacant during the period 7th July, 1970 to 16th November, 1980 were filled from the departmental officials in accordance with percentages prescribed under that rule.

(9) Realizing the contradictory stand taken by the respondent-State in the two writ petitions on the similar controversy, it appears that after addressing arguments, the respondent-State has become wiser and filed an additional affidavit of Joint Secretary to Government, Haryana, Finance Department, dated 20th December, 1988 to the effect that 30 per cent quota of Graduate Assistants of Treasuries for promotion to the posts of Assistant Treasury Officers was kept in tact up till 16th November, 1980 but between 23rd June, 1979 to 9th October, 1980, promotions were made under draft service rules which came into force with effect from 17th November, 1980.

(10) In view of this vacillating stand taken by Respondent No. 1 at different stages of the present writ petition as well as in the writ petition filed by Mohan Lal, clearly reveals that there were no instructions issued regarding promotion of departmental candidates to the posts of Assistant Treasury Officers during the period from 7th July, 1970 till 1980 Rules came into force. On the other hand, the respondent-State treating the guidelines embodied in Rule 7 of 1962 Rules as departmental instructions, continued making promotions from the category of Graduate Assistants of Treasury and others as well as of Assistant Superintendents (Treasury) under the provisions of Rule 7 (1) of 1962 Rules.

**Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)**

(11) Rule 7 (1) (a) was amended in the year 1969 and the percentage of departmental promotion from the above-referred four sources was modified as under :—

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|--|-------------|
| (i) From Assistant Superintendents Treasuries | 7½ per cent |
| (ii) From Assistants in Treasuries | 30 per cent |
| (iii) From Assistants in Treasury and Accounts Branch of Finance Department | 6¼ per cent |
| (iv) From Junior Auditors of Local Audit Department | 6¼ per cent |

A bare perusal of this rule leaves no doubt that the posts of Assistant Treasury Officers were graded as Class III posts and 50 per cent of such posts had to be filled up from direct recruitment on the recommendation of the Haryana Public Service Commission and 50 per cent promotions had to be made from the above-referred four sources. It further transpires that in the case of Assistants from Treasuries and Accounts Branch etc., the basic qualification was a degree of a recognised University and the minimum service of two years as Assistant, but in the case of Assistant Superintendents (Treasury), the note appended below Rule 7 (1) provided for relaxation of the Graduate qualification in suitable cases. There is no dispute between the parties that even after the conversion of the posts of Assistant Treasury Officers from Class III to Class II, the promotions upto November, 1979 continued to be made from the above-referred four departmental sources keeping in view the prescribed quota. Shri Om Parkash at S. No. 42 in the break-up given in para 9 of the petition was the last appointee from the Assistants working in the Treasuries to the post of Assistant Treasury Officer. Thereafter from S. No. 42 to 58, all promotions have been made from Assistant Superintendents (Treasury) to the posts of Assistant Treasury Officers in violation of the quota rule contained in Rule 7 (1) of the 1962 Rules. This action of the State Government cannot be held to be reasonable or can escape the vice of arbitrariness simply on the ground that these were *ad hoc* or stop gap appointments till 1980 Group B Rules came into force with effect from 17th November, 1980 because this action smacks of arbitrariness and adoption of different standards at different stages in order to suit the

whims of the Government. In other words, it can be well-said that after November 1979, when Om Parkash was promoted from the category of Assistants to the post of Assistant Treasury Officer, the right of the petitioners who belonged to the category of Assistants in Treasuries were altogether blocked for being considered for promotion to the posts of Assistant Treasury Officers. Moreover, the above-referred action of the Government is against the spirit of Rule 7 (1) of 1962 Rules which admittedly had been adopted as departmental instructions, but strangely enough, the sudden deviation in observing the spirit of this Rule after November 1979 crept up on the alleged ground that Assistant Superintendents (Treasury) had better and rich experience to man the posts of Assistant Treasury Officers even on *ad hoc* basis. The apex Court in *Sant Ram Sharma v. State of Rajasthan and another* (1), has observed that Government instructions can supplement the rules in the absence of any rules and till the statutory rules are framed. In paragraph 6 of the judgment, it was observed as under :—

“We proceed to consider the next contention of Mr. N. C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept the argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion for junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

(12) Thus, in the light of the observations of the Supreme Court, there is no escape but to hold that the respondent-State having

(1) 1967 S.L.R. 906.

Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)

adopted the quota rule contained in Rule 7 (1) of the 1962 Rules for promotions to the posts of Assistant Treasury Officers from the departmental candidates and it having not issued any administrative instructions, it was bound to observe the same. Thus, there could not be a better case of arbitrariness or discrimination on the part of the Respondent-State in not considering the petitioners or other Assistants of Treasuries and from different sources which were eligible for being considered for promotion to the posts of Assistant Treasury Officers on the basis of Rule 7 (1) of 1962 Rules, even if these were only *ad hoc* appointments.

(13) The stand of the respondent-State in the additional affidavit that even if any Assistant working in treasuries or the petitioners had been promoted on *ad hoc* basis as Assistant Treasury Officers, it would have been of no consequence since they had to be reverted after the recruitment from direct source, which the departmental promotees were earlier manning on *ad hoc* basis because it would amount to laying the cart before the horse. On the other hand, the *ad hoc* appointments to the posts of Assistant Treasury Officers would certainly have attracted better pay-scale, better amenities and conditions of service. This view is supported by a Division Bench judgment of Delhi High Court in *O. P. Gupta v. The Municipal Corporation of Delhi and others* (2). In paragraph 38 of the judgment, this controversy was dealt with as under :—

“The appellant is complaining of an infringement of his fundamental right guaranteed under Article 16 of the Constitution to be considered for promotion. It is no answer to say that because appointments were made from time to time until the finalisation of the Rules only on *ad hoc* basis, the appellant had no right to be considered for promotion. Whatever be the nature of the appointment i.e., permanent, temporary or *ad hoc*, a person eligible for promotion has a right to be considered.”

(14) Regarding the retrospective operation of 1980 Rules, it transpires that no indication is available from the rules itself whether the same will operate retrospectively. In the additional affidavit filed by Respondent No. 1, it is maintained that from November 1979 onwards, *ad hoc* promotions to the posts of Assistant Treasury Offi-

cers were made from Assistant Superintendents (Treasury) on the basis of draft service rules which ultimately came into force with effect from 17th November, 1980. Thus, if the original stand of Respondent No. 1 in the written statement is taken then from 7th July, 1970 till 17th November, 1980 Rules have been made effective retrospectively as the promotions to the posts of Assistant Treasury Officers shall be regularised under the 1980 Rules. The apex Court in *T. R. Kapur and others v. State of Haryana and others* (3), had held in paragraph 16 as under :—

“It is well-settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect : *B. S. Vadhera v. Union of India* (1968)3 SCR 571, *Raj Kumar v. Union of India* (1975) 3 SCR 963, *K. Nagaraj and others v. State of A.P. and another* (1985)1 SCC 523 and *State of J&K v. Triloki Nath Kholsa and others* (1974) 1 SCR 771. It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion, are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotions made with retrospective effect must necessarily satisfy the tests of Arts. 14 and 16 (1) of the Constitution : *State of Mysore v. M. N. Krishna Murty and others*, (1973) 2 SCR 575, *B. S. Yadav and others v. State of Haryana and others* (1981) 1 S.C.R. 1924, *State of Gujarat and another v. Ramanlal*

(3) 1984 (4) S.L.R. 155.

**Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)**

Keshavlal Soni and others, (1983) 2 S.C.R. 287 and
Ex. Captain K. C. Arora and another v. State of Haryana
and others (1984) 3 S.C.R. 623.”

In the light of the above-referred guidelines laid down by the Supreme Court regarding the retrospective operation of the rules, it transpires that the competent authority has the power to frame rules to regulate the conditions of service under Article 309 of the Constitution which also carries with it the power to amend or alter the rules with retrospective effect, but such retrospective operation must satisfy the tests of Articles 14 and 16(1) of the Constitution. It was further remarked that right of a person to be considered for promotion is a condition of service although mere changes of promotion may not be. In the above-referred case, notification prescribing the qualifications with retrospective effect was struck down as it rendered the petitioners ineligible for promotion. In the case in hand also, according to the stand of Respondent No. 1, if the *ad hoc* promotions to the posts of Assistant Treasury Officers are to be regularised under the 1980 rules which came into force on 17th November, 1980, that would amount to affecting the conditions of service of the petitioners, as according to 1962 Rules, the petitioners being posted as Assistants in the Treasuries or Treasuries and Accounts Branch etc. were *eligible* for promotion to the posts of Assistant Treasury Officers to the extent of their quota contained in rule 7(1) of 1962 Rules whereas 1980 Rules had rendered the Assistants including the petitioners as ineligible for promotion to the posts of Assistant Treasury Officers.

(15) Regarding the vires of The Haryana Finance Department (Group B) Service Rules, 1980, which came into force on 17th November, 1980, it transpires that under Rule 9(1) (b) the promotion to the posts of the Assistant Treasury Officers has been provided as :—

- (i) 50 per cent by promotion from amongst the Assistant Superintendent Treasuries.
- (ii) 50 per cent by direct recruitment.

Thus, in a way it can be well-said that Assistants working in the Treasuries, Assistant in Treasuries and Accounts Branch of Finance Department have been debarred from promotion to the posts of Assistant Treasury Officers by virtue of these rules. Mr. R. P. Bali,

the learned counsel for the petitioners contended that 1980 Rules had resulted in entirely blocking the promotional chances of the petitioners which affected the conditions of their service as prior approval of the Central Government was not taken under section 82 of the Punjab Reorganisation Act, 1966. Mr. S. S. Ahlawat, D.A.G.(H) on the other hand maintained that the promotional chances of the Assistants working in Treasuries and others have been enhanced in view of the Haryana Treasury Establishment Subordinate Group C Service Rules 1980 which came into force on 17th December, 1980 as Rule 9(1) (a) provides that cent per cent posts of Assistant Superintendents (Treasury) shall be filled from amongst Assistants working in Treasuries and Audit and Accounts Department (Headquarters) and thus there was only one step in the channel for further promotion to the post of Assistant Treasury Officer and it at the most reduced the chances of promotion of petitioners or other Assistants which would not amount to condition of service. Admittedly, Petitioners Nos. 1, 3—7 were in the service as clerk and governed by 1962 Rules in the erstwhile State of Punjab on the appointed day i.e. 1st November, 1966. Ram Niwas, Petitioner No. 2 joined as clerk on 9th September, 1971. Under Rule 7 of the 1962 Rules, the Assistants working in Treasuries and other Branches were eligible for promotion to the post of Assistant Treasury Officers along with Assistant Superintendents (Treasury) although at that time the post of Assistant Treasury Officer was also considered as Class III post. The post of Assistant Treasury Officer was converted into Class II with effect from 7th July, 1970. Thereafter also, according to the additional affidavit filed by Respondent No. 1 upto November 1979 when Om Parkash figuring at S. No. 42 was promoted to the post of Assistant Treasury Officer, the above-referred quota rule under Rule 7 (1) of 1962 Rules was adhered to, but under Rule 9 (1) (b) of 1980 Rules, 50 per cent of the posts of Assistant Treasury Officers are required to be filled up by promotion from the Assistant Superintendent (Treasury) only which, in turn, implies that the Assistants working in the Treasuries or other establishments referred to above have altogether been ignored for being considered for promotion to the posts of Assistant Treasury Officers. Thus, it would certainly amount to changing the conditions of service of the above referred Assistants including the petitioners to their disadvantage as their promotional chances to the posts of Assistant Treasury Officers had altogether been obliterated. Merely because Rule 9 (1) (a) of the Haryana Treasury Establishment Subordinate Group C Service Rules 1980 which came into force on 17th December, 1980 provided that cent per cent posts of Assistant Superintendents

Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)

(Treasury) shall be filled from amongst the Assistants working in Treasuries and Accounts Department (headquarters), it cannot be said that the amended rules have simply reduced the chances of promotion of Assistants working in the Treasuries to the posts of Assistant Treasury Officers because the introduction of one step in the channel, i.e., promotion to the post of Assistant Superintendent (Treasury) between the promotion to the post of Assistant Treasury Officer had altogether blocked the chances of promotion of the Assistants working in the Treasuries and others to the post of Assistant Treasury Officers. Thus, it would certainly amount to affecting the conditions of service because it is a settled law that right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be. The above-referred view of the apex Court in T. R. Kapur's case (supra) can again be relied upon in this regard. If that is so, then under section 82 of the Punjab Reorganisation Act, prior approval of the Central Government was required. The controversy whether such a prior approval of the Central Government would be treated to have been obtained on the basis of the instructions issued by the Central Government to the States under section 115 (7) of the States Reorganisation Act, 1956 as observed by the Supreme Court in *Mohd. Shujat Ali and others v. Union of India* (4), was settled in *T. R. Kapur's case* (supra) in paragraph 12 of the judgment as under :—

“It is not suggested that the State Government ever moved the Central Government seeking its prior approval to the proposed amendment of rule 6(b) of the Class I Rules. In that connection it is necessary to recall that prior to the reorganisation of the State under the States Reorganisation Act, 1956, a conference of the Chief Secretaries of the States that were to be affected was held at Delhi on May 18 and 19, 1956 for the purpose of formulation of the principles upon which integration of services was to be effected. The Government of India by its circular dated May 11, 1957 to all the State Governments stated *inter alia* that if agreed with the views expressed on behalf of the States representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to

sub-section (7) of Section 115 of the Act in the matter of change of the conditions of service relating to departmental promotions. These considerations however do not arise in the present case. Admittedly, there was no Chief Secretaries Conference as was held prior to the re-organisation of the States under the States Re-organisation Act, 1956. Nor was there any communication issued by the Central Government conveying its previous approval of the changes in the service conditions which the States of Punjab and Haryana might make in terms of the proviso to section 82 (a) of the Punjab Re-organisation Act, 1956. Under the States Reorganisation Act, 1956 so also under the Punjab Reorganisation Act, 1956, the power of the Governor to make rules under the proviso to Art. 309 of the Constitution had been controlled by the proviso to section 115 (7) of the former Act and section 82 (b) of the latter. It follows that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-sections (1) or (2) of section 82 of the Act could not be varied to his disadvantage except with the previous approval of the Central Government. That being so, the impugned notification issued by the State Government purporting to amend rule 6 (b) of the Class I Rules with effect from July 10, 1964 which rendered members of Class II service who are diploma holders like the petitioners eligible for promotion to the post of Executive Engineer in Class I Services making a degree in Engineering essential for such promotion, although they satisfied the condition of eligibility of 8 years' experience in that class of service must be struck down as *ultra vires* the State Government being contrary to section 82 (6) of the Punjab Reorganisation Act, 1966."

In the light of the observations of the Supreme Court reproduced above, there is no force in the condition of the learned counsel for the respondent-State that general instructions issued by the Central Government under section 115 (7) of the States Reorganisation Act, 1956 would cover the present controversy.

(16) For the foregoing reasons, the impugned orders of promotions Annexures P.1, P.2, P.3 and P.10 promoting Respondents 2 to

Tek Chand Jain and others v. The State of Haryana and others
(J. S. Sekhon, J.)

13 to the posts of Assistant Treasury Officers from Assistant Superintendents (Treasury) are hereby quashed by accepting this writ petition. Respondent No. 1 shall, however, reconsider the cases of the petitioners as well as Respondents 2 to 13 for promotion to the posts of Assistant Treasury Officers as per quota rule embodied in Rule 7(I) of 1962 Rules within 3 months of the receipt of this order. The impugned Rule 9 of the 1980 Group B Rules *qua* its application to the petitioners excepting petitioner No. 2, who are already in service before the appointed day i.e. 1st November, 1966 is held to be violative of section 82 (6) of the Punjab Reorganisation Act, 1956, on the ground of not taking prior approval of the Central Government.

(17) The writ petition stands allowed to the extent indicated above with costs against Respondent No. 1 only, which shall be paid to the petitioners proportionately. Costs are quantified as Rs. 1000.

S.C.K.

Before : G. R. Majithia, J.

KULDEEP KUMAR AND ANOTHER,—Appellants.

versus

HUKAM CHAND,—Respondent.

Regular Second Appeal No. 2142 of 1978.

19th December, 1990.

East Punjab Urban Rent Restriction Act, 1949—S. 3. Haryana Control of Rent and Eviction Act, 1973—S. 24—Shop in dispute constructed in 1957—Exemption of five years under Punjab Act expired in 1971—Suit for possession filed on 16th July, 1976—Maintainability—Demised premises—Whether exempted from the provisions of Punjab Act.

Held, that by virtue of this provision, the notification issued under the Punjab Act exempting certain buildings from the purview of that Act was not inconsistent with the provisions contained in the Haryana Act or the rules made thereunder. The enforcement of the Haryana Act with effect from April 25, 1973 would not adversely affect the validity of the notification issued under the Punjab Act. The construction of the demised premises was completed in the year