

## FULL BENCH

Before S. S. Sandhwalia, C.J., R. N. Mittal and J. V. Gupta, JJ.

B. K. BHALLA and others,—Appellants.

*versus*

STATE OF PUNJAB ETC.,—Respondents.

L.P.A. No. 258 of 1978.

March 24, 1981.

*Punjab Educational Services (Class II) Rules 1934—Rules 6, 7, 9(1) and 10—Word 'selection' as used in clause (a) of Rule 6—Whether means selection by way of promotion—Interpretation of statutes—Rules of—Stated—Posts lying vacant—State Government Whether has power to make retrospective appointments against such posts.*

*Held*, that the word 'selection' in clause (a) of Rule 6 of the Punjab Educational Services (Class II) Rules, 1934 has to be interpreted by taking into consideration the entire body of rules. In sub-rule (i) of Rule 10, it is provided that a member appointed by selection from amongst those holding special or miscellaneous posts in the Department shall be senior to members appointed by promotion from the Subordinate Education Service. The words 'appointed by promotion' in the sub-rule are significant and show that the word 'selection' as used by the rule making authority in rule 6 for making appointments from the Subordinate Education Service means selection by promotion from that service. Further, sub-rule (iv) of rule 10 provides for determination of seniority *inter se* amongst the officers who are promoted from the Subordinate Education Service. Again, the rule making authority has used the words 'appointed by promotion' in the said sub-rule. It is also relevant to point out that different methods have been prescribed for making recruitment from the open market and by promotion. Under rule 8, the appointments by direct recruitment are made on the recommendation of the Public Service Commission or the Punjab Education Board of Selection, whereas under rule 7, appointments by promotions are made by the Government itself. Under rule 9, the members of the service, who are recruited directly, are put on probation for a period of one year whereas there is no such probation prescribed for the promotees. Moreover, the words 'promotion', and 'selection' contain the same elements. In the case of promotion elements of seniority and merit are involved. Similarly, in the case of selection from a subordinate service, the same elements are involved. It is, therefore, held that the word 'selection' used in clause (a) of rule 6 means selection by way of promotion. (Para 10).

*Gopal Dass Puri vs. State of Punjab and others* 1974 S.L.W.R.  
379 OVERRULED.

*Held*, that the conventional way of interpreting a statute is to see the intention of the Legislature. It is well settled that if the words of the statute are precise and unambiguous, the intention of the Legislature is gathered by expounding them in their natural and ordinary sense as they best declare the intent of the law giver. But where their import is doubtful, the Court has to choose that interpretation which represents the true intention of the legislature. In such an eventuality, that alternative should be chosen which will be consistent with the smooth working of the statute. The words and phrases occurring in the statute are taken not in isolated or detached manner but are to be read in the light of its context. They take their colour from the context in which they appear. The court has to ascertain the intention of the legislature by directing its attention not only to the clauses to be construed but to the entire statute. It is possible that the same words used in different sections of the statute or even used at different places in the same section may bear different meanings. The conclusion that can be truly arrived at is by studying the statute as a whole. In a nutshell, if the words in the statute are ambiguous, they should be interpreted by taking into consideration the entire statute. (Part 9).

*Held*, that the State Government can make promotions with retrospective effect unless it is prohibited by some rule or regulation. (Para 21).

*Pishori Lal Sahni and others vs. Commissioner*, 1980(1) S.L.R.  
352 OVERRULED.

*Letters Patent Appeal under clause X of the letters patent against the judgment dated 20th February, 1977 delivered by Hon'ble Mr. Justice S. P. Goyal in C.W.P. No. 1115 of 1972.*

H. L. Sibal, Senior Advocate with M. R. Agnihotri, Advocate, for the Appellants.

T. S. Doabia, Advocate for the State, for the Respondents.

Mr. Kuldip Singh, Advocate with Mr. R. S. Mongia.

#### JUDGMENT

R. N. Mittal, J.

(1) This letters patent appeal has been filed against the judgment of a learned single Judge dated 20th February, 1978.

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(2) Briefly, the facts of the case are that the petitioners were appointed directly to the Punjab Educational Service (Class II) on the recommendation of the Punjab Public Service Commission,—*vide* order dated 3rd July, 1963 (copy Annexure 'A'). They completed the period of probation on different dates upto 15th July, 1965. Respondents Nos. 3 to 31 were members of P.E.S. Class III. Out of them respondents Nos. 3 to 14 were promoted to P.E.S. Class II Service,—*vide* order dated 25th January, 1966 (copy Annexure 'C'), with effect from 23rd June, 1962 and respondents Nos. 15 to 31 were promoted to P.E.S. Class II service,—*vide* order dated 22nd February, 1972 (copy Annexure '1'), with effect from the different dates in the years 1963, 1964 and 1965. Respondents Nos. 15, 16, 17 and 18 were given dates of promotion prior to and respondents Nos. 19 to 31 after the date on which the petitioners were appointed. Respondents Nos. 19 to 31, however, made representations to the Government regarding the dates of their promotions and they were also given dates of promotion prior to that of the petitioners.

(3) The Gradation List of the members of the Punjab Educational Service (Class II) as corrected upto June 1, 1966, was issued showing respondents Nos. 3 to 14 senior to the petitioners on the basis of their earlier dates of promotion. The petitioners consequently filed representation dated 20th September, 1968, to the State Government against the promotion of respondents Nos. 3 to 14 with retrospective effect. The petitioners having received no reply for long filed Civil Writ No. 2217 of 1969 under Article 226 of the Constitution of India which was allowed in September, 1971, and a direction was issued to the State Government to decide the representation within a period of three months. The State Government, after hearing the parties, rejected the representation of the petitioners,—*vide* order dated 2nd December, 1971.

(4) The petitioners have challenged the orders Annexures 'C' and '1' on the grounds that the Punjab Educational Services (Class II) Rules, 1934, hereinafter referred to as the Rules, by which the parties were governed, did not permit promotion to Class II service from the date earlier than the date of order of appointment, and that the petitioners, on successful completion of the probationary period, were deemed to have been confirmed from

the date succeeding the expiry of the period of probation and ranked senior to the private respondents.

(5) The claim of the petitioners has been resisted by the State Government and the private respondents. The Government, in its written statement, pleaded that the appointment to P.E.S. (Class II) service were made in the ratio 1 : 2 from among direct recruits and the promotees. In the year 1962, out of sixty vacancies twenty-six had been filled by direct appointment and papers for promotion from Class III service were moved simultaneously regarding the filling up of the remaining vacancies. The matter was delayed on one ground or the other and consequently, respondents Nos. 3 to 14 were promoted in 1966. As the vacancies had become available in 1962, they were promoted from back dates according to the availability of vacancies in the promotees' quota. It was further averred that the Government had a right to make promotions with retrospective effect from the dates when the vacancies become available and there was no rule which debarred it from doing so. Regarding the question of seniority, it was stated that the petitioners and private respondents had not been confirmed in class II service and that question was under consideration of the Government. Similar pleas were taken by the private respondents.

(6) The learned Single Judge held that the private respondents could not be appointed by promotion with retrospective effect under the Rules even though the vacancies were available in class II service. He further held that even on general principles, the Government could not promote them with retrospective effect. Consequently, he allowed the writ petition and quashed the impugned orders to the extent that the respondents would not be deemed to be appointed with retrospective effect but from the dates of their promotions to class II service. Some of the respondents have come up in this letters patent appeal against the judgment of the learned single Judge.

(7) The case was listed before a Division Bench, which referred it to a larger Bench on the ground that construction of the relevant rules seemed to raise a larger issue without regard to the essential distinction betwixt direct appointment as against that by way of promotion which would inevitably arise in other fields of services law as well. This is how the matter has been listed before the Full Bench.

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(8) Mr. H. L. Sibal, learned counsel for the appellants, has argued that recruitment under clauses (a) and (b) of rule 6 of the Rules is by way of promotion. He has submitted that though the word used in the said clauses is 'selection' but it means selection by way of promotion either from the Subordinate Education Service or from persons holding special or miscellaneous posts in the Department. According to him, if that rule is read along with other rules, the only inference that can be drawn is that appointment from the subordinate Education Service to Class II Service is by promotion. He also challenges the correctness of the Division Bench judgment in *Shri Gopal Dass Puri vs. The State of Punjab through the Secretary to Government, Education Department, Chandigarh and others*, 1974 S.L.W.R. 379.

(9) We have heard the learned counsel at a considerable length. In order to determine the question, it will be necessary to refer to rules 6, 7, 9(1) and 10(i) and (iv); which are reproduced hereunder :

"6. *Methods of recruitment* : Members of the service shall be recruited :

- (a) By selection from the Subordinate Education Service, or
- (b) By selection from among those holding special or miscellaneous posts in the Department, or
- (c) By direct appointment on the recommendation of the commission or the Punjab Education Board of Selection, if the former does not exist ;

7. *Appointments by promotions or from among special officers to be, by strict selection* :

Appointments to the Service under clauses (a) or (b) of rule 6 shall be made by strict selection, and no member shall have any claim to such appointment as of right.

9. *Probation of members recruited by direct appointment* :

- (1) Members of the service who are recruited by direct appointment shall be on probation in the first

instance for a period of one year in the case of a member having a domicile in the Punjab or of two years in the case of any other member and during such period of probation members having a domicile other than in Punjab shall pass such examination in Urdu as Local Government may from time to time prescribe.

10. *Seniority of members of the service :*

The seniority of members of the service shall be determined by the dates of confirmation, which for the purpose of this rule shall mean the day succeeding the expiry of the period of probation:

Provided that, if two or more members are confirmed on the same date, their seniority *inter se* shall be regulated as follows :—

- (i) A member recruited by direct appointment, on the recommendation of the commission or the Punjab Education Board of Selection shall be senior to members appointed *by the selection* from among those holding special or miscellaneous posts in the Department shall be senior to members *appointed by promotion* from the subordinate Education Service.

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- (iv) In the case of members who were both or all *appointed by promotion* from the Subordinate Education Service, Seniority shall be determined according to the seniority of such members in that service."

*Note :* Emphasis supplied by underlining.

The conventional way of interpreting a statute is to see the intention of the Legislature. It is well settled that if the words of the statute are precise and unambiguous, the intention of the legislature is gathered by expounding them in their natural and ordinary sense as they best declare the intent of the law giver. But where their import is doubtful, the Court has to choose that interpretation which represents the true intention of the legislature. In

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such an eventuality, that alternative should be chosen which will be consistent with the smooth working of the statute. The words and phrases occurring in the statute are taken not in isolated or detached manner but are to be read in the light of its context. They take their colour from the context in which they appear. The court has to ascertain the intention of the legislature by directing its attention not only to the clauses to be construed but to the entire statute. It is possible that the same words used in different sections of the statute or even used at different places in the same section may bear different meanings. The conclusion that can be truly arrived at by studying the statute as a whole. In a nutshell, if the words in the statute are ambiguous, they should be interpreted by taking into consideration the entire statute.

(10) The word 'selection' in clause (a) of rule 6 of the Rules is to be interpreted in the light of the above observations as in other parts of the Rules the word 'selection' has not been used in the cases of appointments to Class II Service from amongst the Subordinate Education Service. In sub-rule (i) of rule 10 *ibid*, it is provided that a member appointed by selection from amongst those holding special or miscellaneous posts in the Department shall be senior to members appointed by promotion from the Subordinate Education Service. The words 'appointed by promotion' in the sub-rule are significant and show that the word 'selection' as used by the rule making authority in rule 6 for making appointments from the Subordinate Education Service means selection by promotion from that service. Further, sub-rule (iv) of rule 10 provides for determination of seniority *inter se* amongst the officers who are promoted from the Subordinate Education Service. Again, the rule-making authority has used the words 'appointed by promotion' in the said sub-rule. It is also relevant to point out that different methods have been prescribed for making recruitment from the open market and by promotion. Under rule 8, the appointments by direct recruitment are made on the recommendation of the Public Service Commission or the Punjab Education Board of Selection, whereas under rule 7, appointments by promotions are made by the Government itself. Under rule 9, the members of the service, who are recruited directly, are put on probation for a period of one year whereas there is no such probation prescribed for the promotees. Moreover, the words 'promotion' and 'selection' contain the same elements. In the case of promotion, elements of seniority and merit

are involved. Similarly, in the case of selection from a subordinate service, the same elements are involved. We are, therefore, of the opinion that the word 'selection' used in clause (a) of rule 6 means selection by way of promotion. In *Gopal Das Puri's case* (supra), the learned Bench took the view that rules 6 and 7 do not talk of any appointment by promotion. It, consequently, came to the conclusion that in selection from the subordinate service, the element of promotion had been done away with. However, while making the above observations, it did not take into consideration rules 8 to 10 of the Rules. With great respect to the learned Bench in our view, rules 6 and 7 of the Rules have not been interpreted correctly by it and, therefore, we overrule it to this extent.

(11) Mr. Sibal has next argued that a larger number of vacancies were lying unfilled out of which 1/3rd vacancies were to be filled by direct recruitment and 2/3rd by promotion. The process of selection by promotion as well as by direct recruitment was initiated but the selection by promotion was delayed by the Government for one reason or the other whereas the posts meant for direct recruits were filled up. According to him if the appointments were delayed because of some objections, the officers should not be allowed to suffer. He further submits that the Government has a general power to make promotions with retrospective effect unless there are rules to the contrary. He argues that in view of the circumstances of the case and the position of law, the State's order in promoting the appellants with retrospective effect cannot be challenged.

(12) We have given due consideration to the argument of the learned counsel and find force in it. The first question that arises for determination is as to when the process of promotion of the appellants started. The respondents have produced a letter dated 8th August, 1966 from the Director of Public Instruction, Punjab, Chandigarh, to the Education Commissioner and Secretary to Government, Punjab, Education Department, Chandigarh, wherein he gave replies to various points raised by the Accountant-General, Punjab, with regard to promotion and appointment of the appellants to P.E.S. Class II. He explained the question of delay as follows:—

“As regards delay in finalisation of this case I may point out that the proposal regarding promotion of Class III Lecturers to PES Class II as Senior Lecturers (Men's)



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Branch) were sent by the Directorate to Government on the 21st February, 1962. This case could not be taken earlier due to the fact that personal files had to be completed by protracted correspondence. The Administrative Department, however, desired in their U.O. No. 4716-ED-1-62 dated the 9th July, 1962 that the proposals should be revised in view of the decision of the Central Advisory Committee regarding fixation of *inter se* seniority of officers/officials of the erstwhile State of Punjab and PEPSU. The matter was examined accordingly in the Directorate and recommendations were again made to Government in U.O. No. 17/11-62-Z, dated the 11th August, 1962. A back reference was again received,—*vide* A/D's U.O. No. M.Ed. 1(2) 63, dated 21st/24th January, 1963, desiring that the proposals should be recast on the basis of the slab system. The proposals were re-drawn by the Directorate and furnished to Government,—*vide* Directorate U.O. No. 117/11-62-Z, dated the 26th March, 1963. On the basis of the tentative approval of the Government the Administration Departments were moved to obtain the approval of the Punjab P.S.C. to the suitability of the officials concerned,—*vide* U.O. No. 11/11-62-Z, dated 14th November, 1963. The matter was accordingly referred to the Commission by the Government,—*vide* their Memo No. 140-43-ED. (1)-63/6774, dated 1st May, 1963. The Punjab P.S.C. made a back reference *inter alia* for certain documents and personal rules pertaining to the same officers who had already been selected by the Commission from the open market. This was done,—*vide* their letter No. Pr-34-64/32547, dated the 13th July, 1964, transmitted by A/D,—*vide* letter No. 8204-ED-164/16788, dated 21st September, 1964. The requisite documents were supplied to Government,—*vide* communication No. 15243-17/11-62-7. (4) dated the 30th December, 1964. Likewise the matter remained under protracted correspondence with the commission till approval was conveyed,—*vide* their letter No. Pr-(34)-36383, dated 25th August, 1965 on the basis on which ultimately promotion orders were issued by the Government,—*vide* their notification No. ED. 1-5(21)-65/2051, dated the 25th January, 1966".

From the above quotation it is evident that the process of promotion was initiated in 1962 but the final decision could not be taken on account of one objection or the other. It is also relevant to mention that the vacancies against which the appellants were being promoted came into existence in 1962. The learned Single Judge while dealing with this matter also observed that in the year 1962, sixty-two vacancies were available in the service out of which 26 were filled by direct appointment and the case for filling the remaining vacancies from Class III service was moved simultaneously. It is relevant to point out that the appellants were performing the same type of duties as they were supposed to do after their promotion to P.E.S. Class II. The settled principle of law is that the Government servants cannot be made to suffer on account of delay caused by the Government in dealing with their cases expeditiously. If the Government redresses the grievance of its servants because of delays in dealing with their cases, the order cannot be held to be bad. From the above discussion, it emerges that the process of recruitment by promotion to Class II service was initiated in 1962 and the appellants could not be promoted on account of some formalities. Therefore, the Government was justified in promoting them with retrospective effect.

(13) The next question to be determined is as to whether the Government has a general power to make promotions with retrospective effect if the vacancies became available from earlier dates. The learned counsel for private respondents has contended that the Government has no right to make promotions with retrospective effect but in certain exceptional case it can do so. The matter is highly controversial. The Supreme Court in various cases has taken the view that an Officer can be promoted with retrospective effect. In this regard reference may be made to *State of Mysore and another v. Syed Mahmood and others*, (1) *Gurcharan Dass Vaid v. The State of Punjab and others*, (2), and *State of U.P. and others v. Dr. Sarvadhan Mishra and others*, (3). In *Syed Mahmood's case* (supra) the facts were that on the reorganisation of the States in November, 1956, the services of Syed Mahmood were allotted to the State of Mysore. He was employed as junior statistical assistant. On

(1) 1968 S.L.R. 333.

(2) 1972 S.L.R. 4.

(3) 1980 (1) S.L.R. 114.

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January 16, 1958 the Head of the Department of Statistics under the directions of the Government of State of Mysore prepared a tentative seniority list of non-gazetted staff of the department treating junior statistical assistants and senior statistical assistants and senior statistical inspectors of the former State of Hyderabad, junior statistical assistants and senior compilers of the former State of Mysore, statistical assistants and statistical inspectors from Bombay and the head compiler of Coorg as holding the equivalent posts of junior statistical assistants in the State of Mysore. In 1959, before revising this tentative seniority list the State Government directed that all the statistical assistants and statistical inspectors of Bombay-State and the head compiler of Coorg should be treated and promoted as senior statistical assistants. As a result of this direction, officers ranking below Syed Mahmood in the seniority list published on January 16, 1958 were promoted to the higher posts, but his case for promotion was not considered. He was promoted as a Senior Statistical Assistant at a much later stage. He filed a writ petition in the High Court for getting an appropriate relief. The High Court directed the State Government to promote him from the date on which his juniors had been promoted as Statistical Assistants. The State of Mysore filed an appeal against the judgment of the High Court to the Supreme Court. That Court modified the order of the High Court and directed that the State Government should consider his fitness for promotion as from 1959 and promote him from that date if he was fit to discharge the duties of the higher post.

(14) In *Gurcharan Dass Vaid's case* (supra), the contention that respondent No. 4 could not be given a deemed date of confirmation either as a Deputy Superintendent or as an officiating Superintendent was repelled. In *Dr. Sarvadaman Mishra's case* (supra), the respondent was a Medical Officer in the service of the State of Uttar Pradesh. When the war of 1962 came, many Medical Officers, including the respondent, served the country in the theatres of war. On the termination of the war, the respondent returned and rejoined Government service. The question arose whether he could be given a retrospective date of confirmation if the Public Service Commission gave its approval. Krishna Iyer, J. speaking for the Court, held that the respondent who had served the country in the state of Emergency should not suffer for that reason in his service seniority. He further said that the Government would remember

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this factor when giving the date of confirmation retrospectively. From the aforesaid observations, it is evident that the principle that a Government servant can be confirmed/promoted with retrospective effect has been accepted by the Supreme Court.

(15) A similar matter came up before a Division Bench of this Court in *Balbir Singh vs. State of Punjab*, (4) and a similar view was taken by it. R. S. Narula, C.J., speaking for the Court, observed as follows:—

“There has been some controversy on the point whether the Government can promote an officer to the higher rank with effect from an earlier date or not. In principle I find no justification for holding that the Government is debarred from doing so. When public functionaries have to perform some statutory functions under the provisions of an Act their actions can be considered to be valid only if they are taken after the appropriate powers have been conferred upon them under the provisions of a particular Act| Such functionaries in most cases decide the conflicting rights of the parties in a quasi judicial manner. Decisions given by them while they were not invested with statutory powers, cannot be subsequently rendered legal by conferring these powers on them with retrospective effect. The same considerations, however, do not apply when the competent authority after hearing the representation of an employee confers upon him the status to which he was entitled. Again, in a given case the promotion of an employee may have to be deferred because of the pendency of some complaint against him. After he is cleared off the charges, he has to be promoted to the higher rank with effect from the date when this promotion fell due. If this were not done, the right of equality afforded to such an employee under Article 16 of the Constitution would be violated. I am of the considered opinion that in the absence of any rule or other relevant consideration to the contrary, it is open to the Government to make appointments to the promoted rank with retrospective effect. In C.W. No. 4556 of 1973, *Rajinder Pal Singh Sandhu v. Speaker, Punjab*

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(4) 1975 (1) S.L.R. 241.

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*Vidhan Sabha and others, a Division Bench of this Court, of which I was a member, took the view that Mr. speaker was competent to recruit the members of the service of the Vidhan Sahha under instructions dated April 11, 1953, issued by the Governor of the erstwhile State of Punjab. It is not disputed that Mr. Speaker was the competent authority to order the promotion of respondent No. 4 to the higher post and I fail to see how any exception can be had to the action of Mr. Speaker merely because he ordered the promotion with retrospective effect. It has already been noticed that before doing so, Mr. Speaker should have given an opportunity of hearing to the petitioner but that is a matter which relates to the procedure for making promotions. The inherent right of Mr. Speaker to order promotion cannot be questioned. Similarly, in that very case it has been held that in the absence of rules under Article 187 of the Constitution, Mr. Speaker can act on the executive instructions issued by the Governor. In this view of the matter, the first two contentions raised by the learned counsel for the petitioner must be repelled."*

(16) The learned counsel for the private respondents, in order to support his contention that the Government cannot pass an order of promotion with retrospective effect, has made a reference to *General S. Shivdev Singh and another vs. The State of Punjab and others*, (5). *The Income tax Officer, Alleppay vs. M. C. Ponnose and others*, (6). *Shri K. D. Vasudeva, I.A.S. and others vs. The Union of India, through Home Secretary, Government of India New Delhi and others*, (7). *Inder Jit Singh Kang vs. Union of India and others*, (8), *Shri Subhash Chander and others vs. The State of H. P. and others*, (9), *Union of India vs. S. K. Srivastava and others*, (10), and *Pishori Lal Sahni and others vs. The Commissioner Ambala Division and others*, (11).

(5) A.I.R. 1959 Pb. 453 (F.B.).

(6) A.I.R. 1970 S.C. 385.

(7) 1971 (2) S.L.R. 487.

(8) 1975 All Ind. Ser. L. Jor. 680.

(9) 1978 (1) S.L.R. 681.

(10) 1979 (3) S.L.R. 724.

(11) 1980 (1) S.L.R. 352.

(17) In *General S. Shivdev Singh's case* (supra), the Punjab State Government had delegated its powers under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, to the Additional Director Consolidation with effect from a prior date. The Bench observed that there was no distinct provision in the Punjab Consolidation Act conferring powers on the State Government to delegate its functions and powers with retrospective effect and consequently it struck down the impugned notification. From the perusal of the facts, it is clear that the Bench was deciding the case under the provisions of an enactment. This case is, therefore, distinguishable. In our view, the above ratio is of no help to the respondents in the circumstances of this case.

(18) Similarly in *M. C. Ponnose's case* (supra), powers of Tax Recovery Officer had been conferred on Tehsildar under clause (44) (ii) of section 2 of the Income-Tax Act, 1961, with retrospective effect. Those powers were challenged before the High Court in writ jurisdiction. It came to the conclusion that the powers of a Tax Recovery Officer could not be conferred on him with retrospective effect. That judgment was affirmed by the Supreme Court. Again, in that case the powers were conferred under the provisions of an enactment. The finding in that case is, therefore, also not applicable to the facts of the present case.

(19) In *Pishori Lal Sahni's case* (supra), the Commissioner had fixed the seniority of certain officers. One of the officers was made senior to another on the basis of presumptive date of appointment as Assistant Superintendent. That order was assailed before this Court. The case was decided by a learned Single Judge who held that the Commissioner was not competent to give any presumptive date of appointment to the officer to the prejudice of another officer. With great respect to the learned Judge, we are unable to endorse that view. We consequently overrule that judgment.

(20) The other cases referred to by the learned counsel for the respondents are distinguishable and, in our opinion, he cannot derive any benefit from the observations made therein.

(21) From the above discussion, it emerges that the State Government can make promotions with retrospective effect unless it is prohibited by some rule or regulation.

(22) Before parting with the judgment, we may notice a contention raised by the learned counsel for the respondents. It is that the respondents have completed their period of probation and the

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appellants have not been confirmed as yet. He urges that *inter se* seniority of the parties should not be determined unless the respondents have been given an opportunity of being heard. Mr. Sibal, learned counsel for the appellants, has no objection if at the time of confirming the appellants and determining their seniority, the respondents are heard.

(23) For the aforesaid reasons, we accept the appeal and dismiss the writ petition with no order as to costs.

S. S. Sandhawalia, C. J.—I agree.

J. V. Gupta, J.—I agree.

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N. K. S.