

(7) The learned counsel for the respondents could not show me any law under which the State Government or the Deputy Secretary has got the authority to postpone the elections in the manner it has been done in the present case. Of course, he has argued that the powers are mentioned in section 113-A of the Act. But under this section, the State Government or the Deputy Secretary has not been given the power to postpone the election of Chairman or Vice-Chairman of the Samitis. If the intention of the Legislature was to give such powers to the Government, it could also have included the election of the Chairman and Vice-Chairman in this section, but it has not done so. Rather there is a specific provision in section 17 of the Act and the rules made thereunder which deal with the election of the Chairman and the Vice-Chairman.

(8) No other point is urged.

(9) For the foregoing reasons, this petition is allowed with costs and the impugned order (Annexure P/2) is quashed in so far as the postponement of Samiti elections after the Co-option is concerned and the Deputy Commissioner, Ferozepore (respondent 2) and the Assistant Commissioner exercising the powers of Presiding Officer (respondent 3) are directed to perform their duties in accordance with section 17 of the Act and the rules framed thereunder expeditiously without any further loss of time.

N. K. S.

Before R. S. Narula, C.J. and M. R. Sharma, J.

SANT SINGH—*Petitioner*

versus

THE STATE OF PUNJAB ETC.,—*Respondents.*

Letters Patent Appeal No. 323 of 1973.

April 21, 1975.

Punjab Civil Service (Executive Branch) Rules, 1930—Rules 6(a) and 7—Constitution of India (1950)—Articles 14 and 16—Rule 6 providing for consideration of Tehsildars along with Naib-Tehsildars for promotion to the service—Whether discriminatory—Recommendation of names of eligible persons for promotion to the service—Discretion for such recommendation vested in the Financial Commissioners—Whether arbitrary.

Sant Singh v. The State of Punjab, etc. (Sharma, J.)

Held, that a combined reading of the various rules of the Punjab Civil Services (Executive Branch) Rules, 1930, shows that apart from recruiting members to the Service by a competitive examination, chances have been provided for various categories of public servants to enter the Service on the basis of their individual merit. The members of the Service have to perform multifarious types of duties in various departments of the State Government. Rule 6 has been framed with a design to pick up talent wherever it is available. When different sources of recruitment to a particular service are provided in a rule, it does not become discriminatory on the ground that the public servants holding a lower status in a ministerial service are also made eligible. The classification of the various categories can be justified on the basis of the peculiar duties which the public servants are called upon to perform in the higher service. Equality of opportunity cannot be confused with absolute equality as such. What is guaranteed by Articles 14 and 16 of the Constitution of India 1950 is the equality of opportunity and nothing more. When principles incorporated in a rule of service are equally applicable to all the citizens of various classes and they are allowed an opportunity of being considered for appointment to a particular service, no one can complain that such a service rule introduces or perpetuates discrimination. The Government, like any other employer, is aware of its own needs. For constituting a compact service, the members of which are called upon to shoulder responsibilities of a diverse nature, Government has to be left with an unfettered discretion to lay down the categories of services from whom the persons are to be promoted to a higher service. Thus rule 6(a) of the Rules is not discriminatory on the ground that the cases of Tehsildars are considered along with the cases of Naib-Tehsildars for promotion to the Punjab Civil Service.

(Paras 10, 11, 13 and 16)

Held, that rule 7 of the Rules provides that only a person who is a graduate with five years' continuous Government service and who is below the age of 40 years can be considered. The Financial Commissioners in whom power is vested to recommend names of eligible persons for promotion to the service, hold high rank in the hierarchy of Government functionaries. They are expected to be acquainted with the merits of officers serving under them. When a discretion is vested in a high functionary of the State, it cannot be said to be discriminatory on that ground alone. Moreover, when the entire process of selection of candidates for promotion to the service is kept in view, the discretion conferred upon the Financial Commissioners cannot be regarded as arbitrary.

(Paras 17 and 18)

Letters Patent Appeal under Clause X of the Letter Patent against the judgment of Hon'ble Mr. Justice S. S. Sandhawalia, dated December 11, 1972, passed in Civil Writ No. 1167 of 1972.

Kuldip Singh, Advocate, with R. S. Mongia, Advocate, for the Petitioner.

H. S. Brar, Senior Deputy Advocate-General (Punjab), for Respondent Nos. 1 to 3.

S. C. Sibal, Advocate, with R. C. Setia, Advocate, for Respondent No. 4.

JUDGMENT

Sharma, J.—(1) In this appeal under Clause X of the Letters Patent constitutional validity of rules 6 and 7 of the Punjab Civil Service (Executive Branch) Rules, 1930 (hereinafter called the Rules), has been challenged on the grounds that the said rules allow the names of Tehsildars to be considered along with those of Naib-Tehsildars, who are inferior in rank, and that the powers vested in the Financial Commissioners to send up names are arbitrary.

(2) The appellant took the Punjab Civil Services (Executive Branch) Competitive Examination in the year 1963 and was selected for direct appointment to the post of a Tehsildar. He was appointed to this post on July 20, 1964. According to him, his work and conduct throughout has been satisfactory.

(3) For the two vacancies out of the quota of Tehsildars and Naib-Tehsildars for promotion to the P.C.S. (Executive Branch), which occurred in 1964, the following four names were sent :—

1. Shri Jasmer Singh, Tehsildar, Bhatinda.
2. Shri Harnam Singh, Tehsildar, Ludhiana.
3. Shri Bansi Lal Sikka, Naib-Tehsildar, Abohar.
4. Shri Hardeep Singh Sandhu, Tehsildar, Wakf Board.

For the vacancies which occurred in the year 1971, the following officers were recommended :—

1. Shri Madan Mohan.
2. Shri Harjinder Singh.
3. Shri Bansi Lal Sikka.
4. Shri G. C. Jain, Tehsildar, Faridkot.
5. Shri Davinder Singh, Tehsildar.

Sant Singh v. The State of Punjab, etc. (Sharma, J.)

The appellant made a grievance that out of the second list, except Shri G. C. Jain, all the persons recommended were junior to him, but at the motion stage the writ petition was admitted *qua* respondents Nos. 1 to 4 only and dismissed *qua* respondents Nos. 5 to 8.

(4) Regarding respondent No. 4, it has been submitted that he being a Naib-Tehsildar, was inferior in rank to the appellant. It was not legal and proper to pick up his name for nomination while ignoring the valid claim of the appellant.

(5) In the return filed on behalf of the State of Punjab, it was, *inter alia*, averred that the appellant did not have an excellent record of service as claimed by him. The work of the appellant for the year 1967-68 was adjudged as 'below average' and later his recovery work as well as his mutation work was found to be poor and it was noticed that the appellant had hardly checked any *Jamabandi*. He was also conveyed adverse remarks inasmuch as the number of days spent on tour and his inspection of Patwar Offices were considered inadequate during 1968-69. For the next year, it was reported that he did not prove to be a suitable Revenue Officer though the charge with him was quite light. Besides, he had also been charge-sheeted by the Commissioner, Jullundur Division, for delaying the sanction of a mutation for ulterior motives. All these defects were communicated to him during April, 1972. It was further pleaded that the case of the appellant had also been considered along with other Tehsildars.

(6) The learned Judge in Chambers upheld the validity of the rule on the ground that the power of making nominations having been vested in the higher functionaries of the State could not be regarded as discriminatory. Further, Tehsildars and Naib-Tehsildars belong to the same service and discharge similar, if not identical, functions and in view of the peculiar circumstances of the service it was rational to treat the Tehsildars and Naib-Tehsildars as a single class for the purpose of recruitment to the Service.

(7) Before us it has been argued that the view taken by the learned Judge is erroneous because the rule which enables the Naib-Tehsildars to be considered along with Tehsildars should be held discriminatory in view of the observations made by their Lordships of the Supreme Court in *Md. Usman and others v. State of Andhra*

Pradesh and others (1) and that the necessary guidelines on the basis of which discretion was to be exercised by the Financial Commissioners were not present in the Rules.

(8) In order to properly appreciate the points raised on behalf of the appellant, it becomes necessary to make a brief survey of the Rules to the extent of their relevancy to the present case.

(9) Rule 5 lays down that the members of the Service shall be appointed by the Governor of Punjab from among accepted candidates whose names have been duly entered in one or other of the registers of Accepted Candidates to be maintained under these Rules. Rule 6 is of some importance and the validity of rule 7 has been challenged. These rules are, therefore, being quoted *in extenso* :

“6. *Registers to be maintained* :

The following registers of Accepted Candidates shall be maintained by the Chief Secretary, namely :—

- (a) Register A-1 of Tehsildars and Naib-Tehsildars accepted as candidates.
- (b) Register A-II of members of Class III Services holding ministerial appointments accepted as candidates.
- (c) Register B of persons accepted as candidates on the result of a competitive examination, and
- (d) Register C of persons accepted as candidates from amongst officials of the temporary departments of Government, e.g., Food and Civil Supplies Department, Relief and Rehabilitation Department.

7. *Selection of candidates for Register A-I*

- (1) The Financial Commissioners shall maintain a list of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the Service and shall each year not later than the first day of December, and at such other time as Government may require, submit for the consideration of Government the nomination rolls in Form I of so many persons borne on such list as Government may prescribe; provided

Sant Singh v. The State of Punjab, etc. (Sharma, J.)

that unless Government otherwise directs, the roll of no person shall be submitted, who

- (a) has not completed five years' continuous Government service ;
 - (b) has attained the age of 40 years on or before the first day of November, immediately preceding the date of submission of names; and
 - (c) is not a graduate of a recognised University.
- (2) Governor may select from the persons whose nomination rolls are submitted by the Financial Commissioners under the provisions of sub-rule (1) such persons as he may deem suitable for the Service, and the names of persons selected shall be entered in Register A-1 :

Provided that it shall first be necessary to consult the Commission on the suitability of each such person."

Rule 8 lays down that the Chief Minister, the Judges of the High Court, the Chief Secretary, the Financial Commissioners and some other Heads of Departments may by the first day of December each year submit to the Governor of Punjab in the prescribed form the prescribed number of persons from among their Personal Assistants not being gazetted officers, or other persons holding ministerial posts in their offices or in the offices subordinate to them. Rules 10 and 11 relate to the candidates who want to enter the Service by passing the competitive examination and the latter rule also states that their names will be included in Register 'B' in order of merit. Rule 16 provides that the Governor of Punjab may at any time order the removal of any person from the Register of accepted candidates for any reason which he may deem fit. Rule 17 provides the number of candidates who are to be ordinarily appointed to the Service from the various categories. Rule 18 is again of some importance and is being reproduced in full—

18. *Order of appointments of candidates on the same Register.*

Candidates on the different registers shall ordinarily be appointed to the Service in the order of their selection as candidates; provided that in the case of candidates selected on the same, appointments shall ordinarily be made :

- (a) in the case of candidates on Register A-1 according to their seniority as Tehsildars and Naib-Tehsildars, Tehsildars shall be appointed before Naib-Tehsildars.

As between Tehsildars and Naib-Tehsildars the order shall be determined by the date of each officer's confirmation as Tehsildar or Naib-Tehsildar. An officiating Tehsildar shall rank as a Naib-Tehsildar;

- (b) in the case of candidates on Register A-II, according to their substantive pay, preference being given to the candidate drawing the highest pay; or, if the substantive pay drawn by two or more candidates is the same, preference being given to the candidate having the longest service;
- (c) in the case of candidates on Register B, in accordance with the order in which they were entered in the register under the provisions of rule 11; and
- (d) in the case of candidates on Register C, in accordance with the order in which they are selected."

It is not necessary to notice the remaining rules.

(10) A combined reading of the rules shows that apart from recruiting members to the Service by a competitive examination, chances have been provided for various categories of public servants to enter the Service on the basis of their individual merit. The members of the Service have to perform multifarious types of duties in various departments of the State Government, such as the Revenue Department, the Finance Department, the Development Department and so on and so forth. In other words, they are required to shoulder responsibilities in connection with many-sided activities of the State Government. It was perhaps this consideration which motivated the Governor to frame rule 6 which was designed to pick up talent wherever it is available. Sometimes, a really brilliant person is not able to join the Punjab Civil Service because of reasons beyond his control. In that case, he joins a lower service so that he may not become over-age. This rule enables him to show his merit for being included into the said Service.

(11) When different sources of recruitment to a particular service are provided in a rule, the rule cannot be said to be discriminatory on the ground that the public servants holding a lower status in a ministerial service are also made eligible. The classification of the various categories can be justified on the basis of

Sant Singh v. The State of Punjab, etc., (Sharma, J.)

the peculiar duties which the public servants are called upon to perform in the higher service. The equality of opportunity cannot be confused with absolute equality as such. What is guaranteed by Articles 14 and 16 of the Constitution is the equality of opportunity and nothing more. When principles incorporated in a rule of service are equally applicable to all the citizens of various classes and they are allowed an opportunity of being considered for appointment to a particular service, no one can complain that such a service rule introduces or perpetuates discrimination. Again, no two citizens can be equal in all respects. For instance, when B.A. degree is prescribed as the minimum qualification for entry into a service, the holders of M.A. degree would certainly be superior to them, but the holders of B.A. and M.A. degrees are in many cases treated at par for determining their eligibility to enter a service. If the holder of a M.A. Degree is not selected and the holder of a B.A. Degree is selected on the basis of their overall individual merits, the former cannot claim any infraction of his rights.

(12) If the case of the Naib-Tehsildars and Tehsildars is considered in this light and it is assumed that minimum qualification of a candidate should be Naib-Tehsildar of prescribed standing and having the prescribed qualifications, the Tehsildars, who are also allowed to compete and be considered, on being rejected, cannot complain that equality of opportunity guaranteed to them under Article 16 of the Constitution has been violated.

(13) The Government, like any other employer, can be presumed to be aware of its own needs. For constituting a compact service, the members of which are called upon to shoulder responsibilities of a diverse nature, Government should be left with an unfettered discretion to lay down the categories of services from whom the persons are to be promoted to a higher service.

(14) *Md. Usman's case* (supra) also does not help the appellant. In that case, it was urged that the cases of U.D.Cs. for promotion to the posts of Sub-Registrars should not have been considered with the cases of the L.D.Cs. In this connection, the Court observed as under:—

“The fortuitous circumstances of an officer in a particular district becoming an U.D.C. would have given him an undue advantage over his seniors who might have

been as efficient or even more efficient than himself, merely because they chanced to serve in some other district. For the reasons mentioned above, we do not think that in the present case the State can be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. In our opinion, the High Court by overlooking the reasons behind Rule 5 came to the erroneous conclusion that the said rule violated Article 14 of the Constitution."

(15) In this case also, it has been stated on behalf of the respondents that Naib-Tehsildars have a Division-wise cadre and sometimes a junior Naib-Tehsildar is promoted to the higher rank earlier than his counterpart in the other Division.

(16) I am clearly of the view that rule 6(a) of the Rules cannot be challenged on the ground that the cases of Tehsildars are considered along with the cases of the Naib-Tehsildars for promotion to the Punjab Civil Service. When posted in a Revenue Circle, both of them perform almost the similar duties. The next rank to which a Naib-Tehsildar is normally promoted is that of Tehsildar. Last of all, if a Tehsildar and a Naib-Tehsildar are appointed to the Service on the same date, their *inter se* seniority is determined in accordance with rule 18(a) of the Rules and the Tehsildar takes precedence over the Naib-Tehsildar.

(17) The question whether the discretion vested in the Financial Commissioners is arbitrary or not does not present much difficulty. Rule 7 provides that only a person who is a Graduate with five years' continuous Government service and who is below the age of 40 years can be considered. The Financial Commissioners hold high rank in the hierarchy of Government functionaries. They are expected to be acquainted with the merits of officers serving under them. When a discretion is vested in a high functionary of the State, it cannot be held to be discriminatory on that ground alone. It is pertinent to notice that even this power has not been vested in a single Financial Commissioner and all of them have to sit together and to decide the suitability of a particular candidate. In *Pannalal Binjraj v. Union of India* (2), it was observed as under:—

"It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the

Sant Singh v. The State of Punjab, etc., (Sharma, J.)

Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. (*Vide Matajog Dobey v. H. C. Bhari* (3). There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law (*vide People of the State of New York v. John E. Van De Carr, etc.* (4). It has also been observed by this Court in *A. Thangal Kunju Musaliar v. M. Venkitachalam Potti* (5) with reference to the possibility of discrimination between assesseees in the matter of the reference of their cases to the Income-tax Investigation Commission that 'it is to be presumed, unless the contrary were shown, that the administration of a particular law would be done not with an evil eye and unequal hand and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.'

This case was followed with approval in *Sri Ram Ram Narain Medhi v. The State of Bombay* (6).

(18) This consideration apart, the Financial Commissioners only recommend the names of persons serving as Tehsildars and Naib Tehsildars. The names belonging to this category and the names belonging to the other categories mentioned in rule 6 are sent to the Public Service Commission along with the record of service of each candidate whereafter the Commission makes its recommendations to the State Government, who is the final appointing authority. When the entire process of selection of candidates for promotion to the Service is kept in view, the discretion conferred upon the Financial Commissioners can hardly be regarded as arbitrary.

(3) (1955)2 S.C.R. 925.

(4) (1905) 199 U.S. 552; 50 Law Ed. 305.

(5) (1955)2 S.C.R. 1196.

(6) A.I.R. 1959 S.C. 459.

(19) As a result of the foregoing discussion, I am of the considered view that rules 6 and 7 of the Rules are constitutionally valid and there is no merit in this appeal which is accordingly dismissed with no order as to costs.

R. S. Narula, Chief Justice.—I agree.

B.S.G.

Before Muni Lal Verma, J.

THE DAILY MILAP, JULLUNDUR—*Petitioner.*

versus

THE GOVERNMENT OF PUNJAB ETC., *Respondents.*

Civil Writ No. 1295 of 1974.

April 29, 19 75.

Industrial Disputes Act (XIV of 1947)—Sections 2(k), 10(1)(d) and 12—Scope of—Stated—The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (XLV of 1955)—Sections 3, 12 and 13—Dispute regarding increase in wages of working journalists and other newspaper employees—Whether can be adjudicated under the Industrial Disputes Act.

Held, that the definition of “industrial dispute” as given in section 2(k) of the Industrial Disputes Act, 1947 has to be understood from the scope and context of the whole Act. This term means a dispute between the workmen and employers on some general questions on which each group is bound together by a community of interest. The expressions “terms of employment” and “Conditions of labour” occurring in the definition are wide enough to include the dispute relating to the increase in the wages. The word ‘difference’ occurring in clause (k) of section 2 of the Act and the word ‘apprehended’ appearing in the opening part of sub-section (1) of section 10 of the Act connote that that it is not only an ‘existing dispute’ but also an ‘apprehended industrial dispute’ which can be referred for adjudication. Clause (d) of sub-section (1) of section 10 of the Act widens the discretion of the Government so as to refer even any matter which appears to it to be connected with, or relevant to, the dispute. The words “at any time” preceded by the word “may” in sub-section (1) of section 10 of the Act indicate the intention of Legislature that the Government has discretion to refer a dispute