
Before S.S. Nijjar, J.

DALBIR SINGH,—*Petitioner*

Versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 8703 OF 2003

2nd February, 2005

Constitution of India, 1950—Arts. 14, 16 and 226—Punjab Civil Secretariat (State Service Class—I) Rules, 1947—Rl.6.1(b)—Punjab Civil Services Rules, Vol.I, Part I-Rls.3.14 and 3.16—An Assistant of Punjab Civil Secretariat appointed to the post of Law Officer in Local Government Department on deputation—Petitioner continued to hold lien on the post of Superintendent Grade-II/Grade-I in a substantive and permanent capacity—Appointment as a Law Officer not in a substantive capacity—Lien of petitioner neither suspended under Rule 3.14 nor transferred under Rule 3.16—Petitioner granted proforma promotions on the post of Superintendent Grade—II/Grade—I in parent department on the basis of his lien—Period spent by petitioner working on the post of Law Officer has to be treated as period spent on the post which he held substantively—Action of respondents not considering the petitioner for promotion to the post of Under Secretary with effect from the date junior to him was promoted contrary to the principle of “equality” enshrined under Arts. 14 and 16—Petitioner allowed, respondents directed to reconsider the claim of the petitioner for promotion as Under Secretary with effect from the date when junior to him was promoted.

Held, that the petitioner continued to hold the lien on the post of Superintendent Grade-II/Grade-I in the Punjab Civil Secretariat. He was not appointed as a Law Officer in a substantive capacity. He continued to work in the Local Government Department on officiating basis. The lien was never suspended under Rule 3.14. It was also not transferred under Rule 3.16. In fact the petitioner was granted proforma promotions on the post of Superintendent Grade-II on 30th May, 1983 and Superintendent Grade-I on 12th June, 1984. Admittedly respondent No. 4 is junior to the petitioner. He has been granted notional promotion with effect from 1st November, 1990. The claim

of the petitioner, however, has not been considered on the ground that he does not have seven years experience. The view taken by the official respondents is erroneous in law.

(Para 8)

Further held, that the petitioner has been wrongly denied the right of consideration to be promoted at a time when the claim of respondent No. 4 his junior was considered. The period spent by the petitioner working on the post of Law Officer in the Local Government Department has to be treated as the period spent on the post which he held substantively. The respondents had protected the rights of the petitioner on all the posts in his parent cadre without the petitioner actually having worked in the parent department for the necessary period. The respondents, therefore, cannot now be permitted to say that the petitioner was not entitled to be considered and promoted on the post of Under Secretary with effect from the date a person junior to him was so promoted. To permit such an action would be contrary to the principle of "Equality" enshrined under Articles 14 and 16 of the Constitution of India.

(Para 8 and 12)

Ashok Sharma Nabhwala, Advocate, *for the Petitioner.*

M. S. Doabia, Sr. DAG, Punjab, *for the respondent.*

JUDGEMENT

S.S. NIJJAR, J. (Oral).

(1) In this writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks quashing (a) of the order dated 30th March, 2001 (Annexure P—8) whereby respondent No. 4 has been promoted on the post of Under Secretary; (b) The memo dated 4th September, 2001 (Annexure P—10) rejecting the representation of the petitioner for being giving promotion as Under-Secretary with effect from 1st December, 1990. The petitioner also seeks the issuance of a writ in the nature of Mandamus directing the respondents to consider the claim of the petitioner for promotion to the post of Under-Secretary with effect from 1st November, 1990. The facts as pleaded by the parties may be briefly noticed.

(2) The petitioner was working as Assistant in the Punjab Civil Secretariat with effect from 3rd February, 1960. By notification dated 5th February, 1979, he was promoted as a Law Officer in the Local Government Department, Punjab in the pay scale of Rs.400—25—500/30—800 with effect from 28th March, 1978, till such date his services are needed or the post of Law Officer lasts whichever date is earlier. This promotion was made with the approval of Punjab Public Service Commission. On 27th July, 1983, the petitioner was given promotion as Superintendent Grade-II in the scale of Rs.800—25—850—30—1000/40—1200/50—1400 *plus* special pay of Rs. 50/-per month with effect from 1st July, 1983. In other words, he was promoted as Superintendent Grade-II from the date the official Junior to him had been promoted. The pay of the petitioner was enhanced to the scale of Rs 825—25—850—30—1000/40—1200/50—1400—60—1580 by order dated 20th September, 1983 with immediate effect. The pay of the petitioner had been increased to put him in the scale which was available to Superintendent Grade-I in the Punjab Civil Secretariat. By notification dated 22nd December, 1988, the petitioner was granted proforma promotion as Superintendent Grade-I with effect from 25th September, 1984. The petitioner had been promoted alongwith 24 other officials. His name figures at Sr. No. 22 of the Notification with an endorsement that he is working as a Law Officer in the Local Government Department. The petitioner was granted the proforma promotion as he held the lien in the Punjab Civil Secretariat. Soon thereafter, by notification dated 16th June, 1989, the petitioner was appointed as Superintendent Grade-I (PSS-II) in the Punjab Civil Secretariat in a substantive permanent capacity with effect from 1st April, 1988 vice Sher Singh Panwar, Superintendent Grade-I, retired. The petitioner retired on 31st July, 1991. The service record of the petitioner throughout has been good and excellent. He has been issued many appreciation letters for outstanding work in handling successfully prestigious Court cases of the Local Government Department. The seniority list of Superintendent Grade-I (PSS II) of the Punjab Civil Secretariat was redetermined and circulated for implementation *vide* memo dated 30th June, 2000. The Seniority had been redetermined in view of the judgements of the Supreme Court in the cases of **Ajit Singh Janjua-I and II**. In the redetermined seniority list (Annexure P-7), the name of the petitioner figures at Sr. No. 92. The name of respondent no.4-Om Parkash Gupta figures

at Sr. No. 96. After redetermination of the seniority, respondent No. 4 alongwith various other persons was given notional promotion on the post of Under-Secretary with effect from 1st November, 1990 by order dated 3rd March, 2001 (Annexure P-8). Since the petitioner is senior to respondent No. 4, he was entitled to be considered for promotion on the post of Under-Secretary with effect from 1st November, 1990. The petitioner submitted a representation dated 11th May, 2001 complaining that he had not been sent the latest seniority list. He pointed out the facts as narrated above and claimed proforma promotion from the date respondent No. 4, his junior, had been promoted as Under-Secretary. The petitioner was asked to appear before the Deputy Secretary (Seniority) for proforma promotion with effect from 1st December, 1990. However, the respondents have rejected the claim of the petitioner by Memo dated 4th September, 2001 (Annexue P-10). The claim of the petitioner has been rejected on the ground that the petitioner never worked as Superintendent Grade-II and Grade-I. Even if the petitioner has been given the benefit of the judgement of counting his experience in the rank of Superintendent Grade-II and Grade-I with effect from the deemed date of promotion, he did not have the requisite experience of seven years for being promoted as Under-Secretary. The experience of seven years is required under Rule 6.1(b) of the Punjab Civil Secretariat (State Service Class-I) Rules 1974 (hereinafter referred to as "the Service Rules"). Against the aforesaid order, the petitioner submitted a detailed representation on 24th October, 2001 (Annexure P-11). The aforesaid representation filed by the petitioner has not been decided by the respondents.

(3) Respondents No.1 to 3 have filed written statement. It is admitted that the seniority list of Superintendent Grade-I was circulated,—*vide* letter dated 30th June, 2000 and the petitioner was shown at Sr. No. 92 while Om Parkash Gupta (respondent No. 4) was shown at Sr. No. 96. It has also been stated that respondent No. 4, junior to the petitioner, was granted assumed date of promotion i.e. of 1st November, 1990, to the post of Under-Secretary in view of the judgement of the Supreme Court in Ajit Singh Janjua's case. The claim of the petitioner is sought to be denied on the ground that he was given only *proforma* promotion to the post of Superintendent Grade-II and Superintendent Grade-I. He has never worked on these posts actually, and therefore, he does not have the necessary experience of seven years as required under Rule 6.1(b) of the rules for promotion

on the post of Under -Secretary. He remained Law Officer in the Local Government Department with effect from 20th March, 1978 till his retirement on superannuation by letter dated 31st July, 1991. On the other hand, respondent No.4 actually worked as Superintendent Grade-II and Superintendent Grade-I and got seven years experience before he was promoted as Under-Secretary on 4th May, 1992. Therefore, he has been given the assumed date of promotion as Under-Secretary on 1st November, 1990. The petitioner has filed a replication reiterating the facts stated earlier.

(4) In spite of service, none has appeared on behalf of respondent No. 4. Written statement has also not been filed on behalf of respondent No. 4.

(5) Learned counsel for the petitioner has submitted that the petitioner is entitled to promotion to the post of Under-Secretary with effect from 1st November, 1990 i.e. the date from which the incumbent junior to the petitioner (respondent No. 4) was promoted. He submits that the petitioner cannot be denied promotion on the ground that he does not have actual experience of seven years on the post of Superintendent Grade-I as at the relevant time, the petitioner was officiating as a Law Officer in the Local Government Department. Since the petitioner held the lien on the post of Assistant/Superintendent in the Punjab Civil Secretariat, he was entitled to be considered for *proforma* promotion as Under-Secretary prior to the promotion of his junior. The lien of the petitioner in the Punjab Civil Secretariat was never cancelled. In fact, the official respondents had rightly granted *proforma* promotion to the petitioner on the post of Superintendent Grade-II as also on the post of Superintendent Grade-I in accordance with the seniority when person junior to him was considered for promotion.

(6) Mr. Doabia, Learned counsel for the State of Punjab, however, submits that the petitioner never had the experience of working on the post of Superintendent Grade-I. Therefore, he did not fulfil the eligibility criteria as provided under the Rules. The petitioner retired on 31st July, 1991. Respondent No. 4 was not promoted as Under-Secretary till 4th May, 1992. Therefore, till the date of retirement of the petitioner, no junior person had been promoted.

(7) I have considered the submissions made by the learned counsel for the parties. It is a well settled proposition of law that a Government servant maintains a lien on the post on which, he/she is substantively appointed. The claim of the petitioner for promotion has to be considered as on 1st November, 1990. The relevant Rules of the Punjab Civil Services Rules Vol.I, Part-I on the aforesaid date were as follows :—

“3.12. Unless in any case it be otherwise provided in these rules, a Government employee on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

3.13. Unless his lien is suspended under rule 3.14 or transferred under rule 3.16, a Government employee holding substantively a permanent post retains a lien on that post —

- (a) While performing the duties of that post ;
- (b) While in foreign service, or holding a temporary post, or officiating in another post ;
- (c) during joining time on transfer to another post ; unless he is transferred substantively to a post on lower pay; in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post ;
- (d) except as provided in Note below while on leave other than refused leave granted after the date of compulsory retirement under rule 8.21 ; and
- (e) while under suspension.

Note :—When a Government employee, holding substantively the post of a Chief Engineer of the Public Works Department, takes leave immediately on vacating his post he shall during the leave be left without a lien on any permanent post.

The word "vacate" used in this note refers only to vacation as a result of completion of tenure on attainment of Superannuation.

3.14 (a) A competent authority shall suspend the lien of a Government employee on a permanent post which he holds substantively; if he is appointed in a substantive capacity—

- (1) to a tenure post ; or
- (2) provisionally, to a post on which another Government employee would hold a lien, and his lien not been suspended under this rule.

(b) A competent authority may, at its option, suspend the lien of a Government employee on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this rule, is transferred, in an officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien, for a period not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a Government employee's lien on a tenure post may, in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a Government employee's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the Government employee appointed to hold it substantively shall acquire a lien on it :

Provided that the arrangements shall be reversed as soon as the suspended lien revives.

Note 1. :—This clause shall also apply to a post in a selection grade of a cadre.

Note 2. :—When a post is filled substantively under this clause, the appointment will be termed "a provisional appointment", the Government employee appointed will hold a provisional lien on the post ; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

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- (e) A Government employee's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in sub-clause (1) or (2) of that clause.
- (f) A Government employee's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre ; provided that a suspended lien shall not revive because the Government employee takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India or on foreign service or to hold a post in another cadre ; and the total period of absence on duty will not fall short on three years or that he will hold substantively a post of the nature specified in sub-clause (1) or (2) of clause (a).

Note :—When it is known that a Government employee on transfer to a post outside his cadre is due to retire on superannuation pension within three years of his transfer, his lien on the permanent post cannot be suspended.

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xxx xxx xxx

3.16 Subject to the provisions of rule 3.17 a competent authority may transfer to another permanent post in the same cadre the lien of a Government employee who is not performing the duties of a post to which the lien relates, even if that lien has been suspended.”

(8) A perusal of the aforesaid rules clearly shows that the petitioner continued to hold the lien on the post of Superintendent Grade-II/Grade-I in the Punjab Civil Secretariat. He was not appointed as a Law Officer in a substantive capacity. He continued to work in the Local Government Department on officiating basis. The lien was never suspended under rule 3.14. It was also not transferred under rule 3.16. In fact the petitioner was granted proforma promotion on the post of Superintendent Grade-II on 30th May, 1983 and Superintendent Grade-I on 12th June, 1984. This fact is clearly mentioned in the Gradation List of PSS-II Cadre (Superintendent

Grade-I) as drawn in the light of the direction of the Supreme Court in the case of Ajit Singh Janjua-I and II, page 7 on 30th June, 2000. In the seniority list, it is stated that the petitioner joined the post of Clerk (Level-I) on 6th January, 1956, Assistant (Level-II) on 20th August, 1962, Superintendent Grade-II (ASO) (Level-III) on 30th May, 1983 and Superintendent Grade-I (Level-IV) on 12th June, 1984. In the order dated 27th July, 1983 (Annexure P-2), it is mentioned that the petitioner is given proforma promotion as Superintendent Grade-II with effect from 1st July, 1983. He was granted the scale of Rs. 825—25—850—30—1000/40—1200/50—1400—60—1580 by order dated 20th September, 1983 (Annexure P-3). This brought the scale of the petitioner on the post of Law Officer at par with the scale enjoyed by Superintendent Grade-I in the Civil Secretariat. By order dated 22nd December, 1988, the petitioner was given proforma promotion as Superintendent Grade-I with effect from 25th September, 1984. There is a clear endorsement on the order of promotion against his name at Sr. No. 22 that the promotion is proforma and that he is working as Law Officer, Local Government Department. On the other hand in the seniority list (Annexure P-7), respondent No. 4 is mentioned at Sr. No. 96. The dates of his appointments on the posts of Clerk, Assistant, Superintendent Grade-II and Superintendent Grade-I are 25th January, 1956, 16th October, 1962, 30th May, 1983 and 13th July, 1984 respectively. Admittedly, respondent No. 4 is junior to the petitioner. He has been granted notional promotion with effect from 1st November, 1990. The claim of the petitioner, however, has not been considered on the ground that he does not have seven years experience. I am of the opinion that the view taken by the official respondents is erroneous in law.

(9) The petitioner continued to hold the post of Superintendent Grade-II and Superintendent Grade-I in a substantive and permanent capacity. Thereafter, his appointment as Law Officer in the Local Government Department in an officiating capacity would have no other consequence on his claim for promotion in his parent department. In the case of **Surinder Kumar Nauhria versus The Registrar, Cooperative Societies, Punjab, Chandigarh (1)**, this Court had occasion to consider a similar claim. The petitioner therein had joined service as a Clerk in the office of the Financial Commissioner on an

ad hoc basis. After some time, he was appointed as a Clerk in the office of Registrar, Cooperative Societies, Punjab on regular basis. Benefit of the service rendered by him in the Office of the Financial Commissioner was given to him towards the fixation of his pay etc. He was provisionally promoted as Steno typist. The pay scale on the post of Clerk as well as Stenotypist was the same. He was subsequently confirmed on the post of Clerk. Whilst he was working as a Steno typist, he was also designated as Senior Clerk. After some time, the cadre of Clerks was reorganised into Clerks, Sr. Clerks, Junior Assistants. Some persons junior to the petitioner as Clerks were designated as Junior Assistants and placed in a higher scale. The petitioner was ignored for the Proficiency Step-ups on the ground that he is not entitled to be designated as Junior Assistant as he is not actually working as a Clerk. Considering the impact of Rule 3.13 of the Punjab Civil Services Rules Vol. I, Part-I, this Court (Jawahar Lal Gupta, J.) held that an employee continues to retain a lien on the post on which he is confirmed even while he is holding another post on a temporary or officiating basis. A person is deemed to be a member of the cadre for all intents and purposes. All benefits accruing by virtue of this fiction have to be afforded to him before these can be given to a person who is junior to him. In paragraph 9 of the aforesaid judgement, it has been held as follows :—

- “9. The petitioner has categorically averred that his name is borne in the Seniority List of Clerks at Sr. No. 378. This has not been denied. A perusal of the order dated October 5, 1990 (Annexure P-7) shows that persons who are below the petitioner including those at Sr. Nos. 381 onwards have been designated as Junior Assistants with effect from January 1, 1986 and placed in the pay scale of Rs. 1500-2640. The fact that the petitioner was actually officiating as a Steno—typist did not obliterate his lien on the post of Clerk and could not result in denying to him the benefits available to him in cadre of Clerks. He had a right to be considered before any person junior to him should be considered or granted appointment as a Junior Assistant and a higher scale pay. Learned counsel for the respondent admits that the petitioner’s claim was not considered. This was certainly violative of the guarantee enshrined in Article 16 of the Constitution.”

(10) In the case of **Kartar Singh *versus* State of Punjab, (2)**, again considering a similar proposition, this Court has held as follows :—

“8..... However, in a case where a person has a lien on a post in a particular range, it is to be presumed that he continues to hold that post even while he has been deputed to discharge the duties of another post outside the cadre. The concept of “next below rule” is well-known in the services jurisprudence. By merely transferring a person from one range to another in spite of the fact that the person has a right in the cadre, the right relating to seniority and further promotion etc. cannot be taken away.”

(11) In view of the aforesaid ratio of law, it has to be held that the petitioner has been wrongly denied the right of consideration to be promoted at a time when the claim of respondent No. 4, his junior was considered. The period spent by the petitioner working on the post of Law Officer in the Local Government Department has to be treated as the period spent on the post which he held substantively. In fact, the respondents themselves have interpreted the relevant rules in a similar manner when proforma promotion was given to the petitioner on the post of Superintendent Grade-I. There also, the aforesaid promotion was made under the Punjab Civil Secretariat (State Service Class-II) Rules 1963. Rule 8 provides the method of recruitment to the service. Rule 8 (i) (b) provides that promotion can be made on the post of Superintendent (Section Officer) from amongst Assistant Section Officer working on the post for a minimum period of one year or from amongst Deputy Superintendents, Assistant Incharge and Assistants having an experience of working as Deputy Superintendent for a minimum period of one year or an experience of working as an Assistant for a period of 10 years as the case may be. In spite of the facts that the petitioner was all along working on the post of Law Officer in the Local Government Department, he was given proforma promotion as Superintendent Grade-II with effect from 1st July, 1983 by order dated 3rd August, 1983. In the aforesaid order, it was clearly mentioned as follows :—

“ORDER OF THE GOVERNOR OR PUNJAB”

Shri Dalbir Singh, Senior Assistant (presently working as Law Officer in the Local Government Department) is given

proforma promotion as Superintendent Grade-II in the scale of Rs. 800—25—850—30—1000/40—1200/50—1400, plus special pay of Rs. 50/- per month with effect from 1st July, 1983 the date his junior official has been promoted as Superintendent Grade-II.

Dated :
Chandigarh
the 27th July, 1983.

Harsimrat Gill,
Joint Secretary,
Secretariat Administration

(12) Thereafter, the respondents protected the pay of the petitioner on the post of Law Officer so that it is brought at par with the scale he would have enjoyed in his parent department. By notification dated 22nd December, 1988, he was given proforma promotion as Superintendent Grade-I with retrospective effect from 25th September, 1984. It becomes evident that the respondents had protected the rights of the petitioner on all the posts in his parent cadre without the petitioner actually having worked in the parent department for the necessary period. The respondents, therefore, cannot now be permitted to say that the petitioner was not entitled to be considered and promoted on the post of Under-Secretary with effect from the date a person junior to him was so promoted. To permit such an action would be contrary to the principle of "Equality" enshrined under Articles 14 and 16 of the Constitution of India.

(13) In view of the above, the writ petition is allowed. The impugned order (Annexure P-10) dated 4th September, 2001 is hereby quashed. The respondents are directed to reconsider the claim of the petitioner for promotion as Under-Secretary with effect from 1st November, 1990, the date when respondent No. 4, junior to the petitioner was promoted. In view of the passage of time, it would be wholly inappropriate now to quash the order by which respondent No. 4 has been promoted ignoring the claim of the petitioner. In case the petitioner is held entitled to be promoted as Under-Secretary, on the basis of the record, he be given notional promotion, if necessary by creating supernumerary post so that the petitioner is able to enjoy the consequential benefits such as arrears of salary and re-fixation of the retiral benefits as well as the pension. The respondents are directed to pass necessary orders within a period of three months of the receipt of a certified copy of this order. No costs.

R.N.R.