

(12) A contrary view, however, has undoubtedly been expressed by a learned Single Judge of the Allahabad High Court in *Bishambhar Dass vs. Smt. Anguri and another* (8). A perusal of the judgment, however, reveals that the matter was not adequately canvassed and neither principle nor precedent has been cited for what appears to me as an overly strict view. The issue seems to have been treated as one of first impression and with the greatest deference I would record a dissent therefrom. It calls for notice that opinion does not appear to be uniform in the Allahabad High Court as well, because a learned Single Judge of the said High Court in *Abdul Salim vs. Smt. Najima Begum and another* (9) has upheld the order or maintenance, even though in the application under section 125 of the Code it was not even remotely pleaded that the wife was unable to maintain herself.

(13) To conclude the answer to the question posed at the very outset is rendered in the negative and it is held that the technicalities of construing civil pleadings are not attracted to an application under section 125 of the Code. Consequently, it is further held that in such an application, the absence of an express pleading that the claimant is unable to maintain herself or himself is in no way fatal to the claim.

(14) The meaningful legal question having been settled as above, the criminal revision petitions would now go back before the Single Bench for a decision on merits, in accordance therewith.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

RAM KUMAR and others,—Petitioners.

versus

THE STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 1578 of 1982.

January 10, 1983.

Punjab Police Rules, 1934 (as applicable to Haryana)—Rules 13.1, 13.7 and 13.8—Promotion of a Constable to the next rank of Head Constable—Preparation of list B. 1 in terms of Rule 13.7—Whether forms part of the

(8) 1978 CrI L. J. 385.

(9) 1980 CrI. L. J. 232.

Ram Kumar and others v. The State of Haryana and others
(I. S. Tiwana, J.)

process of such promotion—Government instructions providing for reservation of posts for Scheduled Castes and Backward Class employees in Class III & IV posts—Whether applicable to the selection of Constables for the Lower School Course in terms of Rule 13.7.

Held, that a bare reading of Rules 13.7 and 13.8 of the Punjab Police Rules, 1934 (as applicable to Haryana) make it clear that at the stage of the preparation of list B. 1 in terms of Rule 13.7, no promotion of a Constable to that of a Head Constable is involved. No doubt, it is true, that the Lower School Course is a promotion course for Constables yet sub-rule (2) of rule 13.8 lays down in no uncertain terms that promotion to the post of a Head Constable shall be made in accordance with the principles described in sub-rules (1) and (2) of rule 13.1. This sub-rule further provides that selection grade Constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may with the approval of the Deputy Inspector General of Police be promoted to the post of Head Constables though to the extent of 10 per cent of the vacancies only. Thus, this part of the sub-rule clearly indicates that the qualification of having undergone a training may even be completely waived for promotion to the post of a Head Constable in the case of selection grade Constables. What sort of process of promotion it is if it can be completely ignored in a given case? Rule 13.1 makes it amply clear that promotion from one rank to another and from one grade to another shall be made by selection tempered by seniority. Efficiency and specific qualifications whether in the nature of training course passed or practical experience shall be carefully considered in each case. A bare reading of sub-rule (1) of this rule makes it manifestly clear that to undergo a training course is only one of the qualifications which makes a Constable eligible for being considered for promotion to the next higher post of a Head Constable. It is also clear from the phraseology of the Government instructions that these envisage reservation to the post and not to eligibility or the training course. Thus, by no stretch of imagination the process of selection for being sent to the Lower School Course in terms of Rule 13.7 can possibly be held or equated to the consideration for promotion envisaged by Rule 13.8 and the Government instructions would not apply at the stage when Constables in the Police force of the State of Haryana are selected for the Lower School Course. (Paras 4 and 5).

Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) *a writ in the nature of Mandamus directing the respondents to depute the petitioners to the lower school course in accordance with the promotion list Annexure P-2, be issued;*
- (ii) *the respondents be restrained from changing the promotion list already finalised, in view of the instructions Annexure P-3;*

(iii) any other writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case, be issued;

(iv) the record of the case be ordered to be sent for;

(v) the cost of the petition be awarded to the petitioners, under the circumstances of the case;

It is further prayed that the condition of issuing notices to the respondents, be dispensed with, as inquired under the High Court Rules and Orders, under the circumstances of the case. As the Course is likely to commence with effect from 1st April, 1982, there is no time left with the petitioners to issue the notices to the respondents.

It is further prayed that during the pendency of the writ petition the petitioners be deputed to Lower School Course, commencing with effect from 1st of April, 1982.

Kuldip Singh, Advocate, for the Petitioners.

Harbhagwan Singh, A.G. with P. S. Duhan, D.A.G., Haryana, for the Respondents.

JUDGMENT

I. S. Tiwana, J.

(1) These six writ petitions (Nos. 1578, 900, 1414, 1451, 1464 and 4466 of 1982) are before us either on a reference or because of the special order of the Motion Bench. The precise question which needs to be determined in these is whether the government instructions,—vide letter No. 24/17/80-3 GS III, dated December 16, 1980 (Annexure P. 1) or earlier providing for reservation of posts for Scheduled Castes and Backward Classes people are applicable to persons employed as Constables in the police force of the State of Haryana at the stage when they are to be selected for the Lower School Course in terms of Rule 13.7 of the Punjab Police Rules, 1934 (for short, the rules) as applicable to Haryana. Reference were necessitated on account of the supposed conflict between the observation made in three Single Bench judgments of this Court in *Sita Ram, Constable and another v. The State of Punjab and another*, (1) *Sajjan Singh v. State of Punjab and others*, (2) and

(1) 1976 S.L.W.R. 652.

(2) 1978 S.L.W.R. 489.

Ram Kumar and others v. The State of Haryana and others
(I. S. Tiwana, J.)

Tika Singh Constable and another v. The State of Punjab and others, (3) and in Full Bench judgment of this Court in *Sardul Singh v. I.G.P. Punjab and other*, (4). The arguments in these cases have been advanced on the basis of facts stated in CWP No. 1578 of 1982 only and thus these are being disposed of through this common order.

(2) The petitioners who undisputably belong to the above-noted classes and are employed as Constables were selected on the basis of these instructions as a result of written test, parade and interview held on January 27, and 31, 1982 along with 29 others for being included in list B. 1 for Karnal district in terms of Rule 13.7 of the rules for being sent to Lower School Course at Madhuban. A copy of this list is Annexure P. 2 and as per the same the petitioners figured at Nos. 4, 8, 14 and 24. This list was duly approved by respondent No. 3 Deputy Inspector General of Police, Haryana, Ambala Range on February 23, 1982 on a reference by respondent No. 4, Senior Superintendent of Police, Karnal dated February 1, 1982. Since only 28 seats had been allocated to district Karnal for this Course, the last mentioned five persons were to be treated as reserve. On March 5, 1982, a clarification (Annexure P. 3) was issued by the State Government that the above-noted instructions providing for reservation for Scheduled Castes and Backward Class employees in Class III and IV posts in matters of promotion do not apply to the list E. 1 prepared in the Police Department in terms of Rule 13.7 of the rules. As per this clarification, it was further pointed out that this reservation policy could be made effective only *qua* those Constables who have been brought on list 'C' for purposes of promotion to the next higher rank of Head Constable after their successful completion of the Lower School Course. Apprehending that the respondent-authorities would change the selection list P. 2 in the light of Annexure P. 3 the petitioners filed the present petition to seek the relief that instructions P. 3 be quashed being violative of the original or the basic instructions providing for reservation of posts in Class III and IV services of the State Government. This challenge is based on the further argument that the preparation of list B. 1 in terms of Rule 13.7 forms part of the process of promotion of a Constable to the next rank of Head Constable and if the reservation is to be ignored at this stage then virtually no Constable would be available for promotion to the post of Head Constable at a later stage. They

(3) 1980 (3) S.L.R. 642.

(4) 1970 S.L.R. 505.

further seek a Mandamus that the respondent-authorities be directed to send the petitioners to the Lower School Course on the basis of list P.2.

(3) To settle the controversy, the relevant part of instructions P. 1 for reservation of posts in Class III and IV of the service of the State Government essentially deserves to be noticed and the same is as follows :

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| “(a) For Scheduled Castes | 20 per cent (in class III & IV post) on the basis of seniority-cum-merit. There will be no reservation in class I & II posts. |
| (b) For Backward Classes | 10 per cent (In class III & IV Posts) basis of seniority-cum-merit. There will be no reservation in class I & II posts. |
| (d) For Ex-servicemen. | Nil.” |

The roster which is a part of these instructions further specifies the posts which fall to the share of each of the above-noted categories in a block of 100 posts in a particular cadre. Equally essential is now to notice the contents of Rule 13.7 of the rules to know as to whether any promotion is at all involved at the stage when list B. 1 is prepared. This is how the rule reads:

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| 13.7 List B. Selection for admission to promotion course for Constables at the Police Training College. | “(1) List ‘B’, in form 13.7 shall be maintained by each Superintendent of Police. It will, include the names of all constables selected for admission to the Promotion course for constables at the Police Training College (selection will be made in the month of January each year and will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the |
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Ram Kumar and others v. The State of Haryana and others
(I. S. Tiwana, J.)

basis of tests in parade, General Law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records (2) All Constables—

- (a) who are middle pass and have put in more than four years of service;
or
- (b) who are at least matriculates and have put in more than three years of service; or
- (c) who obtain first class with credit, in the Recruits course specified in rule 19.2; will be eligible to have their names entered on the afore-said list, if they are not above 30 years of age on the first day of July in the year in which the selection is made:

Provided that no constable who has been awarded major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any Constable whose name has been brought on this list is not sent to the Police Training College that year he will be required to compete again with the new candidate, if he is still eligible for admission to the said list under the rules.”

This rule is immediately followed by equally relevant and important rule 13.8 which reads as follows:

13.8 List C. Promotion to Head Constables	“13.8 (1) In each district a list shall be maintained in card index from form 13.8(1) of all constables who have
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passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5(2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector General of Police at his annual inspection.

(2) Promotion to Head Constable shall be made in accordance with the principle described in sub-rules 13.1(1) and (2). The date of admission to list 'C' shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector General, be promoted to Head Constable upto a maximum of ten per cent of vacancies."

(4) To us it appears clear that bare reading of the above-noted two rules in the light of the instructions P. 1 is enough to reject the contention of the learned counsel for the petitioners that at the stage of the preparation of list B. 1 in terms of Rule 13.7, any promotion of a Constable to that of a Head Constable is involved. The argument of the learned counsel for the petitioners however in a nutshell is that the very marginal note to Rule 13.7 indicates that the Lower School Course which the Constables have to undergo as a result of their selection and being placed on list B. 1 is a promotion

Ram Kumar and others v. The State of Haryana and others
(I. S. Tiwana, J.)

course and it is at that stage that the process of promotion to the next higher post of Head Constable begins. According to the learned counsel, the policy or instructions of the government relating to reservation in favour of Scheduled Castes and Backward Classes people have to be given effect to, right from the moment the process of promotion starts and in the absence of the same the said instructions are likely to be rendered nugatory. Learned counsel explains that unless the Scheduled Castes and Scheduled Tribe people are permitted to undergo this training on the basis of the above-noted instructions then the requisite number of Constables may not at all be available for being included in the promotional list of Constables (list 'C') in terms of rule 13.8. As already pointed out, we however see no merit in these submissions of the learned counsel. No doubt, it is true, that the Lower School Course is a promotion course for Constables yet sub-rule (2) of rule 13.8 lays down in no uncertain terms that promotion to the post of a Head Constable shall be made in accordance with the principles described in sub-rules (1) and (2) of rule 13.1. This sub-rule further provides that selection grade Constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may with the approval of the Deputy Inspector General of Police be promoted to the post of Head Constables though to the extent of 10 per cent of the vacancies only. Thus this part of the sub-rule clearly indicates that the qualification of having undergone a training may even be completely waived for promotion to the post of a Head Constable in the case of selection grade Constables. What sort of process of promotion it is in the case the contention of the learned counsel is to be accepted if it can be completely ignored in a given case? Rule 13.1 to which reference is made in this sub-rule makes it amply clear that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tampered by seniority. Efficiency and specific qualifications whether in the nature of *training course* passed or practical experience shall be carefully considered in each case. Sub-rule (1) of this rule further lays down that when qualifications of two officers are otherwise equal, the senior shall be promoted. A bare reading of this sub-rule makes it manifestly clear that to undergo a training course is only one of the qualifications which makes a Constable eligible for being considered for promotion to the next higher post of a Head Constable. It is also clear from the phraseology of instructions P. 1 that these envisage reservation to the post and not to eligibility or the training course. This position is further clear from the observations of the

Full Bench in *Sardul Singh's Case* (supra) made in the context as to whether the process of selection for promotion of a Head Constable to the rank of Assistant Sub-Inspector of Police starts after the Head Constable qualifies in the Intermediate School Course or a step prior thereto when he is to be sent for that course. While examining the implications of Rule 13.7 the Bench made the following meaningful observations:—

“Those Constables who successfully pass the Lower School Course and are considered eligible for promotion as Head Constables will be admitted to list ‘C’ under rule 13.8. It is thus evident that the second selection for being admitted to list ‘C’ starts after a Constable on list ‘B’ passes the Lower School Course. His admission to list ‘C’ will not be automatic thereafter but it will have to be considered whether he is fit for promotion to the rank of Head Constable. For that purpose, the marking in sub-rule 13.5(2) and the notes of the Superintendent of Police or furnished by gazetted officers under whom the Constable has worked, on his qualifications and character are to be taken into consideration when admitting him to list ‘C’ and promoting him as Head Constable. It is not that such a procedure was not known to the rule-making authorities for making selections for the training courses. The omission to make a provision for selection at the stage of sending the Head Constables for the Intermediate School Course in rule 13.9 like the one made in rule 13.7 leads to the conclusion that the omission by the rule-making authority was deliberate and the only inference that can be drawn from this omission is that no Head Constable is to be deprived of his right to go for the Intermediate School course in order to qualify himself for consideration for promotion to the next rank of Assistant Sub-Inspector of Police.”

Then the Bench concluded the above-noted question in the following words:

“In our view, the selection for the Intermediate School Course does not form part of the process of promotion of a Head Constable to the rank of an Assistant Sub-Inspector of Police which process starts only from the stage when the names are considered for entry in list

Ram Kumar and others v. The State of Haryana and others
(I. S. Tiwana, J.)

'D' under rule 13.9 and that stage is reached only after a Head Constable has passed the Lower School Course and the Intermediate School Course."

Thus by no stretch of imagination the process of selection for being sent to the Lower School Course in terms of Rule 13.7 can possibly be held or equated to the consideration for promotion envisaged by rule 13.8. On a close scrutiny we also find no conflict between these observations of the Full Bench and those made in the above-noted Single Bench judgments.

(5) Learned counsel while otherwise conceding that the State Government is competent to modify or rescind the instructions issued by it in matters of reservation in favour of the members of the Scheduled Castes and Backward Classes seeks to contend that firstly instructions (P. 3) cannot possibly have any retrospective effect (list P. 2 having been prepared earlier to the issuance of P. 3) and secondly the appointing authorities cannot change list P. 2 without affording any hearing to the petitioners. These contentions have to be noticed to be rejected. As already pointed out, P. 3 is only by way of clarification of the instructions which were already in force and by itself does not provide for any reservation or change in the policy of reservation of posts made in favour of Scheduled Castes and Backward Classes. It only specifically clarifies the position that "the government policy regarding reservation does not apply to the list B. 1 being prepared in the police department." It further clarifies that "in the police department there is a provision of reservation for promotion to the post of Head Constable but it would be applicable only on those Constables who are already on list 'C' and are eligible for promotion." We are thus satisfied that Annexure P. 3 does not bring about any change or modification in the reservation policy of the government and has rather been issued only by way of clarification. In the face of this conclusion of ours, there is obviously no question of retrospectivity being involved in these instructions. It is manifest that list P. 2 was prepared on the basis of a wrong interpretation of instructions P. 1 or an earlier instruction and its correction neither violates any of the petitioners' right nor the respondent-authorities are in any way handicapped in this regard. We also find in the light of the following observations of a Division Bench of this Court in *Ranjit Singh v. President of Haryana*

(*Pb. & Hry.*), (5), that the petitioners cannot possibly claim any prior hearing before the change of list P. 2:

“It was nowhere laid down that no matter whether there was infringement of an enforceable legal right or not, whenever there was reduction in rank or loss of seniority, emoluments or the like resulting even from the exercise of the lawful authority, the effected Government servant always got under the rules of natural justice, a right to be afforded an opportunity to be heard before an order relating to any such matter was passed.”

And again:

“Where an order was passed by the Government which was palpably an erroneous administrative decision which affected several senior officers, there was no rule of law which debarred a Government, while acting administratively, from remedying the wrong done by itself.

Every Administrative Authority has an inherent right to rectify its own mistakes unless there is some specific provision of law which prohibits such a course. An officer holding an officiating post has no vested right to be heard or to urge that since he had obtained some benefit under a wrong decision made by a departmental authority, that decision be not rectified as it would result in the loss of that benefit to him.”

(6) In the light of the above discussion, we find no merit in any of these petitions and thus dismiss the same but with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before J. V. Gupta, J.
MADAN LAL,—Petitioner.

versus

SANTOSH KUMARI and another,—Respondents.

Civil Misc. No. 5034/CII of 1982.

in Civil Revision No. 2821 of 1982.

January 18, 1983.

Hindu Marriage Act (XXV of 1955)—Section 24—Code of Civil Procedure (V of 1908)—Section 115—Wife granted maintenance and litigation

(5) 1971(2) S.L.R. 561.