

(4) Viewing it from another angle, the award under Section 92-A of the Act as it seems to me is final betwixt the owner of the offending vehicle and the claimants. But the award assumes the quality of being interim in nature in so far as it relates to the eventual settlement of liability between the insured and the insurance company. On the affirmance of the order now sought to be appealed against, the finality would attach only to the fact that the order is binding between the claimant and the owner. The Insurance Company is not and can never be held to be bound by the award under section 92-A unless its rights and obligations towards the insured are settled. Thus, the controversy in the appeal filed by the Insurance Company against the parent award is not a factor which comes to obstruct disposal of this appeal, or even by affirming the impugned order. Even the dictum of the Full Bench in *Oriental Fire & Genl. Insurance Co. Ltd. v. Bachan Singh and others* (2) is to the effect that the liability of the insurer is conditional on a judgment or award against the insured based on principle of indemnity and it was never intended by the legislature that the insurer would become liable *de hors* the insured when the insured had been wholly exonerated of any liability. That dictum bears an innate exception to it the form of section 92-A, in the sense that in an interim way the Insurance Company has to indemnify the insured but subject to the owner or the insured reimbursing it in the event the Insurance Company gets absolved of the liability. Accordingly it is so held.

(5) No other point arises in this appeal.

(6) In the view afore expressed, this appeal fails and is hereby dismissed. No costs.

H.S.B.

Before M. M. Punchhi, J.

HANS RAJ GUPTA AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ Petition No. 4972 of 1984

August 8, 1985

Punjab Labour Service (Class I & II) Rules, 1955—Rules 4 and 5—Punjab Labour Service (Class II) Rules, 1982—Different qualifications and procedure prescribed for recruitment to the service by

(2) 1982 A.C.J. 211.

**Hans Raj Gupta and others v. The State of Punjab and another
(M. M. PUNCHHI, J.)**

the two sets of Rules—1982 Rules repealing those framed in 1955—Direct recruits claiming that an advantage given to them by the 1955 Rules was allegedly taken away by the 1982 Rules—Posts of direct recruits falling vacant before the repeal but sought to be filled up later—Filling up of such posts—Whether to be governed by the 1982 Rules.

Held, that the direct recruits, like any other person in the street, have no vested right in the maintenance of a certain set of rules under which they claim an advantage over another set of rules which allegedly put them to disadvantage. A post which the rules require to be filled by direct recruitment has to be filled in accordance with the rules existing at the time when the post is advertised for the purpose. While the old rules were in force, no suitable candidates were available and when for the third time the advertisement was made new rules had come into force and in accordance therewith selections were made by the Public Service Commission. In such a situation, there could be no vested right which the direct recruits could have in the maintenance of the old rules and to voice grievance on account of their non-existence or non-compliance. They also cannot claim any benefit when the rules have been repealed altogether and are no longer alive when the posts were advertised for being filled up.

(Para 4).

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

- (i) Complete records of the case be summoned;
- (ii) the action of the respondents in advertising 12 posts of Labour-cum-Conciliation Officer in the Labour and Employment Department to be filled by way of direct recruitment under the Punjab Labour (Class II) Service Rules, 1982 be declared a nullity and be quashed. The advertisement, annexure P-2 and the consequent process of selection be declared a nullity and be quashed;
- (iii) It is further prayed that a writ in the nature of Mandamus directing the respondents to fill 7 posts falling vacant prior to coming into force of the amended rules, i.e., 15th April, 1980 in accordance with the then existing statutory Rules called the Punjab Labour Service (Class I and II) Rules, 1955, be issued;
- (iv) It is further prayed that during the pendency of the writ petition, the appointment of direct recruits and the consequent reversion of the petitioners from the post of Labour-cum-Conciliation Officer be stayed;

- (v) costs of the petition be also awarded;
- (vi) the Hon'ble Court may also grant other relief deemed just and fit in the circumstances of the case;
- (vii) condition regarding filing of certified copies of the annexures may kindly be dispensed with;
- (viii) condition regarding service of advance notice of the writ petition be dispensed with.

Kuldip Singh, Senior Advocate, and G. C. Gupta, Advocate with him, for the Petitioner.

R. P. Bhatia, Advocate, for A.G., Punjab.

JUDGEMENT

M. M. Punchhi, J. (Oral)

(1) The petitioners having worked as Inspectors in the Labour and Employment Department of the Punjab Government for a few years were working at the relevant time as Labour Officers on *ad hoc* basis. The channel of promotion from the post of Inspector to the post of Labour-cum-Conciliation Officer was governed by rule 4 of the Punjab Labour Service (Class I & II) Rules, 1955. In accordance therewith, no person could be appointed to the service unless he possessed the educational and other qualifications mentioned therein. Those were that he had to be a graduate of a recognised university, preferably in one of the social sciences, such as, economics, commerce, sociology and law. Additionally, he had to have five years' experience of the working of labour laws as Labour Inspector, Deputy Chief Inspector or Shops or Wage Inspector, as also a diploma in Social Welfare of any recognised university of institution. Rule 5 thereof provided that 2/3rd of the cadre strength had to be by promotion from amongst the Labour Inspectors and the remaining 1/3rd by direct appointment and by transfer or deputation of persons already in the service of the Government of India or of any State Government.

(2) The petitioners allege that during 1974 to 1977, 20 posts of Labour-cum-Conciliation Officers fell vacant, out of which 7 posts fell to the quota of direct recruits. They further claim that since

Hans Raj Gupta and others v. The State of Punjab and another
(M. M. Punchhi, J.)

those posts fell vacant during the period when the 1955 rules were holding the field, these posts could only be filled up in accordance with the method of recruitment provided under the 1955 rules, afore-referred to.

(3) The 1955 rules were repealed and in place thereof with effect from January 22, 1982, the Punjab Labour Service (Class II) Rules, 1982, came into force. These provided a new method of appointment and qualifications for the post of Labour-cum-Conciliation Officer. The quota of promotees was fixed at 70 per cent and 30 per cent was kept for direct recruits, to be taken on the basis of combined competitive test. Qualification prescribed for a direct recruit was that he should be simply a graduate of a recognised university. For a promotee the qualifications were that besides being a graduate of a recognised university, he should at least have five years' experience as Labour Inspector or as Field Investigator, as the case may be.

The jobs of the direct recruits, whether under the 1955 rules or under the 1982 rules, had in any case to be thrown out to the public for competition. The petitioners claim that under the 1955 rules, the necessary qualifications for appointment of Labour-cum-Conciliation Officer were rather on the tough side and the petitioners being the ones who were most likely to have competed for the same, had a vested right to have those vacancies thrown out on the basis of the old rules despite the repeal. The petitioners further point out that the new rules have relaxed the qualifications and have taken away an advantage which the petitioners had over others inasmuch as the experience gained by them in the department does not give them any leverage. It is on these premises that the claim has been based. Support for the view is sought from *Y. V. Rangiah and others v. J. Sreenivasa Rao and others* (1) as also from Division Bench judgment of this Court in *Santokh Singh and others v. The State of Punjab* (2) in which the aforesaid Supreme Court decision was relied upon.

(4) The factual position is not disputed. The point to be seen is whether the claim of the petitioners who are in a mood of competing on the direct side and not on the promotees' side is valid for any reason.

(1) AIR 1983 S.C. 852.

(2) CW 3877 of 1984 decided on 16-2-85.

The petitioners, like any other person in the street, have no vested right in the maintenance of a certain set of rules under which they claim an advantage over another set of rules which allegedly put them to disadvantage. The main plank of the case of the petitioner being *Y. V. Rangaiah's case* (supra), it would be appropriate to have a good look at that precedent. Broadly stated, in that case the bone of contention was the post of Sub-Registrar Grade-II. Under the earlier rules, there was one method how promotion to the post of Sub-Registrar Grade-II could be made. The post fell vacant while the earlier rules were in existence and it was not filled in accordance therewith. Later a new method was evolved by a new set of rules whereby the post of Sub-Registrar Grade-II could be filled. It was undoubtedly a promotion post and the dispute was between incumbents in the department itself. It is to resolve that dispute that their Lordships observed as follows:—

“....The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

The afore-quoted observations are in the context of a promotion test. As at present advised, I am of the view that these can have no applicability to a post which has to be filled directly and for which invitation has to be offered to the public at large. A post which the rules require to be filled in accordance with the rules existing at the time when the post is advertised for the purpose. Now concededly here while the old rules were in force, no suitable candidates were available for two times as per the return of the respondents. When for the third time the advertisement was made,

Parvati v. Ram Chand (M. M. Punchhi, J.)

new rules had come into force and in accordance therewith selections were made by the Public Service Commission as the post has now been, more or less, put at par with the post under the Punjab Civil Service (Class II). In this situation, I fail to see any vested right which the petitioners have in the maintenance of the old rules and to voice grievance on account of their non-existence or non-compliance. I also fail to see how the petitioners can claim any benefit when the rules have been repealed altogether and are no longer alive when the posts were advertised for being filled up. The contention thus raised is repelled.

(5) So far as *Santokh Singh's case* (supra) is concerned, I find no ratio which can come to the aid of the petitioners. There again was a case of promotees who made grievance that when the old rules were in force the direct appointees had not been brought in and while considering the case of direct recruits under the amended rules their claim under the old rules could not be considered and revived. The Bench repelled that contention on the basis of *Y. V. Rangaiiah's case* (supra).

(6) No other point arises.

(7) For the foregoing reasons, there is no merit in this petition which fails and is accordingly dismissed. No costs.

N.K.S.

Before M. M. Punchhi, J.

PARVATI,—Petitioner.

versus

RAM CHAND,—Respondent.

Civil Revision No. 352 of 1985.

September 4, 1985.

Code of Civil Procedure (V of 1908)—Section 60, Order 33 Rule 1 and Order 44 Rules 1 and 3—Suit by the wife for maintenance—Trial Court permitting her to sue as an indigent person—Meanwhile she received arrears of maintenance pendente lite from the husband—she received arrears of maintenance pendente lite from the husband—Husband objecting to her status as an indigent person in appeal—Amount of arrears received by the wife—Whether could be reckoned