

option by placing him under suspension, he cannot be made to suffer for the wrong committed by the respondents. We are unable to agree with the views expressed by the learned Single Judge. As already held above, reinstatement of an employee from suspension after exoneration in a departmental enquiry no doubt entitles him to be treated in service for grant of pay, allowances and other benefits but even in such cases the Government has the power to deny payment of full pay and allowances where it finds that the employee was gainfully employed during the period of suspension. That apart, an order treating the period of suspension as one spent on duty has the effect of notionally continuing the employees in service for grant of various service benefits. That cannot, however, be stretched to mean that the employee as was physically present on duty and had in fact attended the office during the period of Suspension. The learned Single Judge has not referred to the object with which the Government of Punjab had issued the circular letter dated 6th February, 1978 for grant of premature increment to the employees. The learned Single Judge has failed to take note of the fact that grant of premature increment was a sort of reward to the employees who had attended their duties on the day of strike. Grant of such a concession to the employees cannot be placed at the pedestal of legal right vesting in the employees. Therefore, the learned Single Judge was not right in holding that by denial of premature increment to a suspended employee the Government had visited such an employee with penalty.

(9) For the aforesaid reasons, we do not find any merit in the writ petition which is hereby dismissed.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.
SURINDER SINGH BANGAR.—Appellant.

versus

THE UNION OF INDIA AND ANOTHER.—Respondents.

L.P.A. 503 of 1989.

26th September, 1994.

Letters Patent Appeal. 1919—Clause X—Promotion Policy para 12.2. as per Bank Circular—Appellant put in five years of service—Minimum eligibility criteria in terms of years of service for promotion is five years—Whether appellant entitled to promotion—Held.

that by putting in five years of service does not by itself make an officer eligible for promotion—Only entitles him to be considered for such promotion—However, he will be put in zone of consideration only if his name in seniority list is within three times the number of vacancies—Appeal dismissed.

Held, that there is no substance in the contention raised by the learned counsel for the appellant that since the appellants had put in more than 5 years of service, they fell within the zone of consideration. By putting in five years service, an officer became only eligible to be considered for promotion to the next grade, but this does not by itself bring him within the zone of consideration. He will be within the zone of consideration only if his name in the seniority list is within three times, the number of vacancies. The view we have taken on this aspect of the matter, finds full support from a judgment of the Supreme Court in *Ashok Kumar Yadav and others v. State of Haryana and others*, 1985 (2) S.L.J. 482.

(Para 11)

J. S. Khehar, Advocate, for the Appellant.

L. M. Suri, Senior Advocate with Deepak Suri, Advocate for respondent No. 2, for the Respondent.

JUDGMENT

Sat Pal, J.

(1) This judgment will dispose of Letters Patent Appeal No. 503 of 1989 and 490 of 1989, since the same questions of law and similar facts are involved in both these cases.

(2) The writ petitioners in both the cases at the relevant time were holding the post in Middle Management Grade Scale II/I in the respondent-Bank, and they had challenged the promotion of certain officials of the respondent-Bank to Grade Scale II/III in the writ petitions. The promotion from the post in Junior Management Grade Scale I to the cadre of Middle Management Grade Scale II and from Middle Management Scale II to Middle Management Scale III was governed by the promotion Policy contained in the Bank Circular, dated 1st February, 1985. In terms of the said Policy, 50 per cent of the vacancies in Scale III were to be filled in from amongst eligible officers, who had put in at least 8 years completed service in Scale II and the remaining 50 per cent of the vacancies were to be filled on merit basis. Similarly, 40 per cent of the vacancies in Grade Scale II were to be filled on merit basis. The minimum eligibility in terms of number of years of service for promotion on merit was 5 years' satisfactory service. As per Para 12.2

of the Promotion Policy, guide lines issued from time to time regarding promotion of eligible officers belonging to the Scheduled Castes/Scheduled Tribes category will be taken into account. In this connection, guidelines are contained in the Ministry of Home Affairs Department of Personnel and Administrative Reforms Circular No. 36011/16/EST(SCT) of 1982. The relevant portion from these guidelines is reproduced :—

“Promotion by Selection within Group A (Class I).

In promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs. 2,000 per month, or less (Rs. 2,250 per month or less in the revised scale) there is no reservation, but the Scheduled Castes/Scheduled Tribes Officers, who are senior so as to be within the number of vacancies for which the select list has to be drawn up would be included in that list provided they are not considered unfit for promotion.”

(3) It is admitted case of the parties that for the relevant year, pertaining to L.P.A. No. 503 of 1989, the number of posts to be filled on merit basis was 75 and with regard to L.P.A. No. 490 of 1989, the number of such posts was 320. In Para 7 of the writ petition, C.W.P. No. 5716 of 1987, out of which L.P.A. No. 490 of 1989 arose, it was stated that the zone of consideration for making appointments by promotion would be three times the number of vacancies to be filled up at any juncture. This fact is also borne out from the Government of India instructions contained in the Ministry of Finance, Department of Economic Affairs (Bank Division) Office Memo No. 101/11/83-SCT(B), dated 7th November, 1983. In both the years, all the candidates, who fulfilled the minimum eligibility conditions in terms of number of years of service, that is to say, who had put in five years' of satisfactory service in Grade Scale I/II were permitted to appear for interview before the Selection Board.

(4) Mr. Khehar, learned counsel appearing on behalf of the appellants, submitted that in terms of the instructions of 1982 issued by the Home Ministry, a candidate belonging to the Scheduled Caste/Scheduled Tribes category has to be selected for promotion in case he is within the zone of consideration and has not been found unfit for promotion. He, therefore, contended that all the writ petitioners, who were within the zone of consideration and appeared before the Selection Board, ought to have been selected for promotion to the post in Grade Scale II/III since they were not found

unit for promotion. In support of his contention, the learned counsel placed reliance on two judgments of the Supreme Court in *Bihar State Harijan Kalyan Parishad v. Union of India and others* (1) and *Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) through its General Secretary, Shri K. S. Radha and others v. The Union of India through its Additional Secretary, Ministry of Finance (Department of Economic Affairs) Baking Division Jeevan Deep Building, New Delhi* (2).

(5) The learned counsel drew our attention to the instructions contained in the Ministry of Finance, Department of Economic Affairs Memo No. 4/5/13/86-R dated 4/8th September, 1986 and submitted that in terms of those instructions, an officer belonging to the Scheduled Castes/Scheduled Tribes was required to be included as a member of the Selection Board and in case such an officer was not available within the Bank, an officer belonging to the Scheduled Castes/Scheduled Tribes from outside was required to be co-opted. He submitted that in these cases, an officer of Grade Scale IV and above was not available, within the Bank, an officer belonging to the Scheduled Caste/Scheduled Tribes from outside was required to be co-opted and since such an officer was not included as a Member of the Selection Board, the selection of the officers to the Grade Scale II/III in those years was liable to be quashed. He also submitted that the result of the interview relating to candidates in L.P.A. No. 503 of 1989 was declared on 18th May, 1987 and the writ petitioner in that case had submitted a representation on 16th May, 1987, wherein he had pointed out that in terms of the instructions issued by the Government of India, an officer belonging to the Scheduled Castes/Scheduled Tribes had to be included in the selection list.

(6) Mr. Suri, learned counsel, appearing on behalf of the respondent-Bank, raised a preliminary objection that though the writ petitioners in both the cases had challenged the selection of certain officers of the Bank to the post of Grade Scale II/III but none of those affected officers had been impleaded as a party in the writ petition and as such, the appellants were not entitled to any relief. In support of this contention, he placed reliance on a judgment of the Supreme Court in *The Workman of the Food Corporation of India v. M/s Food Corporation of India* (3).

(1) A.I.R. 1985 S.C. 983.

(2) J.T. 1990 (3) S.C. 468.

(3) A.I.R. 1985 S.C. 670.

(7) As regards the non-inclusion of an officer belonging to the Scheduled Castes/Scheduled Tribes in the Selection Board, the learned counsel for the Bank submitted that the writ petitioners could not approbate and reprobate. He submitted that all the writ petitioners had appeared before the Selection Board without raising any objection and even the writ petitioner in L.P.A. No. 503 of 1989 was interviewed on 29th January, 1987, and had submitted a representation as late as on 16th May, 1987, just two days before the declaration of the results. He, therefore, contended that the appellants cannot be allowed to urge this point. In support of this contention, the learned counsel placed reliance on two judgments of the Supreme Court in *Swaran Lata v. Union of India and others* (4) and *Dr. G. Sarana v. University of Lucknow and others* (5) and a judgment of this Court in *Bhagirath Ram Garg v. The Punjab State Electrical Board and others* (6).

(8) The learned counsel for the Bank further submitted that in terms of the guidelines contained in the Government of India, Ministry of Finance (Banking Division), dated 7th November, 1983, the candidates falling under three times the number of the vacancies came within the zone of consideration. He further submitted that in Para 7 of the writ petition pertaining to L.P.A. No. 490 of 1989, it has been stated by the writ petitioners themselves that the zone of consideration for making promotions would be three times the number of vacancies, to be filled up at any juncture. He submitted that admittedly none of the writ petitioners was within the zone of consideration and as such, the Government of India instructions contained in No. 36011/16/EST(SCT) of 1982 were not applicable in these cases. He, therefore, contended that both the appeals were devoid of merit and should be dismissed.

(9) Mr. Khehar, in his rejoinder argument, submitted that since in these cases the writ petitioners had challenged the validity of the decision of the respondent-Bank, the affected persons were not the necessary parties. In support of this submission, the learned counsel placed reliance on two judgments of the Supreme Court in *The General Manager South Central Railway Secunderabad and others v. A.V.K. Siddhanti and others etc.* (7) and *State of U.P. and another*

(4) 1979 (1) S.L.R. 710.

(5) 1976 (2) S.L.R. 509.

(6) 1982 (2) S.L.R. 6.

(7) 1974 S.L.J. 576.

v. *Ram Gopal Shukla* (8), and a judgment of a Division Bench of Karnataka High Court in *Vishwanath N. v. State of Karnataka and others* (9).

(10) We have given our anxious consideration to the submission made by the learned counsel for the parties and have perused the record. In terms of the instructions contained in the Ministry of Home Affairs Circular of 1982, in promotions by selection to the posts within Group 'A' (Class I) which carry an ultimate salary of Rs. 2,000 per month, or less (Rs. 2,250 per month or less in the revised scale) though there is no reservation, yet the Scheduled Castes/ Scheduled Tribes Officers who are senior so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. While interpreting these instructions, the Supreme Court in the case of *Bihar State Harijan Kalyan Parishad's case* (supra), held that "those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration". As stated in the Ministry of Finance Circular, dated 7th November, 1983 and also admitted by the writ petitioners themselves in para 7 of the Civil Writ Petition No. 5716 of 1988, the zone of consideration for making the appointment by promotion would be three times the number of vacancies to be filled up at any juncture. Admittedly, in the case pertaining to LPA No. 503 of 1989, the number of vacancies was 75 and the name of the writ petitioner was at Serial No. 694 in the seniority list and as such, he was not within the zone of consideration. Similarly, in the other writ petition bearing No. 5716 of 1988 the number of vacancies to be filled up on the basis of merit was 320. Since the names of the writ petitioners in this petition stood at Serial Nos. 1734, 2274, 2275 and 2279, none of them was within the zone of consideration. In view of these facts, the petitioners in both the writ petitions were not entitled to the benefit contained in the instructions, issued by the Ministry of Home Affairs in the year 1982.

(11) We do not find any substance in the contention raised by the learned counsel for the appellants that since the appellants had put in more than 5 years of service, they fell within the zone of consideration. By putting in five years service, an officer became only eligible to be considered for promotion to the next grade, but this

(8) 1981 (2) S.L.R. 3.

(9) 1979 (2) S.L.R. 670.

Bir Devinder Singh son of Mohinder Singh resident of Bassi 227
Pathana v. Mangat Ram son of Dip Chand resident of Sohana
(G. S. Singhvi, J.)

does not by itself bring him within the zone of consideration. He will be within the zone of consideration only if his name in the seniority list is within three times the number of vacancies. The view we have taken on this aspect of the matter, finds full support from a judgment of the Supreme Court in *Ashok Kumar Yadav and others v. State of Haryana and others* (10). In that case, the Supreme Court held that "Every candidate to be eligible for appearing at the *Viva Voce* must attain at least 45 per cent marks in the aggregate in the written examination. Obtaining of minimum 45 per cent marks does not by itself entitle a candidate to insist that he should be called for the *Viva Voce* test". We do not find any merit also in the contention raised on behalf of the appellants that since an officer belonging to the Scheduled Castes/Scheduled Tribes was not included as a member of the Selection Board, the selection of the officers was liable to be quashed. As stated earlier, all the writ petitioners had appeared before the Selection Board without raising any objection with regard to the constitution of the Selection Board. The appellants, therefore, cannot be allowed to approbate and reprobate.

(12) Since we do not find any merit in the appeals, we do not deem it necessary to decide the preliminary objection raised on behalf of the respondent-Bank that the appellants were not entitled to any relief as they had not impleaded affected parties.

(13) For the reasons recorded, both the appeals are dismissed. The parties are, however, left to bear their own costs.

J.S.T.

Before Hon'ble G. S. Singhvi, J.

BIR DEVINDER SINGH SON OF MOHINDER SINGH RESIDENT
OF BASSI PATHANA,—Petitioner.

versus

MANGAT RAM SON OF DIP CHAND RESIDENT OF SOHANA,
... Respondent.

Civil Revision No. 3937/94

5th December, 1994.

East Punjab Urban Rent Restriction Act (III of 1949) S. 13(2) (iii)
Eviction on grounds of Material impairment—Whether construction

(10) 1985 (2) S.L.R. 482.