

## PRABHAKAR &amp; ORS.

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v.

## STATE OF MAHARASHTRA &amp; ORS.

October 22, 1975

[P. K. GOSWAMI AND N. L. UNTWALLA, JJ.]

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*Bombay Police Officers (Combined Cadre) Conditions of Service Order, 1954—Clause 7(1) (a)—Rule of fixation of seniority by taking the date of the commencement of training is constitutionally valid, not discriminatory and does not offend Art. 14 and 16 of the Constitution.*

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Appointments to the posts of sub-inspectors (either to the Distt. Police Force or the Police Force of Greater Bombay) in the State of Bombay, prior to 1st of May 1939, were after a training of 18 months at the Police Training School at Nasik. Between the period 1st May 1939 and 1st of June 1949, a new training school at Naigaum, a part of Greater Bombay was started wherein the period of training varied from 3 to 8 months and after the short training the cadets were appointed straight away as Sub-Inspectors of Police in Greater Bombay. Separate seniority lists were maintained for the Distt. force and the city force. The Nasik school continued to exist side by side with 18 months training. On the general principle of fixation of seniority when the combined cadre service order came into force w.e.f. 1-8-54 the two seniority lists were maintained on the basis of their passing out the training and in order of merit obtained at the passing examination. After the formation, when transfers were to be made, a difficulty arose in fixing the *inter-se* seniority of the officers appointed after full 18 months training and one appointed after training for a shorter period and to avoid anomaly and hardship a provision was made in clause 7 whereby for the purpose of seniority (i) in the case of officers whose training commenced on any date from 1-5-39 to 1-6-1949, the date of commencement of the training was taken, and

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(ii) in other cases, the date of successful completion of such a course and *inter-se* the place occupied in the results of the examination held at the end of such a course was taken.

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When the constitutionality of Clause 7(1)(a) was challenged, the High Court of Bombay declared Clause 7(1)(a) of the order void, being violative of Articles 14 and 16 of the Constitution on three grounds :

- (1) That the Government had reduced the period of training at Naigaum School as against the resolution dated April 6, 1940 providing for the establishment of a Training School at Naigaum.
- (2) That according to the said clause of the Order the commencement of the training period of the Mofussil officer was to be taken for determination of his seniority whereas in case of the officer belonging to the Greater Bombay Police Force, the date of his appointment was to be taken and in the opinion of the High Court, this was clearly discriminatory.
- (3) That in case of a cadet whose period of training had been extended on account of his failure at the examination the impugned clause gave an advantage even to such a bad officer.

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Dismissing the appeal appellant No. 3 and allowing the appeal of appellants Nos. 1 and 2. the Court

HELD : (i) The High Court has committed an error in the interpretation of the provision contained in clause 7(1)(a) of the Bombay Police Officers (Combined Cadre) Conditions of Service Order. On transfer of any police officer from Greater Bombay to the District and *vice-versa*, if his training had com-

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**A** menced on any date between the period of 1st May 1939 to 1st June 1949 then his seniority was to be determined *vis-a-vis* the police officer of the force to which he was transferred with reference to the dates on which their training commenced. It is not that in one case, it will be the date of commencement of the training and in the other it will be date of appointment. [319-C-D].

**B** (ii) Ordinarily and generally method of fixation of seniority as provided in sub-clause (b) of clause 7(1)(a) of the order was the correct and proper method to be followed. But because of the special situation of appointment of some police officers during the period of 10 years on a shorter period of training, a departure was made as provided in clause (a). There was nothing wrong, illegal or unreasonable in making a provision in sub-clause (a) that in such a situation the commencement of the period of training will be taken as the date for the purposes of fixation of seniority. There was a reasonable nexus between the object and the rule. [319-H, 320 A-B]

**C** (iii) It was for the rule making authority to decide and to choose in such a situation—either the date of commencement of the training or the date of appointment. Taking the former date in the special circumstances is reasonable and justified. Such a provision is not violative of Art. 14 and 16 of the Constitution. [320 B-C]

**D** (iv) To hold clause 7(1) as *ultra vires* on the ground that it gives any advantage even to such a bad officer whose period of training had been extended on account of his failure in the examination may be theoretically correct. Clause 7(1)(a) was not meant to give any undue advantage to a non-deserving police officer who failed to pass the training examination at the proper time. [320 C-D]

(v) Clause 7(1)(a) of the order is constitutionally valid and not discriminatory. [320-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 721 of 1974.

**E** Appeal by Special Leave from the Judgment and Order dated the 25th August 1972 of the Bombay High Court in Spl. Civil Appln. No. 1831 of 1968.

*V. M. Tarkunde, Sharad Manohar, V. N. Ganpule and P. C. Kapoor* for the Appellant.

*M. N. Shroff* for Respondents 1-3.

**F** *K. K. Singhvi, R. K. Garg, E. C. Agarwal and V. J. Francis* for Respondent No. 4.

The Judgment of the Court was delivered by

**G** UNTWALIA, J.—The only point which falls for our determination in this appeal by special leave is whether clause 7(1)(a) of the Bombay Police Officers (Combined Cadre) Conditions of Service Order, 1954—hereinafter called the Order, made by the Government of Bombay in exercise of the powers conferred by clause (b) of Section 5 of the Bombay Police Act, 1951 is constitutionally invalid being violative of Articles 14 and 16 of the Constitution of India as has been held by the Bombay High Court in the Writ Petition filed by respondent no. 4.

**H** In the Province or the State of Bombay, there were two separate police forces—the Mofussil police force governed by the Bombay District Police Act, 1890 and the City Police of Bombay governed by the

City of Bombay Police Act, 1902. Some steps for inter-mixing and inter-transfer of officers of one force to the other were taken by making some provisions in Bombay Act XVI of 1949 called the Police Forces (Control and Direction) Act, 1949. The Bombay Police Act of 1951 repealed the earlier Acts. Under the Order which came into force on and from the 1st August, 1954, provision was made in clause 4 empowering the State Government whenever it thought fit to order the transfer of any police officer belonging to the combined cadre from Greater Bombay to any District and *vice-versa*. The combined cadre was sought to be formed under clause 3 of the Order. Two separate lists of the officers in accordance with their respective seniority were, however, maintained even under clause 3 of the Order. Previously there was one Police Training School at Nasik where cadets for training were sent. The period of their training was 18 months. On passing out the training the cadets were appointed to the posts of Sub-Inspectors of Police. Some were appointed to the District Police Force and some were sent to the Police Force of Greater Bombay. In the year 1939 due to certain exigencies of administration such as introduction of the scheme of Prohibition and the impending second World War more Sub-Inspectors were needed to be appointed for Greater Bombay. A new Training School was opened at Naigaum a part of Greater Bombay. This new Training School remained in existence for about a decade from the 1st of May, 1939 to 1st of June, 1949. The period of training was reduced from 18 months to a much shorter period varying from 3 to 8 months. Thus cadets of particular batches after completion of training for a shorter period were straightaway appointed as Sub-Inspectors of Police in Greater Bombay. This went on for a period of about 10 years as already stated. On the other hand, almost invariably, the training period at Nasik School remained of 18 months. On the general principle of fixation of seniority, the two seniority lists which were maintained separately even under the Order, were maintained on the basis of their passing out the training and in order of merit obtained at the passing examination. But since after the formation of the combined cadre under the Order transfers were to be made under clause 4, a difficulty was felt in the matter of fixation of seniority *vis-a-vis* the officer who had been appointed after completion of full training period and the one who had been appointed on the training of a shorter period. To avoid this anomaly and difficulty, a provision was made in clause 7 of the Order thus :

"7. (1) When an officer who was in service immediately before the formation of the Combined Cadre is transferred under clause 4, his seniority among Police Officers of equivalent ranks in Greater Bombay or in the Districts, as the case may be shall be determined in the case of an officer who was appointed to a post either in Greater Bombay or in the Districts after a course of training at a Police Training School,—

(a) if the training commenced on any date between the period from 1st May 1939 to 1st June 1949 (both inclusive) with reference to the date on which training commenced;

- A (b) in other cases, with reference to successful completion of such a course and inter se the place occupied in the results of the examination held at the end of such a course."

B Respondent No. 4 was a Police Officer appointed in the year 1948 after a short training period at Naigaum School. He challenged by a writ application the vires of the entire Order on certain grounds. He prayed for a direction to respondents 1 to 3 for not giving affect to the Order and for re-fixation of seniority. There was some dispute as to the seniority of a police officer appointed in a regular manner and the one appointed to the police force from the Excise Department. The High Court allowed the writ application in part, declared clause 7(1)(a) of the Order as constitutionally invalid and also directed the adjustment of places of seniority as between the police officers who came by regular appointments and those who came from the Excise Department. Some officers of the Department were impleaded as respondents in the writ application in their respective capacity. The two such officers made parties in the writ application were respondents 4 and 5 of the Mofussil Police Force. Respondents 6 and 7 therein were police officers who had come from the Excise Department. Appellants 1 and 2 in the present appeal are two other police officers of the Mofussil Police Force and appellant No. 3 is a Police Officer who came from the Excise Department. He was respondent 6 in the writ application. The order of the High Court made against appellant No. 3 could not be assailed before us. Appellant No. 3, is not, therefore, entitled to any relief in this appeal.

E So far the case of appellants 1 and 2 is concerned, it must be noted that the High Court has declared clause 7(1)(a) of the Order void being violative of Articles 14 and 16 of the Constitution on three grounds :

- F (1) That the Government had reduced the period of training at Naigaum School as against the resolution dated April 6, 1940 providing for the establishment of a Training School at Naigaum.
- G (2) That according to the said clause of the Order the commencement of the training period of the Mofussil officer was to be taken for determination of his seniority whereas in case of the officer belonging to the Greater Bombay Police Force, the date of his appointment was to be taken and in the opinion of the High Court, this was clearly discriminatory.
- (3) That in case of a cadet whose period of training had been extended on account of his failure at the examination the impugned clause gave an advantage even to such a bad officer.

H In our opinion, none of the grounds forming the basis of the judgment of the High Court is sustainable. The attack on Rule 7(1)(a) was not specifically made in the writ application as originally presented

by respondent No. 4. He laid the foundation for the attack in his re-joinder application. A counter-affidavit thereafter was filed by the State stating the facts which led to the framing of clause 7(1)(a). Respondent No. 4 filed a further rejoinder. It was not disputed, rather, admitted on all hands that at Naigaum School the training period was much shorter than the period of 18 months which continued at Nasik. If during the period of 10 years cadets on the basis of a shorter period of training were appointed to the Bombay Police Force without any specific order of the Government (although it must not be the case) it might have affected the validity of their appointment but not the fact that they had been so appointed on a shorter period of training.

The High Court has committed an error in the interpretation of the provision contained in clause 7(1)(a) of the Order. On transfer of any police officer from Greater Bombay to the District and *vice versa*, if his training had commenced on any date between the period of 1st May, 1939 to 1st June, 1949, then his seniority was to be determined *vis-a-vis* the police officer of the force to which he was transferred with reference to the dates on which their training commenced. It is not that in one case it will be the date of commencement of the training and in the other it will be the date of appointment, as seems to have been wrongly thought by the High Court. To explain, we may take an example. Suppose a Sub-Inspector A whose training had commenced—say on 1st April, 1947 resulting in his appointment on 1st November, 1947 was transferred to the Mofussil where, let us suppose again, a police officer B was there whose training had commenced—say on 1st April, 1947 resulting in his appointment on 1st October, 1948, then in such a case B will be senior to A because his training commenced earlier even though he was appointed later. But if there be an officer, suppose C, in the Mofussil whose training commenced—say on 1st April, 1947 resulting in his appointment on 1st December, 1948 then he cannot be senior to A by taking 1st June, 1947 as the date of commencement of his training and comparing with 1st November, 1947 the date of appointment of A. This interpretation of the rule which we have put was accepted to be the correct interpretation on all hands including the Government. Learned counsel for respondent No. 4, however, submitted that the impugned seniority list had not been prepared by the Government on such an interpretation of clause 7(1)(a), but the list prepared is on the basis of the interpretation given by the High Court. On behalf of the State we were informed that it was not so. We have no doubt in our mind that even if there be any mistake or discrepancy in the seniority list which is found to be not in conformity with the interpretation put by us to clause 7(1)(a), then that mistake or discrepancy will have to be removed sooner than later and the seniority list will be set at right accordingly.

Ordinarily and generally the method of fixation of seniority as provided in sub-clause (b) of clause 7(1)(a) of the Order was the correct and proper method to be followed. But because of the special situation of appointment of some police officers during the period of

- A 10 years on a shorter period of training a departure was made as provided in sub-clause (a). A cadet who received his full training for 18 months at Nasik for no fault of his was appointed later than a cadet who started training later at Naigaum but was appointed earlier than the former. There was nothing wrong, illegal or unreasonable in making a provision in sub-clause (a) that in such a situation the commencement of the period of training will be taken as the date for the purposes of fixation of seniority. There was a reasonable and rational nexus between the object and the rule. It was for the rule making authority to decide and to choose in such a situation—either the date of commencement of the training or the date of appointment. Taking the former date in the special circumstances seems to be reasonable and justified. Such a provision cannot be said to be violative of Articles 14 and 16 of the Constitution.

- C The third ground for declaring clause 7(1)(a) *ultra vires* given by the High Court theoretically was correct but materials were placed before us from the various affidavits to show that hardly there was such a case which had got the advantage of the clause even after failure in the examination. There was one such case of hardship of not passing out the examination in time due to reasons beyond the control of the cadet. Clause 7(1)(a), in our opinion, was not meant to give any undue advantage to a non-deserving police officer who failed to pass the training examination at the proper time. No specific instance was brought to our notice where such advantage had been accorded.

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- E For the reasons stated above, the appeal of appellants 1 and 2 is allowed and that of appellant No. 3 is dismissed. It is held that clause 7(1)(a) of the order is constitutionally valid and not discriminatory. The directions given to respondents 1 and 3 to set right the seniority list by the High Court on the basis of the alleged invalidity of clause 7(1)(a) of the order is set aside. In the circumstances, we shall make no order as to costs.

S. R.

*Appeal allowed in part.*