

A KARAM CHAND

v.

HARYANA STATE ELECTRICITY BOARD & ORS.

OCTOBER 31, 1988

B [M.P. THAKKAR AND B.C. RAY, JJ.]

Punjab P.W.D. (Electricity Branch) Provincial Service Class III (Subordinate Posts) Rules, 1952. Rule 9—Seniority—Fixation of—Normally 'in accordance to the date of appointment'—Exception—Case of temporary promotion.

C The appellant, who belongs to the Scheduled Castes community, joined service as a clerk on February 20, 1954 in the Electricity Branch of the Punjab Public Works Department. In February 1959, the Punjab State Electricity Board was constituted and the employees of the Electricity Branch were transferred to the said Board. The conditions D of service of the employees were governed by the existing terms and conditions, as well as the existing service rules.

E In 1967, the Haryana State Electricity Board was constituted and the appellant was allocated to the said Board. The Electricity Board by its resolution dated March 16, 1976 adopted the circular letter dated December 18, 1972 providing for reservation of 22% of Vacancies both for initial recruitment as well as for promotion to the Scheduled Castes and Scheduled Tribes as well as to members of the backward classes.

F The appellant was promoted on September 25, 1973 as Deputy Superintendent. The respondent No. 2 was also promoted by the same order as Deputy Superintendent. However, in the said order, it was made clear by a note appended thereto that the earlier promotion of the officials will not confer on them any right to claim seniority over others. On April 27, 1972, a circular was issued by the Chief Secretary, Government of Haryana to all the Departments regarding the criteria for reservation for members of Scheduled Castes and Scheduled Tribes G in the service and fixation of their seniority. As the seniority of the appellant was not determined from the date of his appointment to the post of Deputy Superintendent, he made a representation to the Board requesting for its determination. This representation was, however, rejected on the ground that seniority in the promoted rank would be accorded only with reference to the *inter se* seniority in the previous H post, and on January 20, 1977, the appellant was finally informed that

his seniority will not be computed from the date of his promotion to the post of Deputy Superintendent. On January 12, 1977 respondents 2 and 3 who were junior to the appellant as Deputy Superintendent were promoted as Superintendent superseding the claim of the appellant.

Aggrieved by the aforesaid action of the first respondent in promoting respondents 2 and 3, the appellant filed a writ petition in the High Court for a mandamus directing respondent 1 to consider his case for promotion for the post of Superintendent on the basis of his being the senior-most Deputy Superintendent. The writ petition was contested on behalf of the respondent 1 who stated in its counter-affidavit that the petitioner could not claim seniority above the respondents 2 and 3 in the rank of Deputy Superintendent on the ground that his seniority had already been fixed in accordance with the exception below rule 9 of the 1952 Service Rules.

A Single Judge of the High Court dismissed the writ petition on the ground that the instructions governing the matter of promotion in favour of Scheduled Castes candidate had nothing to do with the determination of the seniority of these candidates and that the letter promoting the petitioner had specifically mentioned that the earlier promotion would not confer on him any right of claim to seniority over and above those who are otherwise senior to him in the cadre from which he was promoted and that in the light of the exception to rule 9 of the 1952 Service Rules, the petitioner being promoted temporarily, his seniority cannot be counted from the date of his appointment in the higher post and that respondents 2 and 3, who could be treated senior to him in the rank of Deputy Superintendent as they were senior to the petitioner in the grade of assistants.

The Letters Patent Appeal filed by the appellant having been dismissed summarily, the appellant appealed to this Court by special leave.

Allowing the Appeal,

HELD. 1. On a plain reading of Rule 9 it appears that the seniority of the members of the service serving in an officiating capacity shall be determined prior to confirmation 'in the order of the dates of their appointment' and after confirmation by their respective dates of confirmation. The exception to this Rule is that if a member of the Service is promoted temporarily to a post earlier than his senior for reasons other than inefficiency of the senior person they will take rank

A *Inter se* according to their relative seniority in the class from which they were promoted and the junior person so promoted shall not be confirmed from a date earlier than the date of confirmation of the senior. [709F-G]

B In the instant case, the appellant has been promoted to the post of Deputy Superintendent which was reserved under the block system for members of the Scheduled Castes. The appointment to the said reserved post on promotion is a regular one. The appointment letter does not articulate that the promotion of the appellant to the post of Deputy Superintendent was purely temporary. This being the position the exception to Rule 9(l) cannot be applied to determine the seniority of the appellant in the post of Deputy Superintendent, and his seniority cannot be based in accordance with the *inter se* seniority of respondent Nos. 2 and 3 in the cadre of Assistants from which the appellant and respondent Nos. 2 and 3 were promoted to the post of Deputy Superintendent. [710A-D]

D 2. The appellant is thus senior to respondent Nos. 2 and 3 in the rank of Deputy Superintendent as he was promoted to the said post earlier than the respondents Nos. 2 and 3 and as such his claim for promotion to the post of Superintendent on the dates when the respondent Nos. 2 and 3 were promoted to such post is legal and valid. [710E]

E 3. Respondent No. 1 is directed to treat the appellant promoted to the post of Superintendent from the date Respondent Nos. 2 and 3 were promoted to the said post and to pay him the emoluments attached to the said post of Superintendent minus the emoluments paid as Deputy Superintendent from that date till May 29, 1981 date of actual appointment as Superintendent. [711A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4454 of 1985.

G From the Judgment and Order dated 15.2.1984 of the Punjab and Haryana High Court in L.P.A. No. 224 of 1984.

V.M. Tarkunde, Miss Meenakshi Arora, R.N. Karanjawala and Mrs. Manik Karanjawala for the Appellant.

H K.K. Jain, A.D. Sanger, Ajay K. Jain, Pramod Dayal, B.R. Agarwal, P.G. Gokhale, Janendra Lal and Miss Yashmin Tarapore for the Respondents.

The Judgment of the Court was delivered by

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RAY, J. The only question that arises for decision in this appeal is whether an employee promoted to a post reserved for Scheduled Castes and Scheduled Tribes is entitled to have his seniority determined from the date of his appointment to the post or his seniority *inter se* will be reckoned as it was in the class or grade from which he was promoted to a post in a higher rank.

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The appellant, who is a Scheduled Caste joined service as a Clerk in the Electricity Branch of the Punjab Public Works Department on February 20, 1954. The terms and conditions of his service were governed by the Punjab P.W.D. (Electricity Branch) Provincial Service Class-III (Subordinate posts) Rules, 1952. In February, 1959 and Punjab State Electricity Board was constituted under Section 3 of the Electricity (Supply) Act, 1948 and the employees of the Electricity Branch were transferred to the Board. The conditions of service of the employees were governed by their existing terms and conditions as well as existing service Rules. In 1967 the Haryana State Electricity Board was constituted and the appellant was allocated to the Haryana State Electricity Board with existing terms and conditions of service. The Board being a statutory corporation was requested by letter dated December 13, 1972 by the Government to provide for reservation of 22% of vacancies—initial recruitment and promotion posts for being filled up by members of the Scheduled Castes and Scheduled Tribes as well as by members of backward classes. The Haryana State Electricity Board adopted the above circular by its Resolution dated March 10, 1976 providing for reservation of posts both for initial recruitment as well as for promotion. The appellant was promoted on September 25, 1973 as Deputy Superintendent. The respondent No. 2, Rajinder Singh Marya was also promoted by the same order as Deputy Superintendent. In the said order of appointment the following note was appended:

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“The earlier promotion of the above officials as Deputy Superintendent, will not confer upon them any right to claim seniority over those who may otherwise be senior to them due to any reason whatsoever.”

On April 27, 1972 a circular was issued by the Chief Secretary, Government of Haryana to all its departments regarding reservation for members of Scheduled Castes and Scheduled Tribes in service and fixation of seniority. Paragraphs 2 and 4 of the said circular which are relevant are quoted hereinbelow:

A "2. It has to be pointed out that this was irregular and *inter se* seniority of all the candidates taken together (i.e. whether appointed against reserved vacancies or against open ones) must be fixed according to the combined merit list and not otherwise. Vacancies assigned to Scheduled Castes/Backward Classes under block system are so assigned for the purposes of reservation only and are not intended for fixing *inter se* seniority of the candidates contrary to their order in the combined merit list prepared by the Public Service Commission/Subordinate Service Selection Board.

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D 4. The above instructions, regarding determination of *inter se* seniority will however, apply only in those cases where the departmental service rules do not provide for seniority being determined from the date of joining or from the date of confirmation or by a method otherwise than the merit determined by the Public Service Commission/S.S.S. Board. In other words, in all cases where the service rules have not yet been framed, or where the service rules provide for seniority being determined according to the merit laid down by the Commission/S.S.S. Board, the seniority of the officials shall be determined in the manner stated above. In other cases, where the service rules specifically provide for seniority being determined from the date of joining or from the date of confirmation by the recruiting authority the seniority shall be determined by such different methods."

F As the seniority of the appellant was not determined from the date of his appointment to the post of Deputy Superintendent he made a representation to the Board requesting for determination of his seniority from the date of his appointment to the promoted post and also for considering his case for promotion to the post of Superintendent. This representation of the appellant was rejected on the ground that:

H "The officials belonging to the scheduled castes/tribes and backward classes who are promoted against the posts reserved for them under the block system and for reasons other than inefficiency of their seniors will not be assigned

seniority from the date of their joining in the promoted rank. They shall be assigned seniority in the promoted rank with reference to their *inter se* seniority of their previous posts.

Thereafter, on January 20, 1977 the appellant was finally informed that his seniority will not be computed from the date of his promotion to the post of Deputy Superintendent. On January 12, 1977 the respondent Nos. 2 and 3 i.e. Rajinder Singh Marya and Jagdish Lal Lamba who were junior to the appellant as Deputy Superintendents, were promoted as Superintendents superseding the claim of the appellant.

Aggrieved by this, the appellant instituted an application under Article 226 of the Constitution of India in the High Court of Punjab and Haryana praying for a writ of mandamus directing the respondent No. 1 to consider his case for promotion to the post of Superintendent on the basis of his being seniormost Deputy Superintendent according to the continuous length of service on that post and to promote him to the post of Superintendent with effect from the date his juniors have been promoted and for other consequential reliefs.

An affidavit was filed on behalf of Respondent No. 1 verified by Shri R. Prakash, Secretary, Haryana State Electricity Board wherein in para 3 it has been submitted that:

“..... the seniority of the petitioner has been determined in the post of Deputy Superintendent in accordance with the exception below Rule 9 of the 1952 Rules.”

In Para 5 it has been admitted that the appellant was promoted as Deputy Superintendent on 25th September, 1973 and since then he is continuing on the said post. It has further been submitted that the promotion of the appellant was in an officiating capacity and he still continues to officiate as Deputy Superintendent. The appellant was promoted to the post of Deputy Superintendent against a post which was reserved for the Scheduled Castes, though he was far junior in the cadre of Assistants. In para 7 it has been stated that:

“..... The petitioner cannot claim seniority above those two officials in the rank of Deputy Superintendent. In view of the exception to Rule 9, if a member of service is promoted temporarily to a post earlier than his senior, for

A reasons other than the inefficiency of the senior person, they will take rank *inter se* according to their relative seniority in the class from which they were promoted and junior persons thus promoted shall not be confirmed from a date earlier than the date of confirmation of his senior except on the score of inefficiency of the latter. In the present case, the petitioner was promoted temporarily to the post of Deputy Superintendent earlier to the other two officials on the ground that the petitioner belonged to the scheduled castes. The other two officials were not superseded on the ground of inefficiency"

C On February 4, 1984 the learned single Judge of the High Court dismissed the writ petition holding *inter alia* that the instructions governing the matter of promotion in favour of the Scheduled Caste candidates had nothing to do with the determination of the seniority of these candidates. Moreover, in the letter promoting the petitioner it was specifically mentioned that the earlier promotion would not confer

D on him any right or claim to seniority over and above those who were otherwise senior to him in the cadre from which he had been promoted. It was further held that in the light of exception to Rule 9, the petitioner being promoted temporarily, his seniority cannot be counted from the date of his appointment in the higher post and the respondent Nos. 2 and 3 would be treated senior to him in the rank of

E Deputy Superintendent as they were senior to the petitioner in the grade of Assistants. It was, therefore, found that respondent Nos. 2 and 3 were entitled to be promoted as Superintendents earlier to the petitioner.

F Against this judgment and order Letters Patent Appeal being LPA No. 224 of 1984 was filed. The said appeal was however, dismissed summarily as being without any merit.

G The appellant, thereafter, filed the instant appeal assailing the said judgment. Before proceeding to consider the question whether the appellant's seniority was properly determined under Rule 9 of the Punjab P.W.D. (Electricity Branch) Provincial Service Class III (Sub-ordinate posts) Rules, 1952 (in short to be referred herein as the said Rules) it is necessary to set out herein the relevant provision of Rule 9:

H "9. *Seniority of the members of the Service*—The seniority of the members of the Service for the time being serving in each class of appointment shown in Appendix 'A' shall be determined as follows:

(i) *Prior to confirmation* (i.e. in the case of persons serving on probation or in an officiating capacity) in the order of the dates of their appointment or if such date be the same in respect of two or more persons, in the order of their ages, the older being placed above the younger.

(ii) After confirmation by their respective dates of confirmation, provided that where two or more members are confirmed w.e.f. the same date they will retain the order to confirmation.

Exception: If a member of the service is promoted temporarily to a post earlier than his senior, for reasons other than the inefficiency of the senior person they will take rank *inter-se* according to their relative seniority in the class from which they were promoted and the junior person thus promoted shall not be confirmed from a date earlier than the date of confirmation of his senior except on the score of inefficiency of the latter.

Provided further that if a member is appointed to a higher class later than a person who was junior to him in the lower class for reasons which the appointing authority may certify in writing to be connected with the Public interest the person so appointed shall be given the same seniority in the higher class vis-a-vis such junior as he held in the lower class."

Thus, on a plain reading of the Rule it appears that the seniority of the members of the Service serving in an officiating capacity shall be determined prior to confirmation 'in the order of the dates of their appointment' and after confirmation by their respective dates of confirmation. There is an exception to this Rule to the effect that if a member of the Service is promoted temporarily to a post earlier than his senior for reasons other than inefficiency of the senior person they will take rank *inter-se* according to their relative seniority in the class from which they were promoted and the junior person so promoted shall not be confirmed from a date earlier than the date of confirmation of the senior. The provision contained in the exception to Rule 9 is applicable only in the case of temporary promotion of a member of the service to a post earlier than his senior for the purposes other than inefficiency of the senior persons.

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A In the instant case admittedly the appellant has been promoted to the post of Deputy Superintendent which was reserved under the block system for members of the Scheduled Castes. The appointment to the said reserved post on promotion is a regular one and this has been admitted in paragraph 5 of the counter-affidavit referred to hereinbefore. The appointment letter does not articulate that the promotion of the appellant to the post of Deputy Superintendent was purely temporary. The promotion has been made on a regular basis to the post of Deputy Superintendent reserved on the basis of quota of vacancies for being filled up by promotion of members belonging to the Scheduled Castes. The appointment of the appellant to the said promotional post of Deputy Superintendent, in our considered opinion cannot be designated to be purely a temporary promotion.

B This being the position the exception to Rule 9(ii) of the said rules cannot be applied to determine the seniority of the appellant in the post of Deputy Superintendent and his seniority cannot be based in accordance with the *inter-se* seniority of the respondent Nos. 2 and 3 in the cadre of Assistants from which the appellant and respondent Nos.

C 2 and 3 were promoted to the post of Deputy Superintendent. Rule 9(i) of the said Rules is applicable in this case and the seniority of the appellant is to be reckoned from the date of his appointment in the post of Deputy Superintendent. The appellant is thus senior to respondent Nos. 2 and 3 in the rank of Deputy Superintendent as he was promoted to the said post earlier than the respondents Nos. 2 and 3 and as such his claim for promotion to the post of Superintendent on the dates when the respondent Nos. 2 and 3 were promoted to such post is legal and valid. It may be mentioned that during the pendency of the writ petition, the appellant had been promoted to the post of Superintendent on 29.5.1981 and as such he pleaded in para 6 of the special leave petition that his seniority in the cadre of Deputy Superintendent should not be affected on the basis of the judgments rendered by the High Court.

G On a consideration of the facts and circumstances stated hereinbefore, the finding of the High Court that the appellant was promoted temporarily and so exception to Rule 9(ii) applies for determination of seniority of the appellant as Deputy Superintendent, in our considered opinion, cannot be sustained as we have already held that the promotion of the appellant in a reserved vacancy, is a regular one and it does not smack of purely temporary character. The seniority of the appellant is to be reckoned from the date of his appointment to the said post according to the provisions of Rule 9(i) of the said Rules.

H The judgments of the High Court in Letters Patent Appeal No. 224 of

1984 as well as in the writ petition No. 773 of 1977 are set aside and the appeal is allowed. The respondent No. 1 is directed to treat the appellant promoted to the post of Superintendent from the date the respondent Nos. 2 and 3 were promoted to the said post and to pay him the emoluments attached to the said post of Superintendent minus the emoluments paid as Deputy Superintendent from that date till the date of his actual appointment as Superintendent, i.e. May 29, 1981. The appeal is thus allowed with costs.

N.V.K.

Appeal allowed.

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