

PETITIONER:
SOM RAJ AND ORS. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS. ETC.

DATE OF JUDGMENT 23/02/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MISRA RANGNATH
PUNCHHI, M.M.

CITATION:
1990 AIR 1176 1990 SCR (1) 535
1990 SCC (2) 653 JT 1990 (1) 286
1990 SCALE (1) 284
CITATOR INFO :
R 1990 SC1402 (29)

ACT:

Constitution of India, 1950: Articles 14 and 16 Service Law-Punjab Subordinate Agricultural Service--Directorates of Agriculture --Subordinate Offices--Employees non-maintenance of common seniority--Held not arbitrary.

Civil Services--Punjab Subordinate Agricultural Service Rules, 1933: Rules 3, 4, 7, 9, 10--Appendix--Sections 6 and 7--Directorates of Agriculture (Head Office)--Subordinate Offices--Ministerial service-Employees--Whether entitled for common seniority.

Administrative Law--Executive
authority--Discretion--Must be guided by law.
Rule of Law---Absence of arbitrary power is the first postulate.

Service Law--Selection list--Employer has no power and discretion to pick and choose candidates--Appointment should be in order of merit.

'Cadre'--Government can constitute different cadres in any particular service--Head Office--Subordinate office-maintenance of common cadre not necessary.

HEADNOTE:

The appellants belonging to the ministerial service in the subordinate offices of the Directorates of Agriculture of the States of Punjab and Haryana filed writ petitions in the Punjab and Haryana High Court seeking a direction that subordinate offices and the Directorates should be treated as one unit and common seniority of all the employees should be maintained. The High Court dismissed the petitions. Hence these appeals by special leave.

In these appeals it was contended that the appellants are entitled to common seniority with their counterparts in the Directorates because their service conditions, pay scales and qualifications were same. In

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order to show similarity with their counterparts in the Directorates it was also pointed out that though a common selection was made for Directorates and subordinate offices

yet the appointing authority picked up some candidates out of the select list and appointed them in the Directorates thereby deviating from the order of merit prepared by the Selection Board.

Dismissing the appeals, this Court,

HELD: 1. The Punjab Subordinate Agricultural Service Rules 1933 themselves made a distinction between the persons appointed in the Directorate and the Subordinate Offices as separate cadres and the subordinate cadre in some cases is the feeder cadre for promotion to the post in the Head Office. In this view by no stretch of imagination, the appellants can be considered to be equally placed for treating them at par with the Directorate employees for being treated as being in a common cadre. There is reasonable nexus to differentiate the two cadres. Therefore, the classification can not be said to be arbitrary violating Articles 14 and 16 of the Constitution. [543A-B]

1.1 The fact that the office of the Directorate and the subordinate offices have been compendiously shown in section 6 of the Appendix to Rules does not by itself mean that office of the Directorate and Subordinate Offices are treated under the rules as one unit or at par. [542A]

2. It is open to the Government to constitute different cadres in any particular service as it may choose according to its administrative convenience and expediency. [541E]

2.1 The office of the Director is the apex office obviously to control and oversee the functioning of the subordinate offices and the other allied departments under his control monitoring the implementation of the Government's agricultural programmes. It may not be necessary to maintain a common cadre of the employees of the Directorate and the Subordinate offices. Each cadre is a separate service or a part of the service sanctioned for administrative expediency. Therefore, each may be a separate unit and the posts allocated to the cadre may be permanent or temporary. [541F-G]

2.2 Accordingly the appellants are not entitled to be treated at par with the employees working in the respective Directorates for giving direction to the respondents to maintain common seniority between the employees of the Directorate and Subordinate Offices. [543D]

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3. Normally the order of appointment would be in the order of merit of candidates from the list and must be in accordance with rules. The exercise of power should not be arbitrary. The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject, to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. [542D-E, F]

3.1 Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority. [542G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3321/82 and 3524 of 1983.

From the Judgment and Order dated 2.5. 1980 of the Punjab and Haryana High Court in C.W.P. Nos. 677/79 and 97/79.

P.P. Rao and C.M. Nayar for the Appellants in both the appeals.

N.S. Das Behl for the Respondent in C.A. No. 3524 of 1983.

Awadh Behari Rohtagi, Mahabir Singh, A.G. Prasad and Prem Malhotra for the state of Haryana.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. 1. Since common questions of facts and law arise for decision in these two appeals, they are disposed of by a common judgment. Civil Appeal No. 3221/82 and Civil Appeal No. 3524/83 arise out of the common judgment in Civil Writ Petition Nos. 677/79 and 97/79 and a few other petitions dated May 2, 1980, on the file of High Court of Punjab and Haryana at Chandigarh. The writ petitions were dismissed and the appellants had leave of this court under Article 136 of the Constitution. The facts lie on a short compass

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and reference to the facts on record in Civil Writ No. 97 of 1979 are sufficient for disposal of these appeals. Writ Petition No. 97 of 1979 relates to Punjab service while Civil Writ Petition No. 677/79 relates to Haryana.

2. The appellants were direct recruits to the ministerial services in the subordinate offices of the Directorates of Agriculture of the respective states. Admittedly all are governed by Punjab Subordinate Agricultural Service Rules 1933, for short 'rules'. The respective state Governments upgraded on February 8, 1979 offices of the Directorates as 'A' Class and the Subordinate Offices situated elsewhere remained as 'B' Class. The appellants and other filed writ petitions on February 26, 1976 seeking a writ of mandamus to direct the respondents to upgrade the Subordinate Offices of the Department of Agriculture as 'A' Class; to treat the appellants on par with the similar employees working in the office of the Directorates of Agriculture; treat the Directorate of Agriculture and Subordinate Offices as one department for maintaining common seniority of all of them; to upgrade their scales of pay on the basis of the said seniority and to quash the order dated February 8, 1979 declaring the Directorate as 'A' Class as wholly arbitrary and discriminatory. Pending appeals, the respective Governments by proceedings dated March 2, 1982 classified the Directorate and Subordinate Offices as 'A' Class. The Government have also accorded equal pay to the employees similarly situated. Therefore, the only question that survives to be resolved is whether the Subordinate Offices and the Directorate would be treated as one unit and common seniority of all the employees should be maintained.

3. Shri P.P. Rao and Shri C.M. Nayar, learned counsel for the appellants in the respective appeals contended that the appellants were selected along with the persons appointed in the office of the respective Directorates. They possessed the same qualifications; their scales of pay are now the same. Their service conditions are also the same under the rules, and therefore, they are entitled to maintenance of common seniority for the purpose of promotion. It is seen that the appointments were made somewhere in 1973. From the list produced before us in Civil Appeal No. 3221/82 relating to the State of Haryana, among the persons selected by the

Recruitment Board, though some of the persons are found to have secured higher ranking in the list prepared by the Selection Board, they were appointed to the Subordinate Offices while persons below them, in ranking were appointed in the Directorate. When we enquired from the counsel for the State Shri Rohtagi, the learned Senior Counsel has produced before us the not-

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ings which show that the Director had taken five of them, one of whom had secured first class in Matriculation, two ex-service candidates and two candidates who secured higher percentage of marks at the qualifying matriculation examination. In the view we are taking this solitary circumstances does not militate against the ultimate conclusion that we have reached in the matter. Admittedly, rule 3 of the rules provides that the service shall consist of seven sections and in each section there shall be such number of posts whether permanent or temporary of each grade specified in the appendix as the Local Government from time to time may determine. Under rule 4(1) the Director of Agriculture shall make appointment to all the posts in the service except the post of Junior Clerks, other than those sanctioned for Head Office, Mukaddams and the posts shown under Section 7 of the appendix. All other appointments shall be made by the Head Office concerned, vide rule 4("). Rule 7 prescribes the method of recruitment. Rule 7(1)(I) specifies thus:

"In the case of Superintendent, Office of the Director--

- (i) by promotion from the amongst the Head Assistants employed in the office, or
- (ii) by selection from amongst Superintendents or Head Assistants with at least five years clerical experience in other Government office."

Rule 7(i)(J) read thus:

"In the case of Head Assistant--

- (i) by promotion from amongst Assistant and Stenographers with clerical experience who have proved their fitness for the appointment, or
- (ii) by selection from amongst clerks employed in the office of Government other than the office of the Director."

Rule 7(1)(K):

the case of Superintendent or Head Clerk of a Subordinate Office--

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- (i) by promotion from amongst Senior Clerks who have proved their fitness for the post, or
- (ii) by selection from amongst clerks employed in Government Office other than the office in which the post/office is to be filled."

Rule 7(1)(L):

"In the case of Assistant--

- (i) by promotion from amongst Senior Clerks in their respective offices who have proved their fitness for appointment to the post; or
- (ii) by selection from amongst clerks employed in Government Offices other than the office in which the post is to be filled; or
- (iii) by direct recruitment--

provided that no graduate not already in Government service shall be appointed to be an Assistant unless he has been recommended as fit for appointment by the Punjab University Appointment Board."

Sub-rule (2):

"Appointment to any post by the promotion of officials already in service or by the transfer of officials shall be made strictly by selection and no official shall have any

claim to such an appointment as of right."

The candidates have to undergo probation as provided in Rule 9, the details of which are not relevant. Rule 10 provides seniority of members of the service. The seniority of the members in the service shall, in each class of appointment shown in the appendix, be determined by the dates of their substantive appointment on probation or otherwise to a permanent vacancy in such class. The other details are not necessary. Hence omitted.

4. In the appendix, the office of the Director of Agriculture, Section 6 mentions ministerial posts of Superintendent, Head Assis-

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tants, Assistants, Stenographers, Senior Clerks, Junior Clerks. Their varying pay scales have also been mentioned, the details of which are now not material. In the Subordinate Offices one Superintendent, seven Head Clerks and two Senior Clerks are the cadres.

5. A resume of these rules clearly shows that for the appointment of all the posts including Junior Clerks in the Head Office, the appointing authority is the Director. All appointments to the post of Junior Clerks other than Head Office shall be by the concerned Head Office. As per the appendix, the staffing pattern in the Office of the Director of Agriculture and the Subordinate Offices is entirely different. The only common element is the Senior Clerks. The seniority is to be maintained on the basis of the substantive appointment to the respective cadres. The seniority of the members of the service shall, in each class of appointment shown in the appendix be determined by the date of their substantive appointment or promotion or otherwise to permanent vacancies in such a class. The method of appointment has been adumbrated under Rule 7(1)(I) to (L) by promotion from amongst the persons working in the respective subordinate posts in the respective offices in the first instance, or by selection from amongst persons working in the Government Offices including Subordinate Offices and in some cases by the direct recruitment. Thereby it is clear that for filling up the vacancies arising in the post of Superintendent, Assistants and Senior Clerks, the persons working in the Subordinate Offices or the Government Offices are the feeder channels, or in some cases by direct recruitment. Sub-rule (2) of Rule 7 makes the matter clear that they have got right to be considered, but it is strictly by selection and they have no claim to the appointment as of right. It is open to the Government to constitute different cadres in any particular service as it may choose according to its administrative convenience and expediency. The office of the Director is the apex office obviously to control and oversee the functioning of the subordinate offices and the other allied departments under his control monitoring the implementation of the Government's agricultural programmes. It may not be necessary to maintain a common cadre of the employees of the Directorate and the Subordinate Offices. Each cadre is a separate service or a part of the service sanctioned for administrative expediency. Therefore, each may be a separate unit and the posts allocated to the cadre may be permanent or temporary. It is seen from the appendix that in the office of the Directorate there is one Superintendent, three Head Assistants, four Assistances, two Stenographers, seven Senior Clerks and twelve Junior Clerks. In the Subordinate Offices, there is one Superintendent, seven Head Clerks and two

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Senior Clerks. This is obviously on the basis of administra-

tive need. No doubt the office of the Directorate and the Subordinate Offices have been compendiously shown in Section 6 of the Appendix. That does not by itself mean that office of the Directorate and Subordinate Offices are treated under the rules as one unit or at par. as contended for by Shri P.P. Rao. As pointed out in the beginning, the Director had committed some irregularities at the time of initial appointments in the year 1973 when he picked up five persons out of the select list of the candidates and appointed them in the Directorate of Haryana Government deviating from the order of merit prepared by the Board. They were selected at a common selection by the Recruitment Board along with other candidates who stood higher in the order of merit prepared by the Selection Board. But this was done in the year 1973 and the appointments have not been challenged till date of filing of the writ petition in 1979. Even in the writ petition no challenge was made. This is pressed into service only to show that the appellants are similarly situated with them. After the appointments were made and the candidates joined in the respective posts for consideration for promotion the Rules occupy the field and the claims are to be considered according to Rule 7. Therefore, though we may not agree with the learned counsel for the State that the Director had absolute discretion to pick and choose arbitrarily and make appointment of the posts, yet undoubtedly, he had power to appoint them. Normally the order of appointment would be in the order of merit of candidates from the list and must be in accordance with rules. His exercise of power should not be arbitrary. The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the anti-thesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority. We refrain from going into the correctness of the choice made by the Director due to laches in not assailing the correctness of the appointment for well over six years. The validity of the rules have not been questioned. The only question is, as stated earlier, whether the

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employees working in the Head Office and the Subordinate Office are entitled to common seniority. The rules themselves made a distinction between the persons appointed in the Directorate and the Subordinate Offices as separate cadres and the subordinate cadre in some cases is the feeder cadre for promotion to the post in the Head Office. In this view, by no stretch of imagination, the appellants can be considered to be equally placed for treating them at par with the Directorate employees for being treated as being in a common cadre. There is reasonable nexus to differentiate the two cadres. Therefore, the classification cannot be said to be arbitrary violating Articles 14 and 16 of the Constitution.

6. It is not necessary to burden the judgment with the

decisions cited by either counsel as they are not directly or nearer to the core in the case. Accordingly we hold that the appellants are not entitled to be treated at par with the employees working in the respective Directorates for giving direction to the respondents to maintain common seniority between the employees of the Directorate and Subordinate Offices. The appeals are accordingly dismissed, but without costs.

T.N.A.
missed.

Appeals dis-

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JUDIS