

Before Hon'ble G. R. Majithia & S. K. Jain, JJ.

MAHABIR PARSHAD GOYAL AND OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 15711 of 1989

30th November, 1993

*Constitution of India, 1950—Art. 226/227—Punjab State Assistant Grade Examination Rules, 1984—Determination of—How to give effect to certain provisions of the Punjab Assistant Grade Examination Rules 1984.*

*Held*, that it is apparent that a person shall be eligible for promotion to the post of Assistant if, apart from fulfilling the requisite qualifications and experience, he qualifies the test prescribed under Rules 5A person can qualify the test after availing any number of chances. Once he qualifies the test irrespective of the number of chances availed by him for passing the test, he makes himself eligible for appointment by promotion to the post of Assistant. The qualified persons will form a class for themselves and will be eligible for promotion to the post of Assistant as and when a vacancy is available. A person may have passed the test in three or five chances, but if no vacancy is available, he cannot claim that a post of Assistant be created and he be appointed against that post. The person who has passed the test in the first five chances or prior thereto cannot have an edge over the others who have passed the test in any of chances from 6th to 10th if a person has passed the test in the first or second or third or fourth or fifth chances and the vacancy was available after he had passed the test, the appointing authority cannot deny him appointment merely on the ground that persons senior to him are making attempts to qualify the test so as to make themselves eligible for appointment by promotion to the post of Assistant.

(Para 6)

*Further held*, that we accordingly conclude thus :—

- (i) A person passing the test irrespective of the number of chances he has availed to qualify the test will make himself eligible for appointment by promotion.
- (ii) However, if he passed the test in the first five chances and a vacancy is available he will be entitled for promotion to the post of Assistant forthwith.

- (iii) A person who has passed the test in any of the first five chances and is appointed by promotion to the post of Assistant against the existing vacancy, he will be assigned the seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant.
- (iv) If a person does not qualify the test in any of the first five chances but qualifies the test in any of the chances from 6th to 10th and is appointed by promotion to the post of Assistant he will not be entitled to assignment of seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he had been appointed by promotion to the post of Assistant and he will be assigned seniority in the cadre of Assistant from the date he was appointed by promotion as such.

(Para 6)

*Constitution of India, 1950—Art. 226/227—Punjab State Assistant Grade Examination Rules, 1984—Rule 10(2) proviso—Whether proviso to sub rule (2) of Rule 10 arbitrary—Held to be not arbitrary.*

*Held*, that we do not find any arbitrariness in the proviso to sub-rule (2) of Rule 10. In fact, this proviso has been inserted for achieving the purpose for which the Rules have been enacted and to create a competitive set up out of which more brilliant people may come up to man the service.

(Para 9)

Rajiv Atma Ram, Advocate with Puneet Jindal, Advocate, for the Petitioners.

Ashok Aggarwal, Addl. A.G. Punjab, for the Respondents.

#### JUDGMENT

*G. R. Majithia, J.*

(1) This judgment disposes of Civil Writ Petitions No. 15711 of 1989, 894 of 1988, 4171 of 1988, 392, 1892, 1918, 1933 of 1989, 1477 & 11566 of 1990, 2535 of 1991, 1394 of 1993 and 8062 of 1993 as a common question of law arises for determination therein.

(2) The principal question which arises for determination is: How to give effect to certain provisions of the Punjab State Assistant Grade Examination Rules, 1984 ?

(3) During the period, the State of Punjab was under the President Rule, the President of India, in exercise of the powers conferred by the proviso to Article 309 and clause (b) of Article 318 of the

Constitution of India, and all other powers enabling him in this behalf, made the Punjab State Assistant Grade Examination Rules, 1984 (for short, the Rules). These Rules came into force with effect from April 11, 1984. Rule 2 deals with definitions. Clause (a) of Rule 2 says that the "appointing authority" means the authority which has the powers to make appointment to the post of Assistant. Clause (b) defines "Board" which means the Subordinate Services Selection Board, Punjab or such other authority as may be constituted by the Government by an order, for holding the test. Clause (c) defines "Government" which means the Government of the State of Punjab in the Department of Personnel and Administrative Reforms. Clause (d) says that "higher post" means a civil post or post in civil service under the State of Punjab higher in rank to that of Assistant. Clause (e) defines "post of Assistant", which means a civil post or a post in civil service under the State of Punjab designated as Assistant and includes all such posts, higher in rank to that of the post of Clerk, as are in the same or in an identical pay scale and carry responsibilities similar to or identical with those of the post of Assistant by whatever designation they may be called. Clause (f) defines "prescribed", which means prescribed by an Act of the State Legislature regulating the recruitment, and the conditions of service of persons appointed to civil services and posts in connection with the affairs of the State of Punjab or by rules framed under such an Act or under the Constitution of India or otherwise for the said purpose. Clause (g) says that "provisional basis in relation to an appointment by promotion of a person to the post of Assistant before qualifying the test prescribed in the relevant service rules or in these Rules, as the case may be. Clause (h) defines "test", which means a written qualifying examination conducted by the Board under these Rules. Rule 3 says that these Rules shall apply to all the posts of Assistant Except those in the Punjab Vidhan Sabha Secretariat. Rule 4 relates to eligibility for promotion to the post of Assistant. Sub-rule (1) of Rule 4 says that no person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant he qualifies the test. First proviso to sub-rule (1) of Rule 4 says that the condition of qualifying the test will not be applicable to a person who has already qualified the Assistant Grade Examination in terms of Punjab Government circular No. 4309-GII 57/21176, dated October 23, 1957, or who was holding on regular basis the post of Assistant on October 23, 1957. Second proviso to this sub-rule says that the condition laid down in sub-rule (1) of Rule 4 will not be applicable to a person who is holding the

post of Assistant or a higher post, on provisional basis, on the commencement of the Rules and is of the age of fifty years or more. Third proviso to Rule 4(1) says that a person who has been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of the Rules shall be required to qualify the test within a period of three years from such commencement and on his failure to qualify the test within the specified period, such person will be reverted to the post of Clerk or to the post, by whatever designation called, from which he was appointed by promotion to the post of Clerk or to post, by Sub-rule (2) of Rule 4 enables the appointing authority to appoint a person by promotion to the post of Assistant in a Service, on provisional basis, when no person who has qualified the test is available. The provisional promotion can be made till a qualified person becomes available in that Service. Rule 5 deals with the composition of test. It says that the test shall consist of two papers of one hundred marks each; the first paper shall be on the subjects of noting, drafting, precis writing in the Punjabi language and translation and the second paper shall be on the subject of Accounts and Service matters and as far as may be, questions carrying seventy-five marks shall be from the Punjab Civil Services Rules and the rest from the Punjab Financial Rules. Sub-rule (2) of Rule 5 says that the candidates appearing in the test shall have the option to answer the second paper with the aid of books either in English or in Punjabi language. Sub-rule (3) of Rule 5 says that a person working in Class-A office shall be considered to have qualified the test only if he secures a minimum of 50 per cent marks in the aggregate but not less than 40 per cent marks in each paper, and a person working in a B Class office shall be considered to have qualified the test only if he secures a minimum of 40 per cent marks in the aggregate but not less than 33 per cent marks in each paper. A person who has secured the prescribed minimum marks in each paper but has failed to secure the prescribed minimum marks in the aggregate, may re-appear in either or both the papers so as to qualify the test. Rule 6 says that it shall ordinarily be held twice a year in the months of January and July or in such other months as may be specified by the Government from time to time. Rule 7 says that all persons holding the posts of Clerks or other posts by whatever designation called, from which they could be appointed by promotion to the posts of Assistants, shall be eligible to sit in the test. Rule 8 says that a person qualifying the test shall be eligible for promotion to the post of Assistant in the cadre of his service. Rule 10 deals with saving of seniority. It says that where a person who was promoted as Assistant before the commencement of the Rules on provisional basis subject to his qualifying the test shall be liable to reversion to the post from which he was promoted if he fails to qualify

the test within a period of three years as specified in the third proviso to Rule 4 and in case such a person qualifies the test within that period, his seniority shall be determined with reference to his date of promotion to the post of Assistant on provisional basis. Sub-rule (2) of Rule 10 says that if a person holding the post of a Clerk or any other post by whatever designation called from which he can be appointed by promotion to the post of Assistant, qualifies the test within the first 5 chances available to him after his appointment to such post, he shall, on his promotion to the post of an Assistant be assigned seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant. Proviso to sub-rule (2) of Rule 10 says that if a person fails to qualify the test within the first five chances, he shall, on his promotion to the post of Assistant, be assigned seniority in the cadre of Assistants from the day he is promoted as such. Rule 11 has an overriding effect. It says that the provisions of these Rules shall have the effect notwithstanding anything inconsistent therewith contained in any other rules governing the appointment and other conditions of service for the time being in force. Rule 12 confers power on the State Government to grant exemption from passing the test. It says that Government may, by order, for reasons to be recorded in writing, exempt any class or category of persons from the operation of these Rules and such exemption shall operate prospectively.

(4) To give effect to these Rules, the State Government has been issuing instructions from time to time and sometimes the instructions are self-contradictory and inconsistent with the provisions of the Rules. The inconsistency in the Government instructions led to divergent stand taken by the State Government in the various writ petitions filed by persons claiming benefit under these Rules. The persons who had passed the test in the first five chances claimed preference over others both in appointment by promotion as Assistants and seniority, and in some cases, the persons who had passed the test in 6th, 7th, 8th, 9th or 10th chance were given promotion to the posts of Assistants in preference those who had passed the test in any of the first five chances on the ground that the former were senior to the latter in seniority of the cadre of Clerks on which they were borne. The promotion of those persons was justified on the ground that on the date when the posts became available the persons who had passed the test in any of the 6th to 10th chances had become eligible for promotion to the post of Assistant. This conflict has to be resolved in these writ petitions.

(5) Indisputably, the Rules have to be harmoniously construed, so that each rule may be given effect to. Words in each rule speak the intention of the framers. In different Services under the State, service rules had been framed and promotion to the next higher rank was made under those Rules. Wherever Rules were not framed, the promotions were regulated by the administrative instructions. To achieve efficiency in the administration, the competent authority thought it proper to provide for a written test apart from fulfilling other qualifications for appointment by promotion to the post of Assistant. From the post of Assistant, promotions are made to the next higher rank in the Services.

(6) From a brief resume of the Rules given above, it is apparent that a person shall be eligible for promotion to the post of Assistant if, apart from fulfilling the requisite qualifications and experience, he qualifies the test prescribed under Rule 5. A person can qualify the test after availing any number of chances. Once he qualifies the test irrespective of the number of chances availed by him for passing the test, he makes himself eligible for appointment by promotion to the post of Assistant. The qualified persons will form a class for themselves and will be eligible for promotion to the post of Assistant as and when a vacancy is available. A person may have passed the test in three or five chances, but if no vacancy is available, he cannot claim that a post of Assistant be created and he be appointed against that post. The person who has passed the test in the first five chances or prior thereto cannot have an edge over the others who have passed the test in any of chances from 6th to 10th. But if a person has passed the test in the first or second or third or fourth or fifth chances and the vacancy was available after he had passed the test, the appointing authority cannot deny him appointment merely on the ground that persons senior to him are making attempts to qualify the test so as to make themselves eligible for appointment by promotion to the post of Assistant. However, in a case the post is not available after having qualified the test in any of the first five chances, that person cannot claim preference for appointment by promotion to the post of Assistant in preference to those who had passed the test in any of the 6th to 10th chances as in that event, rules 8 and 10 shall be rendered nugatory. The intent of Rules, 4, 8 and 9 appears to be that all those persons who had qualified the test irrespective of the number of chances available to them for passing the test will be entitled to promotion as per their own seniority in the cadre of Service to which they belong. But this is subject to the availability of vacancies. The *inter se* seniority in the cadre of Assistants has been saved under Rule 10 of the Rules. Rule 10 does not provide for framing the seniority but for saving it. If a person

has been appointed by promotion to the post of Assistant on provisional basis before the commencement of the Rules, he is required to qualify the test within a period of three years from the date of commencement of such Rules and failure to qualify the test within that period will lead to his reversion to his original post. If he qualifies the test as provided under the third proviso to sub-rule (1) of Rule 4, his seniority will be determined in the cadre of Assistants from the date of his promotion to the post of Assistant on provisional basis. If he does not qualify the test as provided in the third proviso to sub-rule (1) of Rule 4, he will not be entitled to claim seniority from the date of his promotion to the post of Assistant on provisional basis. If a person qualifies the test within the first five chances, he will be assigned seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant, meaning thereby if a person has qualified the test in the first five chances, he carries his seniority in the appointment from which he has been promoted to the post of Assistant. If a person has not qualified the test in first five chances, he will be assigned the seniority in the cadre of Assistants from the date of his appointment by promotion to the post of Assistant and will not be entitled to seniority in the appointment from which he had been promoted to the post of Assistant. We accordingly conclude thus :—

- (i) A person passing the test irrespective of the number of chances he has availed to qualify the test will make himself eligible for appointment by promotion to the post of Assistant.
- (ii) However, if he passes the test in the first five chances and a vacancy is available, he will be entitled for promotion to the post of Assistant forthwith.
- (iii) A person who has passed the test in any of the first five chances and is appointed by promotion to the post of Assistant against the existing vacancy, he will be assigned the seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant.
- (iv) If a person does not qualify the test in any of the first five chances but qualifies the test in any of the chances from 6th to 10th and is appointed by promotion to the post of Assistant he will not be entitled to assignment of seniority in the cadre of Assistants in accordance with his seniority

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in the appointment from which he had been appointed by promotion to the post of Assistant and he will be assigned seniority in the cadre of Assistant from the date he was appointed by promotion as such.

(7) During the course of hearing of these writ petitions, it was brought to our notice that the petitioners were not promoted as Assistants although they had passed the qualifying test prior to the private respondents and the vacancies of Assistants were available. The factual assertion has not been controverted by the State. The instructions issued by the State Government which are inconsistent with the rule of law laid down above are declared invalid.

(8) Before we part with this judgment, in fairness to Mr. K. K. Jagia, counsel for the petitioners, Mr. Jagia's challenge to the proviso to sub-rule (2) of Rule 10 be dealt with. Proviso to sub-rule (2) of Rule 10 reads thus :—

“Provided that if such a person fails to qualify the test within the aforesaid first five chances, he shall, on his promotion to the post of Assistant, be assigned seniority in the cadre of Assistants from the day he is promoted as such.”

(9) According to Mr. Jagia, this proviso is arbitrary. He says that if a person can qualify the test in any number of chances, the proviso nullifies those provisions and makes the same ineffective. The submission is devoid of any merit. The proviso to sub-rule (2) of Rule 10 relates to safeguarding the seniority, while Rule 8 provides for number of chances which can be availed by eligible persons for passing the test. The object of the proviso is that if a person qualifies the test in any of the first five chances, he maintains his seniority in the appointment from which he has been promoted to the post of Assistant. If he does not qualify the test in the first five chances, he will be assigned seniority in the cadre of Assistants from the day he is promoted as such. A person may make himself eligible for appointment by promotion to the post of Assistant by passing the test in any number of chances. But, if he wants to retain his original seniority in the appointment from which he has been promoted to the post of Assistant, he has to qualify the test in first five chances, failing which he will be assigned the seniority in the cadre of Assistants from the day he is promoted as such. We do not find any arbitrariness in the proviso to sub-rule (2) of Rule 10. In fact, this proviso has been inserted for achieving the purpose for which the Rules have been enacted and to create a competitive set-up out of which more brilliant people may come up to man the Service.



(10) For the reasons stated above, the writ petitions are disposed of. The official respondents are directed to give effect to this judgment within six months.

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J.S.T.

Before Hon'ble A. L. Bahri & V. K. Bali, JJ.

MANGE RAM,—Petitioner.

*versus*

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 12237 of 1991.

13th December, 1991.

*Constitution of India 1950— Art. 226—Promotion—Petitioner denied promotional pay and scale on the basis of adverse entries last preceding ten years—Action of State set aside on basis of 1973 instructions which provide that censure or warning not to be considered to stop promotion.*

A. L. Bahri, J.

*Held, that Annexure R-1 are the instructions issued by the State Government on July 19, 1973 specifically providing that censure or warnings which were not major punishments would not be considered to stop promotion and these punishments are merely to be taken as part of the total record. In view of these instructions, thus the warnings which were administered in 1977 or in 1979 which were stale at the relevant time i.e. January 1, 1986 when the question of placing the petitioner in the higher promotional grade was to be considered, could not be taken into consideration. Otherwise, the latest record of the petitioner did not debar him for being placed in the higher grade.*

(Para 3)

Dinesh Kumar, Advocate, for the Petitioner.

Rajan Gupta, DAG, Haryana, for the Respondents.

#### JUDGMENT

(1) Mange Ram, Junior Engineer working in PWD (B&R) Panipat, in this writ petition seeks direction to be placed in higher pay scale of Rs. 1640—2900 with effect from January 1, 1986 the date when persons junior to him were placed therein,—*vide* order dated May 23, 1988 (Annexure P-3). Instructions on the subject are contained in Annexure P-1. 50 per cent of the posts of Junior Engineers were to be placed in the promotional pay scale of