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STATE OF PUNJAB & ORS.

v.

LABHU RAM & ORS.

October 15, 1976

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[M. H. BEG AND P. N. SHINGHAL, JJ.]

Punjab Civil Service Rules, Vol. I, Rules 2.49 and 3.10 to 3.16,—Junior Vernacular Cadre teachers officiating in senior vernacular cadre entitled to benefit of their substantive posts.

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The respondents, teachers of the Junior vernacular cadre, Punjab, were promoted to the senior vernacular cadre temporarily. After the expiry of their probationary period, they were not confirmed, but continued to work in the senior cadre, and their names were dropped from the junior vernacular cadre. Meanwhile, other teachers, junior to the respondents in the junior cadre, were offered better opportunities of being taken in a "selection grade". The respondents filed a writ petition in the High Court contending that they were entitled to the opportunity of moving into the selection grade, as they were neither probationers nor confirmed members but were only officiating in the senior cadre while retaining their substantive places and liens in the junior cadre. The High Court allowed the writ.

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Dismissing the appeal the Court,

HELD: The state was unable to substantiate the submission that the petitioners-respondents became probationers in the senior vernacular cadre. According to the rules, their lien in the junior vernacular cadre was retained by them, and, it could not be suspended by the mere fact that they were performing the duties of teachers working in the senior vernacular cadre. [836 D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1745 of 1968.

(Appeal by Special Leave from the Judgment and Order dated 13-10-1967 of the Punjab and Haryana High Court in Civil Writ No. 1113 of 1966).

O. P. Sharma, for the appellants.

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S. K. Mehta, *K. R. Nagaraja* and *P. N. Puri*, for the Respondents.

The Judgment of the Court was delivered by

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BEG, J.—The State of Punjab has come up by special leave against the judgment of a Division Bench of the High Court of Punjab & Haryana allowing the Writ petition of the respondents who, it is admitted by the State, are teachers of the Junior Vernacular grade working, on the dates on which they filed the Writ petition, as "promotees" in the senior vernacular grade temporarily but had not been confirmed there. It appears that the only difference between the junior vernacular cadre and the senior vernacular cadre is that those who teach lower classes were placed in the "junior" cadre and those who teach higher classes were in the "senior vernacular cadre".

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But, for some reason, working in senior vernacular cadre was considered a promotion. After consideration of the whole position, the two grades were integrated by the Government from 1st October, 1957, with retrospective effect, under the Punjab Educational Service

(Provincialised Cadre) Class III Service Rules, 1961. This meant that the Government recognised that both the cadres should be really considered as one and that there were no acceptable grounds for a differentiation. Nevertheless, it appears that the names of the petitioners were dropped from the junior vernacular cadre as they had been working for more than the probationary period in the senior vernacular cadre. It is urged that it must be deemed that they were confirmed in the senior vernacular cadre automatically. However, they had to be "probationers" in the senior cadre for such a result to enure. We fail to see how they become "probationers" there.

Curiously, the prospects of those who were not considered "promoted" to the senior vernacular cadre and were junior to the petitioners respondents in that cadre, improved as they were offered opportunities of being taken in a "selection grade". But, no such opportunities were offered to the petitioners on the ground that they had been removed from the junior vernacular cadre. The names of the petitioners respondents had been automatically dropped from the cadre in which they held their liens having been appointed there initially permanently.

The High Court of Punjab & Haryana held that the petitioners respondents are entitled to the benefit of their substantive posts, which were still in the junior vernacular cadre, as they were never confirmed in the senior vernacular cadre whatever may be the sentimental satisfaction of being considered as persons "promoted" to and working in the "senior vernacular cadre". Subsequent events showed that those who are junior to the petitioners, and, for that reason, did not get the opportunity of serving in the "senior" cadre, had better opportunities offered to them without any reasonable ground of discrimination between the two cadres except that the petitioners were seniors and could consider themselves "promoted" because they had been performing the duties of teachers of the "senior" cadre. The petitioners, after discovering that those who were junior to them and had, therefore, not been given the opportunity of serving in the senior vernacular cadre, had a better opportunity of moving into the selection grade, which had not been offered to them, applied for this very opportunity as they still continued in their substantive posts which were in the junior vernacular cadre. They took up the correct position that they had merely been officiating in the senior vernacular cadre but their right places were in the junior vernacular cadre. The mere fact that they worked in the senior cadre for longer periods than probationers would could not give them the status of either mere probationers or persons confirmed in the senior vernacular cadre. They could not, for that reason alone, be deprived of the benefits of their substantive appointments in the junior vernacular cadre. Hence, their Writ Petitions were allowed and they were afforded all the benefits which would have accrued to them as members of the junior vernacular cadre to which they did not really cease to belong. Moreover, as already pointed out, the Government had itself considered the position and had integrated the two cadres into one with retrospective effect from 1st October, 1957.

A The position of the petitioners appears to us to be fully covered by the following rules contained in the Punjab Civil Services Rules—Volume I :

B “3.10. Unless in any case it be otherwise distinctly provided the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority, without claim or additional remuneration, whether the services required of him are such as would ordinarily be remunerated from Union or State revenues, or from the revenues of a local fund.

C Substantive Appointment and Lien.

3.11. (a) Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.

D (b) A Government servant cannot be appointed substantively except as a temporary measure, to two or more permanent posts at the same time.

(c) A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien.

E 3.12. Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

F 3.13. Unless his lien is suspended under rule 3.14 or transferred under rule 3.16, a Government servant holding substantively a permanent post retains a lien on that post—

(a) while performing the duties of that post;

(b) while on foreign service, or holding a temporary post, or officiating in another post;

G (c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;

(d) except as provided in Note below while on leave; and

H (e) while under suspension.

3.14. (a) A competent authority shall suspend the lien of a Government servant on a permanent post which he

holds substantively, if he is appointed in a substantive capacity :

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another Government servant would hold a lien, had his lien not been suspended under rule.

(b) A competent authority may, at its option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien, for a period of not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a Government servant's lien on a tenure post may, in no circumstances, be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a Government servant's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it : Provided that the arrangements shall be reversed as soon as the suspended lien revives.

(e) A Government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in sub-clause (1), (2) or (3) of that clause.

(f) A Government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre : Provided that a suspended lien shall not revive because the Government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India or on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in sub-clause (1), (2) or (3) of clause (a).

3.15. (a) Except as provided in clause (c) of this rule and in note under rule 3.13, a Government servant's

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lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

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(b) In a case covered by sub-clause (2) of clause (a) of rule 3.14 the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government service.

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(c) Notwithstanding the provisions of rule 3.14(a), the lien of a Government servant holding substantively a permanent post shall be terminated on his appointment substantively to the post of Chief Engineer of the Public Works Department.

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3.16. Subject to the provisions of rule 3.17, a competent authority may transfer to another permanent post in the same cadre the lien of a Government servant who is not performing the duties of a post to which the lien relates, even if that lien has been suspended."

According to the rules set out above, the lien of the petitioners in the junior vernacular cadre was retained by them and it could not be suspended by the mere fact that they were performing the duties of teachers working in the senior vernacular cadre. Nothing beyond this was disclosed by the facts of these cases.

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The definition of a probationer, given in rule 2.49 is as follows :

"2.49. Probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. This term does not, however, cover a Government servant who holds substantively a permanent post in a cadre and is merely appointed 'on probation' to another post".

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Learned Counsel for the State was unable to substantiate the submission that the petitioners respondents were merely probationers in the senior vernacular cadre and not really persons whose substantive posts were in the junior vernacular cadre, appointed to perform the duties of persons put in another cadre. Their duties in the senior cadre involved teaching somewhat higher classes. This 'additional experience could not reasonably be looked up as a disqualification for the selection grade. The High Court had, therefore, given the petitioner-respondents the benefits of the cadre on which their names should have been retained. Moreover, this is not a question which can arise again as the two different cadres have been merged with retrospective effect from 1st October, 1957. It meant that they were entitled to be considered for the selection grade, and, if they satisfy the requirements for selection to get the benefits of it. Consequently, we dismiss this appeal with costs.

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M.R.

Appeal dismissed.