

BHAGWAN DAS AND OTHERS

v.

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
AND OTHERS

April 30, 1985

[R.S. PATHAK AND V. KHALID, JJ.]

Constitution of India 1950, Article 14 and 16.

*I.C.A.R.—Seniority first of Assistants—Promotees and direct recruits—
Placement in List Promotees contending violation of guarantee of equality—Satis-
factory proof of date of appointment in grade—Necessity of.*

The 39 petitioners in the writ petition were promotees to the post of Assistant in the Indian Council of Agricultural Research—first respondent. The second respondent was the Union of India and respondent Nos. 3 to 31 were direct recruits to the same post. Respondent Nos. 32 to 88 were also promotees and impleaded as proforma respondents. The petitioners contended that they belonged to the service of the Central Secretariat, (Department of Agriculture) and the society was a part of that Department till 1.4.1965 on which date the Government of India decided to re-organise the society into a fully autonomous organisation with its own Secretariat. The petitioners opted to join the service in the Society on such re-organisation. Respondent Nos. 3 to 31 were directly recruited after an open competitive test. The seniority list was prepared by the Society in 1976 showing the relative positions of the promotees and the direct recruits. A second seniority list was published by the Society on 7.4.1981 and this list brought changes in the earlier list and pushed down the promotees from the positions they occupied in that list. The petitioners contended that this seniority list should be quashed on the ground that it violated Article 14 and 16 of the Constitution, as recruitment rules laying down the terms of services in the Society were not available seniority had to be fixed on length of service. They were also entitled to seniority on the basis of the length of their service from the date of they came into the Society by virtue of the option. The case of the contesting respondents was that seniority has to be fixed not with reference to the reorganisation of the Society but on the date of their appointment on a regular basis, and that the petitioners had to establish that they were duly appointed in the service on a regular basis when they exercised their option.

Dismissing the Writ Petition,

HELD : 1. In the absence of satisfactory proof of the date of appointment of the petitioners in the grade as assistants in the Society the petitioners cannot successfully urge violation of Article 14 and 16 of the Constitution. No great injustice was done to the promotees in the preparation of the list. Going through the list, one finds that the gap between the promotees and the direct recruits is of a very short duration and not wide as in other cases. Direct recruitment was made first only 1967. However, to work out the quota system an earlier date of appointment had to be given to the direct recruits. This could not be avoided. This has not done great injustice to the petitioners. This dislocation was limited only to a period between 1965 to 1967 and 1967 to 1971 and not a fairly long period of time. [1073 C-E]

2. The memorandum Annexure-4 dated 20th April, 1970 clearly states that the principles to determine the inter-se seniority of the ministerial staff in the reorganised Council was considered by the Society and that it was decided that the seniority of the Ministerial staff would be fixed on the basis of "date of appointment made on a regular basis." The contention of the petitioners that seniority has to be fixed with reference to the date on which option was exercised by them, has no basis. [1069D-E]

3. Direct recruitment to the post of Assistants in the Society was made holding competitive examination in 1967 and 1971. Upper Division Clerks, like the petitioners who were working with the Agricultural Department, could very well have appeared for this competitive examination and got themselves directly recruited as Assistants on successfully passing the competitive examination. Some of the petitioners in fact appeared for the competitive test without success. Those who were successful at the competitive examination and the interview were offered the post of Assistant by regular appointment. [1069F-H]

4. Relying on Annexure-4—Memorandum dated 24.4.70 the petitioners' attempt to contend that their seniority should start from the date they exercised option and that this is correctly reflected in 1976 list. This submission overlooks the fact that even at that time, there were rules in existence prescribing a ratio of 1 : 1 between promotees and direct recruits. In addition to this, it has to be noted that here also, filling up of vacancies on a regular basis is emphasised, [1071 G-H]

5. The Union Government and the Society were originally in error in their assumption that no rules existed for regulating the service conditions in the Society. Annexure 6, are rules relating to the Indian Council of Agricultural Research before its reorganisation. The said rules show that the posts of Assistants can be filled up 50% by direct recruit also. The handbook for personnel officer shows that the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. New recruitment rules came into effect from 1.9.1974. This method of recruitment was to be with effect from 1.1.1976. It further provided that vacancies arising between 29.8.1973 and 31.12.1975 were to be filled wholly (100%) by promotion. This

means that vacancies prior to 29.8.1973 and 31.12.1975 will be filled up in accordance with the 1964 rules and vacancies between 29.8.1973 and 31.12.1975 will be filled by the promotees along and thereafter in the ratio 1 : 1. From these rules it is evident that the Society was conscious of the claims of the promotees and hence safeguards their interests by providing 100% posts for them between 29.8.1973 and 31.12.1975. By doing so, justice was done to them in a great measure. [1072 C-E; G-H; 1073 A]

ORIGINAL JURISDICTION: Writ Petition No. 1938 of 1981
(Under Article 32 of the Constitution of India)

M. K. Ramamurthy and P. P. Singh for the Petitioners.

M. C. Bhandare, Raju Ramachandran, R. K. Garg, V. J. Francis and N.M. Popli for the Respondents.

The Judgment of the Court was delivered by

This writ petition involves the familiar rivalry between promotees and direct recruits. Normally a resolution of such a dispute these two well known groups of service employees would necessitate consideration of various decisions relating to the quota and rota rule and such other allied matters. We have been relieved of this exercise because we feel that the dispute in this case can be resolved on facts, unaided by precedents on such matters. The counsel on both sides advisedly, therefore, restrained themselves from citing the relevant authorities before us.

2: Now the facts:

All the 39 petitioners are promotees to the post of Assistant in the Indian Council of Agricultural Research (for short 'the society') the 1st respondent herein. The second respondent is the Union of India and respondent Nos. 3 to 31 are direct recruits to the same post. Respondent Nos. 32 to 88 are also promotees and have been impleaded as proforma respondents.

3: The petitioner originally belonged to the service of the Central Secretariat, Government of India, Ministry of Agriculture. The Society was a part of that department till 1.4.1965 on which date the Government of India decided to re-organise the

Society into a fully autonomous organisation with its own secretariat. The petitioners opted to join the service in the Society on such re-organisation. Respondent Nos. 3 to 31 were directly recruited after an open competitive test, held by the Society in 1967 and 1971. A seniority list was prepared by the Society in 1976 showing the relative positions of the promotees and the direct recruits. The provocation for filing the writ petition was the publishing of a second seniority list, by the Society by its Memorandum No. 27 (5)/81—Estt. II dated 7.4.1981. This list brought changes in the earlier list and pushed down the promotees from the positions they occupied in that list. The prayer in the writ petition is to quash this seniority list on the ground that it violates Article 14 and 16 of the Constitution of India and to stay its implementation.

4. The Petitioners' case is that they came into the Society by virtue of the option exercised by them and that they are entitled to seniority on the basis of the length of their service from the date of option. According to them, recruitment rules, laying down the terms of service in the Society, were not available then and as such seniority had to be fixed on length of service. The case of the contesting respondents is that seniority has to be fixed not with reference to the date of the reorganisation of Society and the date of option exercised by the petitioners but from the date of their appointment on a regular basis. They seriously disputed the case of the petitioners that they were entitled to seniority from the date they exercised their option. According to them the petitioners have to establish that they were duly appointed in the service on a regular basis, when they exercised their option, to claim seniority on the strength of length of service from the date of their option.

5. We must confess that there was considerable confusion both on the side of the petitioners and on the side of the Society and the Government regarding the existence of rules, regulating the conditions of service in the Society. Things proceeded in the Society on the basis that there were no recruitment rules in existence till 1974, while the factual position is that rules were in existence from 1964. It was on this wrong assumption that the seniority list was prepared on 2nd February, 1979. In that list, seniority was reckoned with reference to length of service. It was after realising that a mistake had been committed and that rules, in fact, existed that the impugned list was drawn up on 7th April, 1981.

A A 6. The petitioners have given a Comparative statement as Annexure-9, showing the manner in which the new list has worked to their detriment. This Annexure shows the relative positions of the promotees and the direct recruits in the 1976 list and in the 1981 list. To cite two or three examples ; direct recruits who were placed at serial Nos. 4, 20 & 83 in the 1976 list, have gone up as serial Nos. 2, 10 and 22, respectively, in the 1981 list. While preparing the 1976 list, a deemed date of appointment in the grade was adopted to calculate the length of service. The petitioners, case is that the direct recruits never questioned their placement in this list and therefore cannot oppose with any justification the petitioners' request for quashing the impugned list. Though this submission is wholly not unfounded, the petitioners cannot succeed merely on the inaction on the part of the direct recruits but have to satisfy the Court of a right in them to entitle them to seniority from the date they opted and came into the Society's service. It is this aspect of the case that needs examination by us in this writ petition.

D 11 7. In this case we do not have the usual picture of great injustice glaring in the face, of promotees being eased out of their places by direct recruits after a long lapse of time. Here we are dealing with a small Society with a limited number of employees and the dispute relates to a short period from 1965 to 1973. The petitioners cannot, in this case, put forward either the case of a wholesale reduction of their places, legitimately due to them or the collapse of the quota and rota system as was the case in some of the decided cases. The short point here is as to when the petitioners were regular appointed in the grade of Assistants and as to whether the petitioners' rightful places have been robbed by the Society and the direct recruits by the impugned seniority list.

E 8. The petitioners were originally Upper Division Clerks with the Agricultural Department of Government of India. They came to Court with the definite plea that their seniority was fixed on the basis of the principles applicable to Government service in the absence of any rules framed by the Society, regulating their service conditions. It is stated in the petition that they made representations to the authorities for laying down of clear principles to determine the inter-se seniority between them and the direct recruits and as a consequence, the Government of India issued a Memorandum dated 20th April, 1970, asking the Government employees to give their option by 30th April, 1970 and

reiterating at the same time that the inter-se seniority of the ministerial staff under the reorganised Council would be fixed on the basis of the date of appointment made on a regular basis. It is significant to note that the petitioners have not produced a single of their appointment orders for this Court to be satisfied as to when they were appointed as Assistants on a regular basis while a specimen appointment order of direct recruits has been produced. Still the petitioners insist that the crucial date for determining the inter-se seniority is 1-4-1965, the date on which the Society was reorganised. We find it difficult to accept the contention that the length of service has to be reckoned from 1.4.1965 or from the respective dates when they entered the service of the Society on exercise of their option when the Memorandum, produced by them, has clearly stated that the inter-se seniority will be fixed on the basis of the date of appointment in the grade on the regular basis. We have looked into the Memorandum Annexure-4, dated 20th April, 1970. It clearly states that the date for exercise of option has been extended to 30th April' 1970 and that the principles determining the inter-se seniority of the ministerial staff in the reorganised Council was considered by the Society in consultation with the Ministries of Law and Home Affairs and Finance and that it was decided that the seniority of the ministerial staff in the reorganised Council would be fixed on the basis of "date of appointment to the grade on a regular basis." This statement in the Memorandum which finds a place in paragraph 8 of the Writ Petition also shows, according to us, the hollowness of the contention of the petitioners that seniority has to be fixed with reference to the date on which option was exercised by them.

9. Direct recruitment to the post of Assistants in the Society was made by holding competitive examination in 1967 and 1971. Upper Division Clerks, like the petitioners who were working with the Agricultural Dept., Govt. of India, could very well have appeared for this competitive examination and got themselves directly recruited as Assistants on successfully passing the competitive examination. We are told that some of the petitioners in fact, appeared for the competitive test without success. Though this statement made by the counsel for the respondents at the bar was not disputed by the petitioners' counsel, we do not propose to rely on it since it is not a matter on record. Those who were successful at the competitive examination and the interview were offered the posts of Assistant by regular appointment as per appointment order produced as

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A Annexure-5, issued by the Society, containing the terms of appointment. As already indicated, the petitioners have either by design or by oversight failed to make available to us their orders of appointment on a regular basis in the grade when they exercised option. It is against this background that the challenge to the 1981 list has to be considered.

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10. If the petitioners can satisfy us that they had greater length of service in equivalent grade than the direct recruits, they are entitled to succeed. If they fail, the list has to stand despite the fact that the earlier list was not challenged by the direct recruits. We do not have on record anything to show when the petitioners were regularly appointed in the grade of Assistants. In the absence of this evidence, can the petitioners succeed? As already stated the Society and the Union Government were originally under a misapprehension that no rules existed governing the service conditions in the Society. The petitioners have produced a Memorandum Annexure-3, dated 21st August, 1967 which throws considerable light on the dispute involved in the case. It is stated therein that the Government of India have approved of the reorganisation of the Indian Council of Agricultural Research into an Office wholly controlled and financed by the Indian Council of Agricultural Research, with effect from a date to be appointed shortly. As a consequence of the above decision the various posts existing as Government posts in the said Secretariat, will be abolished with effect from the aforesaid date and corresponding number of posts in various cadres will be created as nongovernment posts under the Society.

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11. Paragraph 2 of this Memorandum reads :

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"The Indian Council of Agricultural Research has, however, agreed to take over such officers as belong to the C.S.S. (holding posts of Section Officer's grade and Grade IV only), C.S.S.S. and C.S.C.S., employed *on date* in the Department of Agriculture and its attached offices (including the Indian Council of Agricultural Research) as are willing to serve the Council. The Indian Council of Agricultural Research will, of course, select from amongst the persons opting for its service only the number of persons required by them, keeping in view the total number of existing posts in the various cadres borne on the Govern-

ment side of the Indian Council of Agricultural Research.”

Clause VI of Para 2 reads as follows :

“The inter-se seniority of the staff in Indian Council of Agricultural Research shall be determined in accordance with the rules to be framed for the purpose taking into account, among others, the principles governing the seniority under the Central Government.”

From the passages extracted above, it becomes clear that appointments are to be regularly made to various grades only with effect from a date to be appointed after 21st August, 1967, the date of the Memorandum, which means that the deemed date of appointment mentioned in the 1976 list cannot be relied upon by the petitioners to project a case of their length of service from that date. The petitioners placed strong reliance on the Memorandum, Annexure-4 dated 20th April, 1970, and in particular to the following :

“It has also been decided that 1st April, 1965 shall constitute the crucial date for determining the inter-se seniority of the staff finally merging into the reorganised Council. Accordingly, a combined inter-se seniority list will be prepared for each grade of the persons on the basis of the above principle in accordance with the position obtaining in respect of each individual as on 1st April, 1965 and all regular vacancies arising in the Council with effect from 1st April, 1965 upto date, meant to be filled by promotion (including those which have been filled up on *ad hoc* basis) will be filled up on a regular basis from the inter-se seniority list drawn up in the manner indicated above.”

12. Relying on this, the petitioners attempt to contend that their seniority should start from the date they exercised option and that this is correctly reflected in 1976 list. This submission overlooks the fact that even at that time, there were rules in existence prescribing a ratio of 1 : 1 between promotees and direct recruits. In addition to this, it has to be noted that here also, filling up of vacancies on a regular basis is emphasised.

A 13. The Petitioners cannot therefore seek support from this to press a case of seniority from the date of exercise their options or from the deemed date of appointment.

B Rights can accrue to them as members of the new service only from the date they are regularly appointed in the grade. The impugned list instead of continuing the mistake committed in the 1976 list, has only corrected the mistake.

C 14. We find from the records that the Union Government and the Society were originally in error in their assumption that no rules existed for regulating the service conditions in the Society. We have at page 91 as Annexure-6, rules relating to the Indian Council of Agricultural Research before its reorganisation. The said rules show that the posts of Assistants can be filled up 50% by direct recruitment and 50% by promotions. In other words, for every promotee there should be a direct recruit also. As is seen in the Handbook for personnel officer, the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

D 15. New recruitment rules for various posts in the Society including Assistants with which we are concerned, came into force with effect from 1.9.1974. Under these rules, in the number of posts available for Assistants 50% was to be by way of promotion from amongst the U.D.Cs. having rendered at least 5 years approved service in the grade on the basis of seniority-cum-fitness subject to rejection of the unfit on the recommendations of the D.P.C. and 50% by direct recruitment on the basis of the results of competitive examination held by the ICAR.

E 16. This method of recruitment was to be with effect from 1.1.1976. The method of recruitment before this date is also indicated in these rules. It is provided in these rules that vacancies, arising between 29.8.1973 and 31.12.1975, will be filled wholly (100%) by promotion. This means that vacancies prior to 2.9.1973 will be filled up in accordance with the 1964 rules and vacancies between 29.8.1973 and 31.12.1975, will be filled by the promotees alone and thereafter in the ratio 1 : 1. From these rules it is evident

that the Society was conscious of the claims of the promotees and hence safeguarded their interests by providing 100% posts for them between 29.8.1973 and 31.12.1975. By doing so, justice was done to them in a great measure. The petitioners have no grievance that in preparing the 1981 list, which is impugned in this writ petition, a departure has been made to their detriment, without adhering to the quota provided in the rules. Their only grievance is that the earlier list was changed without taking into account the deemed dates of appointment. We have already indicated that in the absence of satisfactory proof of the date of appointment of the petitioners in the grade as assistants in the Society, the petitioners cannot successfully urge before us a violation of Article 14 and 16 of the Constitution of India. A look at the list prepared in accordance with the above rules, fortifies our conclusion that no great injustice was done to the promotees in the preparation of the list. As one goes through the list, one finds that the gap between the promotees ~~the~~ direct recruits is of a very short duration and not wide as in other cases. It is true that direct recruitment was made first only in 1967. However, to work out the quota system an earlier date of appointment had to be given to the direct recruits. This could not be avoided. This according to us, has not done any great injustice to persuade us to give relief to the petitioners. The dislocation was limited only to a period between 1965 to 1967 and 1967 to 1971 and not to a fairly long period of time.

In our Judgment, therefore, the petitioners are not entitled to succeed. The writ petition fails and is dismissed. The parties are directed to bear their costs,

N.V.K.

Petition dismissed.