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HARBANS SINGH

v.

STATE OF PUNJAB AND ORS.

AUGUST 3, 1995

B

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Service Law :

C

Punjab Law and Legislative Department Provincial Service Class III Rules, 1951—Promotion—Dichotomy of Technical and non-technical posts—Effect on—Directions to State Government.

D

The appellant joined as a clerk in the Department of Legal and Legislative Affairs, State of Punjab in June, 1965. He was promoted as an Assistant on August 13, 1974. The 3rd respondent was appointed as Clerk in another Department. When a vacancy of Assistant arose and was notified, 3rd respondent had applied for the post and was appointed on August 22, 1974 and had joined on September 17, 1974. The Punjab Law and Legislative Department Provincial Service Class III Rules, 1951 was in vogue at the date of the respective appointments. On that day, there was no distinction of a Technical and non-technical post. The Rules were amended in 1976, and dichotomy of technical and non- technical post was created and the 3rd respondent was working on technical side. When the vacancy of Legal Assistant arose, the appellant was eligible for consideration. He claimed his promotion by virtue of his seniority in the Department. 3rd respondent came to be appointed on May 20, 1977 as a Legal Assistant.

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The appellant made a representation to the Government, and it found that the appellant was eligible for promotion but was wrongly overlooked. Therefore, the appellant was appointed as Legal Assistant w.e.f. May 20, 1977. A direction was given that if any future vacancy arises, the 3rd respondent would be accommodated. A Review Petition filed by the 3rd respondent was dismissed, and he filed a writ petition in the High Court which was allowed by a single Judge and on appeal it was confirmed by the Division Bench. Hence this appeal.

H

Allowing the appeal, this Court

HELD : 1. At the time when the Punjab Law and Legislative Department Provincial Service Class III Rules were in vogue, there was no distinction between technical and non-technical Assistants. It could also be seen that admittedly the appellant passed his LL.B (two years) course in 1973 and 3rd year Course in 1974. By 1977, he had already had two years experience on legal side. By fortuitous circumstance, the 3rd respondent was working on the technical side while the appellant was continuing on non-technical side. For no fault on his part a dichotomy for consideration of the respective claims of the appellant and the 3rd respondent was made and the 3rd respondent came to be preferred when vacancy had arisen in 1977. Therefore, the Government was right in reconsidering the matter in January, 1981 and in giving promotion to the appellant as a Legal Assistant and the consequential benefits. [498-B; G-H; 499-A]

2. Since the appellant as well as the 3rd respondent have been further promoted as Dy. Legal Remembrancers and both of them have been continuing as such, justice and equity would need to mould the relief and be worked out by giving appropriate direction to the Government. The Government is, therefore, directed to create a supernumerary post of Dy. Legal Remembrancer and till the third respondent retires from service or a super- numerary post of legal assistant must be created till date he was promoted as Dy. Legal Remembrancer, as the case may be and that he would continue in the post. As regards the appellant is concerned, since the Government itself had found him to be eligible and was appointed w.e.f. May 20, 1977 i.e. the date on which the third respondent was promoted, it must be deemed that the appellant was duly promoted w.e.f. that date and he is entitled to all consequential benefits. [499-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7412 of 1995.

From the Judgment and Order dated 14.9.93 of the Punjab and Haryana High Court in L.P.A.No. 447 of 1993.

Ujjagar Singh, Ms Naresh Bakshi and Davender for the Appellants.

Sumant Batra and Ashok K. Mahajan for the Respondents.

The following Order of the Court was delivered :

Leave granted.

A We have heard the learned counsel on both sides. The appellant joined as a clerk in the Department of Legal and Legislative Affairs, State of Punjab in June, 1965. He was promoted as an Assistant on August 13, 1974. Ajit Lal Arora, 3rd respondent who was appointed as Clerk in another Department. When a vacancy as an Assistant had arisen and was notified for recruitment, Ajit Lal Arora had applied for the post and was appointed on August 22, 1974 and had joined on September 17, 1974. The Punjab Law and legislative Department Provincial Service Class III Rules, 1951 was in vogue at the date of the respective appointment. On that day, there is no distinction of a Technical and non-technical post. The Rules were amended in 1976. Thereunder dichotomy of technical and non-technical post was created and Ajit Lal Arora was working on technical side. When the vacancy as a Legal Assistant had arisen, the appellant was eligible for consideration. He claimed for promotion by virtue of his seniority in the Department. Ajit Lal Arora came to be appointed on May 20, 1977 as a Legal Assistant. The appellant made a representation to the Government, who by its order dated June 6, 1981 found that the appellant was eligible for promotion but was wrongly overlooked. Therefore, the appellant was appointed as Legal Assistant w.e.f. May 20, 1977. A direction was given that if any future vacancy arises, Ajit Lal Arora would therein be accommodated. A Review Petition filed by Ajit Lal Arora was dismissed on May 5, 1982. Dissatisfied therewith, Ajit Lal Arora filed a writ petition in the High Court which was allowed by a single judge and on appeal in L.P.A. 447/93, it was confirmed by the Division Bench. Thus, this appeal by special leave.

F The crucial question is whether the appellant is entitled to be considered for promotion as on May 20, 1977, the date on which Ajit Lal Arora came to be appointed by promotion as Legal Assistant. It could be seen that at the time when the Rules were in vogue, there was no distinction between technical and non-technical Assistant. It could also be seen that admittedly the appellant passed his LL.B. (two years) course in November, 1973 and 3rd year Course in 1974. By 1977, he had already had two years experience as on legal side. By fortuitous circumstance, the 3rd respondent was working on the technical side while the appellant was continuing on non-technical side. For no fault of him a dichotomy for consideration of the respective claims of the appellant and the 3rd respondent was made and the 3rd respondent came to be preferred when vacancy had arisen in 1977. Therefore, the Government was right in reconsidering the matter in

January, 1981 and given promotion to the appellant as a Legal Assistant and the consequential benefits. We are informed that the appellant as well as Ajit Lal Arora have been further promoted as Dy. Legal Remembrancers and both of them have been continuing as such. Under those circumstances, justice and equity would need to mould the relief and be worked out by giving appropriate direction to the Government. The Government is, therefore, directed to create a supernumerary post of Dy. Legal Remembrancer and till Mr. Ajit Lal Arora retires from service or a supernumerary post of legal assistant must be created till date of A.L. Arora was promoted as Dy. Legal Remembrancer, as the case may be and that he would continue in the post. As regards the appellant is concerned, since the Government itself had found him to be eligible and was appointed w.e.f. May 20, 1977 i.e. the date on which Ajit Lal Arora was promoted, it must be deemed that the appellant was duly promoted w.e.f. that date and he is entitled to all consequential benefits.

The appeal is allowed to the above extent. No costs.

G.N.

Appeal allowed.