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SATNAM SINGH AND ORS.

v.

PUNJAB AND HARYANA HIGH COURT AND ORS.

FEBRUARY 7, 1997

B

[J.S. VERMA AND S.P. KURDUKAR, JJ.]

Service Law:

C *Punjab and Haryana High Court Establishment (Appointment and Conditions of Services) Rules, 1973: Rules 16, 26, 27, 30, 34, Schedules I, I-A and III.*

D *Recruitment Rules—Conditions of service of officers and servants of High Court—Notification of—Date of coming into effect—Administrative and financial provisions only forwarded to Governor for approval—Held: Financial provisions only and not administrative provisions required approval of Governor—Hence, administrative provisions came into force from date fixed by Chief Justice whereas financial provisions came into force from date of notification in Official Gazette—Constitution of India, 1950, Arts. 229(2) proviso and 231.*

E

Interpretation of Statutes:

Internal aids—Proviso—Held: To be strictly construed because it is an exception to the general rule.

F

The Chief Justice of the High Court made Rules known as the Punjab and Haryana High Court Establishment (Appointment and Conditions of Service) Rules, 1973 in exercise of his powers under Article 239(2) read with Article 231 of the Constitution. The Rules, which related to administration, were made applicable with effect from 1-3-1974 whereas the Rules involving financial implications were referred to the Governor for approval as required under proviso to Article 229(2) of the Constitution. A notification for publication of the Rules in the Gazette of India was issued on 23-1-1975. Rule 16 prescribed quota for filling up of the posts and Rule 30 prescribed method of determining the seniority. The dispute in this appeal related to Rules 16 and 30 as to whether they came into force

H from 1-3-1974 or from 23-1-1975.

Allowing the appeal, this Court

HELD: 1. The proviso to Article 229(2) of the Constitution carves out the exception, requiring the approval of the Governor of the State only in respect of other rules "so far as they relate to salaries, allowances, leave or pensions". To read the proviso to require approval thereunder to the entire set of Rules including those which do not relate to "salaries, allowances, leave or pensions" would be to enlarge the scope of the proviso by reading into it more than what is enacted therein. The plain words of the proviso to Article 229(2) leave no doubt that the requirement of approval thereunder is confined to the rules only so far as they relate to salaries etc., and no more. It was open to the High Court to frame two sets of rules, one for administrative matters and the other for financial matters, and to refer only financial rules to the Governor for approval. The result cannot be any different if only one set of rules is made by the Chief Justice incorporating both kinds of rules. Rules 16 and 30 of the Punjab and Haryana High Court Establishment (Appointment and Conditions of Service) Rules, 1973, being administrative provisions, came into force from 1-3-1974. [1043-C-D, 1044-B-C]

Sunder Sham Kapoor & Ors. v. Hon'ble Chief Justice, Punjab and Haryana High Court, (1987) 4 SLR 460 (P&H), referred to.

2. A proviso has to be strictly construed inasmuch as it carves out an exception to the general rule. The general rule enacted in the main part is not to be unduly restricted by expanding the content of the proviso, which is intended to carve out the exception from the general rule. [1043-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3705 of 1990 Etc.

From the Judgment and Order dated 21.2.89 of the Punjab & Haryana High Court in C.W.P. No. 642 of 1987.

H.N. Salve, V.C. Mahajan, Pradeep Gupta, K.K. Mohan, Gaurav Jain, Ms. Abha Jain, P.P. Tripathi, Suresh C. Gupta, Ms. Rekha Pandey, Gaurav K. Banerjee and Naveen Prakash for the appearing parties.

The Judgment of the Court was delivered by

J.S. VERMA, J. High Court Establishment (Appointment and Con-

A dditions of Service) Rules, 1973 (for short the "Rules") were made by the Chief Justice of the High Court of Punjab and Haryana in exercise of powers conferred by Clause (2) of Article 229 read with Article 231 of the Constitution of India. By order dated March 18, 1974, the Chief Justice of the High Court made these rules applicable with effect from March 1, 1974; and the rules involving financial implications were referred to the Central Government through Chandigarh Administration for obtaining approval as required by the Proviso to Clause (2) of Article 229 of the Constitution. It was expressly mentioned in the order that "all new appointments made after March 1, 1974 have been regulated by the new rules". The Chief Justice also directed the office by the order dated April 19, 1974 to circulate the new rules to the entire staff and all concerned. Publication of rules in this manner was made and the rules, except those involving financial implications, came into force in actual working with effect from March 1, 1974. The circulation note dated April 24, 1974 of the Deputy Registrar, Administration clearly records this fact.

D Rule 16 of the above Rules prescribed the quota for filling the posts of Assistants by specifying that 50% of the posts shall be filed by direct recruitment and the remaining 50% posts were to be filled by promotion from the clerks on the establishment of the Court. Rule 30 prescribed the method of determining seniority. These rules did not involve any financial implications and according to the aforesaid order of the Chief Justice of the High Court they were treated as effective from March 1, 1974.

A controversy has arisen about the date on which rules 16 and 30 came into force because the rules involving financial implications are held to have come into force from a later date.

F This date has significance because the quota provided by these rules was abolished from January 20, 1978 and the availability of number of vacancies for the direct recruits would be more if the period of quota rule is longer. Writ Petitions filed in the High Court have led to the impugned judgment. Neither side is fully satisfied with the decision. Civil Appeal No. 3704 is by promotees and Civil Appeal No. 3705 is by direct recruits against the same judgment dated February 21, 1989.

H As earlier stated, the High Court sent a proposal for approval of the Government to the rules involving financial implications at the time of applying these rules with effect from March 1, 1974 by order of the Chief

Justice. The proposal for approval was made only in respect of rules 26, 27 and 34 and Schedules 1, IA, II and III of the said Rules. These rules related to pay, special pay and pension etc. so that they undoubtedly related to financial matters and required the approval envisaged by the Proviso to Clause (2) of Article 229 of the Constitution. The correspondence between the High Court and the Government is clear to indicate that the proposal for approval of the Government and the approval accorded to the same related only to rules 26, 27 and 34 and Schedules I, IA, II and III only. The Government of India, Ministry of Law and Justice (Department of Justice) letter No. 30/8/83-Jus., dated September 25, 1985 to the Home Secretary, Union Territory Administration, Chandigarh with a copy to the Registrar, High Court, clearly says that the approval of the President was only to these rules involving financial implications. There can be no doubt whatsoever that the entire exercise, from the proposal by the High Court to approval of the President related only to rules 26, 27 and 34 and Schedules I, IA, II and III of the said Rules relating to certain conditions of service involving financial implications and not to the remaining rules contained in the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. Our concern in these matters is confined only to the date of enforcement of rules 16 and 30 prescribing the quota for the direct recruits and promotees and the mode of determination of seniority between them.

The contention of the direct recruits is that rules 16 and 30 along with remaining rules which did not involve financial implications and, therefore, did not require approval of the Government came into force with effect from March 1, 1974 by order of the Chief Justice of the High Court. On the other hand, the promotees contend that the entire set of rules came into force only on January 23, 1975, the date of the notification which was published in the Gazette dated February 1, 1975. The contention of the promotees is based on the decision in an earlier litigation which related to applicability of the rules involving financial implications. That decision is *Sunder Sham Kapoor and Others v. The Hon'ble Chief Justice, Punjab and Haryana High Court, Chandigarh and Others*, (1987) 4 SLR 460.

As earlier stated, the significance of the date on which rules 16 and 30 along with the remaining rules, other than those sent for approval of the Government is for the reason that the number of posts available for recruitment from the two sources - direct recruits and promotees - has to

A be calculated from that date only. There was no prescription of quota prior to that date and subsequent to January 20, 1978 when by amendment made in the Rules the provision for quota was abolished. It is only between the date of enforcement of the quota rule and its abolition on January 20, 1978 that this question arises and it assumes significance because the longer period of quota rule is beneficial to the direct recruits.

B

In the present case the High Court has taken the view that the commencement of the entire set of Rules including rules 16 and 30 was from January 23, 1975 and not March 1, 1974. The view taken in the earlier decision in *Sunder Sham Kapoor* has been followed. In our opinion, the significant distinction between the present case and *Sunder Sham Kapoor* has been overlooked by the High Court. In *Sunder Sham Kapoor* the subject matter related to salaries and allowances with other consequential benefits and, therefore, they involved financial implications governed by the Rules which required approval of the Government in accordance with the proviso to Clause 2 of Article 229. That being so, the rules on which the claim was based in *Sunder Sham Kapoor* came into force only when the approval of the President was accorded with the direction that the same would be effective from the date of their issue. The publication of the notification dated January 23, 1975 made in the Gazette was, therefore, treated as the date of enforcement of the Rules which required approval of the President under the proviso to Clause 2 of Article 229. No such approval was required for the remaining rules including Rules 16 and 30 and, therefore, the order of the Chief Justice enforcing the Rules with effect from March 1, 1974 brought into force these remaining rules on that day. This distinction has been overlooked by the High Court in applying the decision of *Sunder Sham Kapoor* in the present case also.

F

The relevant part of Article 229 is as under :

"229. Officers and servants and the expenses of High Courts.-

G

(1) xxx xxx xxx

H

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the court authorised by the Chief Justice to make rules for the

purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries allowance, leave or pensions, require the approval of the Governor of the State.

(3) xxx xxx xxx"

Clause (2) of Article 229 enacts that conditions of service of officers and servants of High Court shall be such as may be prescribed by Rules made by the Chief Justice of the Court, subject to the provisions of any law made by the Legislature of the State. The proviso carves out the exception, requiring the approval of the Governor of the State only in respect of the rules "so far as they relate to salaries, allowances, leave or pensions". Thus the approval according to the proviso is required only in respect of those rules which relate to salaries, allowances, leave or pensions and not to other rules relating to the conditions of service of the officers and servants of the High Court. To read the proviso to require approval thereunder to the entire set of rules including those which do not relate to "salaries, allowances, leave or pensions" would be to enlarge the scope of the proviso by reading into it more than what is enacted therein. A proviso has to be strictly construed inasmuch as it carves out an exception to the general rule. The general rule enacted in the main part is not to be unduly restricted by expanding the content of the proviso which is intended to carve out the exception from the general rule. The plain words of the proviso to Clause (2) of Article 229 leave no doubt that the requirement of approval thereunder is confined to the rules only so far as they relate to salaries etc., and no more. It is settled that a proviso cannot expand or limit the clear meaning of the main provision.

Viewed at from a different angle the conclusion reached is the same. It is open to the Chief Justice to frame two different sets of rules whereby the rules relating to salaries, allowances, leave or pensions are made separately in one set while the other set relates to other conditions of service. If the exercise is performed in this manner only that set of rules which relates to salaries etc. involving financial implications requires the approval according to the proviso to Article 229(2) while the other set does not require any such approval and can be enforced by Chief Justice straight away by his order. The result cannot be any different if only one set of rules is made by the Chief Justice incorporating both kinds of rules.

A We have no doubt that all the rules framed by the Chief Justice
except for Rules 26, 27 and 34 and Schedules I, IA, 2 and 3 which alone
were sent for approval according to the proviso to clause (2) of Article 229,
came into force with effect from March 1, 1974 by virtue of the order of
Chief Justice of the High Court. This is how the High Court understood it
B till some doubt was created because of the significant distinction in the
decision in *Sunder Sham Kapoor* being overlooked. It is, therefore, clear
that Rules 16 providing for the quota and Rule 30 prescribing the mode of
determining seniority came into force with effect from March 1, 1974. The
quota for the direct recruits and promotees has to be worked out accord-
ingly and the vacancies have to be filled on that basis. The High Court is
C required to calculate the vacancies and adjust the appointments to the
vacancies on this basis.

For the aforesaid reason the impugned judgment of the High Court
is set aside. The High Court would now proceed to calculate the number
D of vacancies available to direct recruits and promotees on this basis and to
make consequential adjustment in the cadre of assistants, accordingly.

This appeal was heard along with Civil Appeal No. 3705 of 1990,
Satnam Singh and Others v. The Punjab and Haryana High Court at Chan-
E *digarh and Others* and Civil Appeal No. 3704 of 1990, *S.K. Singal and Ors.*
v. The High Court of Punjab and Haryana, Chandigarh, through its Registrar
and Others. Learned counsel for the appellant in this appeal squarely stated
that this appeal would be rendered infructuous if the date of enforcement
of the relevant rules providing for the quota rule is held to be March 1,
1974 as claimed by the direct recruits and not January 23, 1975 as claimed
F by the promotees. In our judgment rendered today in the connected Civil
Appeal No. 3704 of 1990 by the promotees and Civil Appeal No. 3705 of
1990 by the direct recruits, we have held that the date of commencement
of the relevant rules prescribing the quota is March 1, 1974. This appeal
has, therefore, to be dismissed.

G

Consequently, this appeal is dismissed.

V.S.S.

Appeal No. 3705 of 1990 allowed
and appeal No. 8720/94 dismissed.