

STATE OF HARYANA AND ORS.

v.

PREM SINGH AND ORS. ETC.

APRIL 5, 2000

[S. SAGHIR AHMAD AND S. RAJENDRA BABU, JJ.]

*Service law—Appointment to lateral post by transfer—Benefit of reservation not given—Held : post held both before and after transfer are equivalent posts and both being class II posts, there was no promotion—No benefit of reservation either as scheduled caste or otherwise available under the rules.*

The appellants claimed benefit of reservation both as Scheduled Caste members and also as per the rules, by filing a writ petition, the High Court allowed. Hence this appeal is by the State.

Allowing the appeal, this Court

**HELD : 1.1.** Respondent No. 1 had worked for about two years on the equivalent post of Deputy Collector to which post he had been promoted on May 14, 1992 and, therefore, he cannot claim to be appointed as Tehsildar by transfer. Posts of Deputy Collector and Tehsildar are both Class II posts and are equivalent posts. Deputy Collector is a post under the Irrigation Department, whereas, Tehsildar is a post under the Revenue Department in the State.

Respondent No. 1 was promoted to the post of Deputy Collector and was granted regular promotion thereto and the Haryana Public Service Commission has also approved such promotion. The contention advanced on behalf of the first respondent that he held a post inferior to that of a Tehsildar falls to the ground and, therefore, he cannot claim the benefit of promotion at all. It is also clear from the Recruitment Rules that the case of the respondent could not have been considered on any other basis. While respondent No. 1 had been promoted to the post of Deputy Collector by an order made on April 21, 1992, the writ petition was filed on November 26, 1992. In the circumstances, he could not have made a claim to the post of Tehsildar at all. [1000-B-E]

1.2. Even on the basis found by the High Court that the reservation policy was to apply in respect of transfer from a lower post to a higher

**A** post inasmuch as respondent No. 1 held a post of Deputy Collector equivalent to that of Tehsildar which are both Class II posts he could not have claimed benefit of reservation in respect of Scheduled Castes. In this view of the matter, this Court has no hesitation in setting aside the order made by the High Court. [1000-E-F]

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6361 of 1994  
Etc.

From the Judgment and Order dated 9.12.93 of the Punjab & Haryana High Court in C.W.P. No. 955 of 1993.

**C** C.S. Vaidyanathan, Mukul Rohtagi, Additional Solicitor General, R.F. Nariman, A.K. Srivastava, M.L. Verma, Mahabir Singh, Manoj Swarup, Jasbir Malik, K.K. Mohan, Pradeep Gupta, Arvind Bansal, Puneet Agarwal, Atul Bandhu, N.S. Bisht, K.G. Bhagat, Vineet Bhagat, Kamal Baid, Debasis Misra, Pankaj Kalra, Ravindra Bana, Dr. Ratan Lal, Abhay Prakash Sahay, (Sant Lal Pacher) in-person, B.K. Sharma, Prem Malhotra, Anil Mittal and Ms. Indu Malhotra for the appearing parties.

The Judgment of the Court was delivered by

**RAJENDRA BABU, J.**

**E** CIVIL APPEAL NO. 6361 OF 1994

A writ petition was filed before the High Court of Punjab & Haryana by the respondents. Facts, in brief, giving rise to this appeal are as follows:

**F** Respondent No. 1 was selected as Zileदार and after completion of training was appointed in the Irrigation Department in January 1975. Under the relevant recruitment rules three sources were provided for appointment to the post of Tehsildar ('B' Class) - (i) 40% by direct recruitment, (ii) 40% by promotion, and (iii) 20% by transfer from amongst the following categories :-

- G**
- (i) Superintendent of the office of the Deputy Commissioners;
  - (ii) Assistant Superintendent of Commissioners' and Deputy Commissioners' office;
  - (iii) District Kanungoes;
- H** (iv) Zonal Zileदars of P.W.D. (Irrigation Branch] OR

(v) Head Assistant of Director Land Records Office.

The Government on February 9, 1979 issued instructions wherein it was stated that the quantum of reservation would be to the extent of 20% for Scheduled Castes in the case of direct recruitment to Class I, II, III and IV posts. It was clarified that in all appointments by promotion 20% reservation will be granted in favour of the Scheduled Castes but such reservation would be limited to Class III and Class IV posts on the basis of seniority- cum-merit. It was expressly stated that in respect of appointments by promotion there will be no reservation in Class I and Class II posts. It was further clarified in the instructions issued on June 10, 1982 that if posts were filled by transfer to an identical time scale of pay, there would be no reservation but if a higher post was filled by transfer then the benefit of reservation would be given. Process of selection was announced to the post of Tehsildar ('B' Class) for appointment by transfer in the year 1986. Eight persons were appointed in 1986, four in 1990 and six in 1992. In the recruitment made as per the rules in 1986 the benefit of reservation was not given to the post of Tehsildar which is a Class II post. Respondent No. 1 filed a writ petition claiming his right to appointment on the ground that he is a senior Zileदार and also on the basis of reservation. The High Court made an order on the basis that reservation was available in the case of appointment by transfer to Class II post. The High Court did not consider the fact that even assuming that reservation had to be granted in this category, the claim of all the Scheduled Castes candidates in the five posts from which the recruitment was to be made by transfer. This order is in challenge before us in this appeal.

The first respondent contended that he is entitled to the post in question not only on the basis of reservation in favour of a Scheduled Caste candidate but also that he is being appointed by way of transfer from a lower scale of Zileदार in the Irrigation Department to a different department, that is, Revenue Department to the post of Tehsildar. The instructions issued by the Government would not be applicable and on the other hand he would be entitled to such appointment. A bar, if any, is implied and that the instructions are applicable to each and every Schedule Caste candidate wherever transfer is made to an equivalent post and for purpose of getting the benefit of the reserved post by way of transfer it must be from a post carrying lower pay scale to another post in any department carrying a higher pay scale. On that basis it is contended that the view taken by the High Court is in order.

We have carefully examined the facts arising in the case. The facts

A available on record clearly disclose that Zildar is a Class III post and  
Tehsildar and Deputy Collector are Class II posts. The posts of Clerk,  
Assistant and Assistant Superintendent are Class III posts, while the post of  
Superintendent, Deputy Collector and Tehsildar are Class II posts. Respond-  
ent No. 1 had worked for about two years on the equivalent post of Deputy  
Collector to which post he had been promoted on May 14, 1992 and,  
B therefore, he cannot claim to be appointed as Tehsildar by transfer. Posts of  
Deputy Collector and Tehsildar are both Class II posts and are equivalent  
posts. Deputy Collector is a post under the Irrigation Department, whereas  
Tehsildar is under the Revenue Department in the State. It is also made clear  
C by the affidavit of Bhagwan Dass Bishnoi, Tehsildar, Narnaul (Haryana) that  
respondent No. 1 was promoted to the post of Deputy Collector and was  
granted regular promotion thereto and the Haryana Public Service Commis-  
sion has also approved such promotion by an order made on May 14, 1992.  
The contention advanced on behalf of the first respondent that he held a post  
inferior to that of a Tehsildar falls to ground and, therefore, he cannot claim  
D the benefit of promotion at all. It is also clear from the Recruitment Rules that  
the case of the respondent could not have been considered on any other basis.  
While respondent No. 1 had been promoted to the post of Deputy Collector  
by an order made on April 21, 1992, the writ petition was filed on November  
26, 1992. In the circumstances, he could not have made a claim to the post  
of Tehsildar at all. Even on the basis found by the High Court that the  
E reservation policy was to apply in respect of transfer from a lower post to a  
higher post inasmuch as respondent No. 1 held a post of Deputy Collector  
equivalent to that of Tehsildar which are both Class II posts he could not have  
claimed benefit of reservation in respect of Scheduled Castes. In this view of  
the matter, we have no hesitation in setting aside the order made by the High  
F Court and dismiss the writ petition filed by the respondent. The appeal stands  
allowed accordingly. However, there shall be no orders as to costs.

*CIVIL APPEAL NO. 6362 OF 1994*

G In the light of the order made by us in CIVIL APPEAL NO. 6361 of  
1994, this appeal has become unnecessary and, consequently it stands dis-  
missed.

I.M.A.

Appeals allowed/dismissed.