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DR. RAJINDER SINGH

v.

THE STATE OF PUNJAB AND ORS.

APRIL 11, 2001

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

*Service Law :*

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*Punjab Civil Medical (State Service Class I) Rules, 1972—Rules 2(2) and 9A—Promotion of respondent as Deputy, Director, Health Services on recommendations of Departmental Promotion Committee based on Government Notification treating Class II service as Class I service—Validity of—Held, respondent did not have requisite qualification on relevant date as per Rules—Government Notification cannot substitute Service Rules—Promotion of respondent set aside with direction for fresh appointment.*

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Respondent was promoted as Deputy Director (Health Services) on the basis of recommendations of Departmental Promotion Committee. Appellant filed a Writ Petition before High Court challenging the promotion on the ground that the respondent did not possess requisite qualifications on the relevant date under Rule 9A sub-rule (c) of Punjab Civil Medical (State Service Class I) Rules, 1972 (PCMS Class I). The High Court dismissed the Writ Petition relying upon a Government notification dated 9.4.1989 which treated PCMS Class II as Class I.

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Allowing the appeal, the Court

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**HELD :** 1.1. At the relevant date when the respondent was recommended for promotion, he had not completed 10 years of service within the meaning of Rule 9A read with Rule 2(2) of the Punjab Civil Medical (State Service Class I) Rules, 1972. As the respondent was not possessing the requisite qualifications on the relevant date, he could not be considered for promotion to the post of Deputy Director, Health Services. [1111-A-B]

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1.2. A perusal of notification dated 9.4.1989 clearly indicates that Government itself was aware that the two classes of service cannot be equated or treated alike without amending the Rules. The Rules have not been amended so far. The Departmental Promotion Committee erred in recommending the promotion of the respondent ignoring the Rules and

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only relying upon a notification. [1111-E-F]

1.3. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory Rules framed with the authority of law. Following any other course would be disastrous in as much as it would deprive the security of tenure and right of equality conferred upon the civil servants under the Constitutional scheme. It would be negating the so far accepted service jurisprudence. The High Court was not justified in observing that even without amendment of the Rules, the Class II of the Service can be treated as Class I only by way of notification. Following such a course amounts to amending the Rules by a Government Order and ignoring the mandate of Article 309 of the Constitution. [1111-F-H]

2. As the respondent was not eligible for consideration to the post of Deputy Director, Health Services the Departmental Promotion Committee committed a mistake in recommending the respondent. Hence, the recommendation of the Committee as also the consequential promotion of the respondent is set aside and the said post is declared to have fallen vacant forthwith. Respondent-State is directed to appoint a fresh Departmental Promotion Committee who shall consider the cases of all the eligible officers including the appellant and the respondent and recommend for promotion any of the eligible persons from the service in accordance with the Service Rules, totally ignoring notification dated 9.4.1989. [1112-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2720 of 2001.

From the Judgment and dated 7.1.1999 of the Punjab and Haryana High Court in CWP No. 1328/98.

Ranjit Kr., Sudhir Walia and Mahinder Singh Dahiya for the Appellant.

TLV Iyer and Anoop Choudhry, R.K. Talwar, Yash Pal Dhingra, Rajeev Sharma and Vinod Shukla for the Respondents.

The Judgment of the Court was delivered by

**SETHI, J.** Leave granted.

Aggrieved by the recommendations of the Departmental Promotion Committee held on 14.1.1998 and consequential promotion of respondent

A No.3 as Deputy Director (Health Services), the appellant filed a writ petition in the High Court mainly on the ground that the promotee-respondent did not possess the requisite qualifications under the Service Rules applicable in the case. Relying upon the notification dated 9th April, 1989 which treated PCMS Class II as PCMS Class I, the high Court dismissed the writ petition observing that for the purpose of treating the PCMS Class II as PCMS Class I, there was no necessity of amending the rules. The High Court, however, held that Rule 9A of the Rules applicable in the case provided that for the post of Deputy Director, a person should be member of Class I atleast for a period of 10 years.

C It is not disputed that service conditions of the appellant and respondent No.3 are governed by the statutory rules made in exercise of the powers conferred upon the Government under Article 309 of the Constitution which are known as Punjab Civil Medical (State Service Class I) Rules, 1972 (hereinafter referred to as "PCMS Class I Rules"). Rule 9 deals with the matters of recruitment and provides that recruitment to any post in service excepting the post of Director (Health Services), Joint Director (Health Services) and Dy. Director (Health Services) be made in the manner prescribed therein. Rule 9A dealing with the appointment to the senior posts provides:

*"Appointment to Senior Posts - No person shall be appointed -*

- E (a) to the post of Director, Health Services, unless he has an experience of working on the post of Joint Director, Health Services for a minimum of one year.
- F (b) to the post of Joint Director, Health Services, unless he has been a member of service for a minimum period of twelve years including two years as Deputy Director, Health Services, and
- (c) to the post of Deputy Director Health Services, unless he has been a member of the service for a minimum period of ten years."

G According to sub-rule (c) of Rule 9A, a person cannot be appointed to the post of Deputy Director unless he has been the member of the service for a minimum period of 10 years. "Service" has been defined as: "Service means the Pubjab Civil Medical (State Service Class I)"

H It has not been disputed before us that at the relevant date when the

respondent No.3 was recommended for promotion, he had not completed 10 years of service within the meaning of Rule 9A read with Rule 2(2) of the PCMS Class I Rules. As the respondent NO.3 was not possessing the requisite qualifications on the relevant date, he could not be considered for promotion to the post of Deputy Director, Health Services.

We do not agree with the High Court that even without amending the rules, the respondent-State could have declared the PCMS Class II as PCMS Class I. The notification dated 9th April, 1989 reads as:

“In pursuance of the recommendations of the Committee for the removal of anomalies in the Revised Scales of pay of Punjab Civil Medical Services, the President of India is pleased to declare the PCMS (Class II) as PCMS (Class I). There will be only one service with the nomenclature of PCMS (Class I) with effect from 1.1.1986.

The necessary amendments in the service rules of PCMS (Class II) and PCMS (Class I) will be made separately.

This issue with the concurrence of the Finance Department conveyed vide their I.D. No.10/27/89-FPI, dated 20.3.89.” (Emphasis Supplied)

A perusal of the notification clearly indicates that the Government itself was aware that the two classes of service cannot be equated or treated alike without amending the rules. There is no dispute that the rules have not been amended so far. The Departmental Promotion Committee, therefore, erred in recommending the promotion of respondent No.3, ignoring the rules and only relying upon a notification.

The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the rules, the Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a Government Order and ignoring the mandate of Article 309 of the Constitution.

A As respondent NO.3 was not eligible for consideration to the post of Deputy Director, Health Services, the Departmental Promotion Committee committed a mistake in recommending him. Consequent promotion of respondent No.3 on the basis of recommendation of the Departmental Promotion Committee being contrary to law is liable to be set aside.

B Learned counsel appearing for both the parties addressed arguments regarding the claims and counter claims of the appellant and respondent No.3 to the post of Deputy Director, Health Services to which the respondent No.3 is stated to have become eligible by now. We refrain to comment upon such submissions in view of the order which we propose to pass in this appeal.

C Accordingly this appeal is allowed by setting aside the impugned judgment. The recommendation of the Departmental Promotion Committee and consequential promotion to the post of Deputy Director, Health Services is set aside and the said post of Deputy Director, Health Services in the State of Punjab is declared to have fallen vacant forthwith. The respondent-State is directed to appoint a fresh Departmental Promotion Committee who shall consider the cases of all the eligible officers including the appellant and respondent No.3 and recommend for promotion any of the eligible persons from the service in accordance with the Service Rules totally ignoring notification dated 9th April, 1989.

E No costs.

B.S.

Appeal allowed.