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STATE OF RAJASTHAN
v.
UCCHAB LAL CHHANWAL
(Civil Appeal No. 9544 of 2013 etc.)

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OCTOBER 22, 2013
[ANIL R. DAVE AND DIPAK MISRA, JJ.]

PRACTICE AND PROCEDURE:

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Promotion - Challenged before High Court in writ petition - Persons junior to respondents, but promoted, not arrayed as parties in writ petition filed by respondents - Writ petition allowed by High Court - Held: Once respondents are promoted, the persons who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of principles of natural justice -- On this singular ground, judgments of single Judge and Division Bench of High Court are set aside - However, the finding of High Court holding that circular dated 26.7.2006 was not applicable as the controversy relating to promotion pertained to the year 1996-97, is unexceptionable and is concurred with - Service law - Government of Rajasthan Circular dated 26.7.2006 - Rajasthan Police Service Rules, 1954.

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Party - Non-joinder of affected party - Effect of.

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The writ petition of the respondent in C.A. No.9544 of 2013 challenging the order dated 1.12.1992 awarding him punishment of censure and on that basis denying him promotion by order dated 22.8.1997 was allowed by single Judge of the High Court who quashed the order dated 1.12.1992 and held that the writ petitioner was entitled to promotion to the senior scale. The Division

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Bench of the High Court dismissed the writ appeal filed by the department. A

Allowing the appeals in part, the Court

HELD: 1.1 The dispute relates to promotion which will have impact on inter se seniority. There were specific averments in the writ petition that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted by order dated 20.8.1997. [para 11 and 15] [26-D-E; 28-D] B

1.2 Once the respondents are promoted, the persons who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them, as that would go against the basic tenet of the principles of natural justice. On this singular ground, the orders of the writ court as well as the Division Bench pertaining to grant of promotion to the respondents are set aside. [para 15-16] [28-E-G; 29-B] C D

Vijay Kumar Kaul and Others v. Union of India and Others 2012 (6) SCR 128 = 2012 (7) SCC 610 *Indu Shekhar Singh v. State of U.P.* 2006 (1) Suppl. SCR 497 = 2006 (8) SCC 129; *Public Service Commission v. Mamta Bisht* 2010 (7) SCR 289 = 2010 (12) SCC 204; *J.S. Yadav v. State of Uttar Pradesh and Another* 2011 (5) SCR 460 = 2011 (6) SCC 570 - relied on. E F

2. As far as the conclusion of the High Court that the circular dated 26.7.2006 was not applicable as the controversy relating to promotion pertained to the year 1996-97, it is unexceptionable and is concurred with. [para 6 and 15] [24-G; 25-A; 29-A] G

B.V. Sivaiah and Others v. K. Addanki Babu and Others 1998 (3) SCR 782 = 1998 (6) SCC 720; *K. Samantaray v. National Insurance Co. Ltd.* 2003 (3) Suppl. SCR 669 = 2004 H

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(9) SCC 286; Shankar Lal Balai v. State of Rajasthan and Others 2009 (Raj.) unreported cases page 777, Satyamani Tiwari v. State of Rajasthan and Others S.B.C.W.P.No. 2878/2003 decided on 11.8.2006 - cited.

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Case Law Reference:

1998 (3) SCR 782 cited para 5

2003 (3) Suppl. SCR 669 cited para 6

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2009 (Raj.) unreported cases page 777 cited para 6

S.B.C.W.P.No. 2878/2003

decided on 11.8.2006 cited para 6

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2012 (6) SCR 128 relied on para 11

2006 (1) Suppl. SCR 497 relied on para 12

2010 (7) SCR 289 relied on para 13

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2011 (5) SCR 460 relied on para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9544 of 2013.

F From the Judgment and Order dated 11.11.2010 of the High Court of Judicature for Rajasthan at Jaipur Bench in D.B. Civil Special Appeal (Writ) No. 08449 of 2010 in S.B. Civil Writ Petition No. 6574 of 1997.

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C.A. No. 9545 of 2013.

Dr. Manish Singhvi, AAG, Amit Lubhaya, Irshad Ahmad for the Appellant.

Sandhya Goswami, Santosh Mishra for the Respondent.

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The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. Leave granted in both the special leave petitions.

2. Regard being had to the identic issue involved in both the appeals they were heard together and are disposed of by a common judgment. For the sake of convenience the facts from the appeal arising out of S.L.P. (C) No. 21202 of 2011 are adumbrated herein.

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3. The respondent was appointed in Rajasthan Police Service (Junior Scale) after his selection through Rajasthan Public Service Commission (for short "the Commission") vide order dated 19.10.1989. As stipulated in Rajasthan Police Service Rules, 1954 (for short "the Rules") the R.P.S. cadre is divided into four categories and the lowest category is in the junior scale. The persons from the junior Scale are promoted to senior scale and thereafter to super time scale. The Rules provide that the person who has six years experience in junior scale becomes eligible for consideration to senior scale. A seniority list was published on 19.8.1997 wherein the name of the respondent found place at serial number 51 in junior scale. In respect of vacancies in the promotional posts arising against the quota of 1996-97 a Departmental Promotion Committee (DPC) was convened and on the basis of recommendations of the DPC persons junior to the respondent were promoted. It is apt to mention here that the criterion for promotion was seniority-cum-merit.

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4. Be it noted, the DPC though considered the case of the respondent, yet his case was not recommended for promotion for the vacancy occurring in 1996-97 as he was imposed with the punishment of censure on 1.12.1992. However, he was promoted thereafter in the year 1998. In this backdrop the respondent approached the High Court by way of filing S.B. Civil Writ Petition No. 6574 of 1997 for quashing of the penalty of censure imposed on him on 1.12.1992 and further for setting

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A aside the order dated 22.8.1997 whereby he had been
 superseded and his juniors had been promoted. A prayer was
 made for issue of a direction to consider his candidature for
 promotion to the post of senior scale in Rajasthan Police
 Service and, if he was found suitable, to promote him with all
 B consequential benefits.

5. The writ court vide order dated 5.3.2010 came to hold
 that the promotion of the respondent could not have been
 deferred as the seniority was required to be given more
 weightage over the merit as per the decision rendered in *B. V.*
 C *Sivaiah and Others v. K. Addanki Babu and Others*¹. Being
 of this view the writ court allowed the writ petition and quashed
 the order dated 1.12.1992 as far as it denied promotion to the
 respondent to the senior scale against the vacancies of the year
 1996-97 and directed that he was entitled to promotion to the
 D senior scale against the vacancy of the year 1996-97 with all
 consequential benefits.

6. Being dissatisfied with the aforesaid order the State of
 Rajasthan preferred D.B. Civil Special Appeal (Writ) No. 08449
 E of 2010. In the appeal circular dated 26.7.2006 which sets out
 certain guidelines relating to the types of punishments and their
 impact/effect on promotion of a personnel as per which the
 respondent was found unfit to be promoted was pressed into
 service. The Division Bench vide judgment and order dated
 F 11.11.2010 placing reliance on *B.V. Sivaiah* (supra) and *K.*
*Samantaray v. National Insurance Co. Ltd.*² and the decisions
 of the High Court of Rajasthan in *Shankar Lal Balai v. State*
*of Rajasthan and Others*³, *Satyamani Tiwari v. State of*
*Rajasthan and Others*⁴ and various other pronouncements of
 G the High Court came to hold that the circular dated 26.7.2006

1. (1998) 6 SCC 720.

2. (2004) 9 SCC 286.

3. 2009 (Raj.) unreported cases page 777.

H 4. S.B.C.W.P.No. 2878/2003 decided on 11.8.2006.

was not applicable as the controversy relating to promotion pertained to the year 1996-97. The High Court further observed that in case of promotion based on seniority-cum-merit the person who had been inflicted with the penalty of censure which is a minor penalty, cannot be denied promotion without being considered and, in any case, it could not have taken into consideration in respect of the year 1996-97. Being of this view the Division Bench affirmed the order passed by the learned single Judge.

7. We have heard Dr. Manish Singhvi, learned counsel appearing for the appellant in both the appeals, Ms. Sandhya Goswami, learned counsel for the respondent in appeal arising out of S.L.P. (C) No. 21202 of 2011, and Mr. Santosh Mishra, learned counsel for the respondent in appeal arising out of S.L.P. (C) No. 21201 of 2011.

8. It is submitted by Dr. Manish Singhvi, learned counsel for the appellant, that though the respondent was entitled to be considered for promotion but the principle relating to seniority-cum-merit would come into play when he is compared with other persons and in that event the punishment of censure has to be taken note of. It is his further contention that the punishment does not stand wiped off unless the Rules/ instructions so provide. The learned counsel for the State has criticized the approach of the writ court and that of the Division Bench on the ground that there has been incorrect appreciation of facts and the view expressed ignoring the distinction between consideration for promotion and suitability for promotion is legally unsustainable.

9. Learned counsel for the respondents in both the appeals submitted that censure which is a minor punishment cannot be an impediment for the entire service career and it has to be restricted to a specified period of time and when there is consideration on the base of seniority-cum-merit, seniority has to be given due weightage. For the aforesaid purpose they pressed into service the decisions which have been relied

A upon by the High Court. It is also canvassed by them that the High Court has correctly opined that the circular cannot be made applicable retrospectively having been issued in the year 2006 to a promotional matter pertaining to the year 1996-97.

B 10. There can be no scintilla of doubt that the finding recorded by the High Court pertaining to the circular is absolutely correct and unassailable. The said circular could not have been placed reliance upon by the State to contend that the respondents could have been deprived of promotion.
C However, the said circular is totally inconsequential for the present case, for what we are going to hold.

11. Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted vide order dated 20.8.1997. They have not been arrayed as parties. Needless to emphasize, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him. In this context, we may refer with profit to the decision in *Vijay Kumar Kaul and Others v. Union of India and Others*⁵ wherein it has been held thus: -
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G "Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of

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 5. (2012) 7 SCC 610.

seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant." A

12. After so stating this Court referred to the decision in *Indu Shekhar Singh v. State of U.P.*⁶ wherein it has been held thus: - B

"56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority." C

13. In *Public Service Commission v. Mamta Bishnoi*⁷ this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10) D

"9. ... in *Udit Narain Singh Malpaharia v. Board of Revenue*⁸, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat*⁹, G

6. (2006) 8 SCC 129.

7. (2010) 12 SCC 204.

8. AIR 1963 SC 786.

9. AIR 1965 SC 1153.

A *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*¹⁰
and *Sarguja Transport Service v. STAT*¹¹.)

B 10. In *Prabodh Verma v. State of U.P.*¹² and *Tridip Kumar Dingal v. State of W.B.*¹³, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

14. In *J.S. Yadav v. State of Uttar Pradesh and Another*¹⁴ it has been held as follows:-

C "No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

D 15. In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the

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10. (1974) 2 SCC 706.

11. (1987) 1 SCC 5.

12. (1984) 4 SCC 251.

13. (2009) 1 SCC 768.

H 14. (2011) 6 SCC 570.

conclusion of the High Court relating the circular is concerned, A
it is unexceptionable and we concur with the same.

16. Consequently, the appeals are allowed in part and the B
order passed by the Division Bench as well as by the writ court
is set aside to the extent directions have been issued granting
benefit of promotion to the respondents. In the facts and
circumstances of the case, there shall be no order as to costs.⁷

R.P.

Appeals partly allowed.