PETITIONER:
JIT SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT13/02/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
DESAI, D.A.

CITATION:
1979 AIR 1034 1979 SCR (3) 194
1979 SCC (3) 37
CITATOR INFO :
O 1990 SC 857 (9,10,11)

ACT:
Punjab Police Service Rules, 1959-Rules 6 & 14-Scope of.

HEADNOTE:
The proviso to r. 6 of the Punjab Police Service Rules, 1959 relating to the appointment to the higher posts of Deputy Superintendents of Police provided that only those inspectors would be eligible for promotion who had got six years' continuous service (officiating as well as substantive) in the rank of inspector. Sub-rule (2) required that a list (called List 'G') of officers considered fit for promotion to the rank of Deputy Superintendent of Police be prepared by the State Government in consultation with the State Public Service Commission and appointments shall be made by promotion from persons brought on that list. In view of an urgent need to make a number of appointments of Deputy Superintendents of Police, an executive order was issued in 1965 reducing the period of six years continuous service to four years. Respondents 4 to 37 were accordingly promoted on an ad hoc basis as officiating Deputy Superintendents of Police. The first list 'G' prepared in term of r. 6(2) was sent for approval of the Service Commission on 7th January, 1966 and in September, 1966 a supplementary list of inspectors who had completed four years' service after 7th January, 1966 was sent to the Commission. Both the lists were eventually approved by the Service Commission in September, 1970.

The appellants who were appointed as inspectors in May, 1963 were confirmed in May, 1966 and completed six years of service in May, 1969. Their names were not included in either the first or the supplementary list 'G' sent by the State Government to the Service Commission whereas the names of respondents 4 to 37 found a place in the list.

In rejecting the appellants' writ petition the High Court held that they had not qualified themselves for inclusion of their names in List 'G' at the time that list was drawn up by the State Government in 1966 because they had not put in the requisite period of service for being considered for inclusion in it.

Dismissing the appeal;

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HELD : 1. The appellants were not eligible for inclusion in List 'G' prepared in 1966 on the basis of the State Government's recommendation made in January and September of that year because at the relevant time only those inspectors who had put in six years of continuous service as inspector were eligible for promotion. No further supplement to List 'G' was sent for the Commission's approval after 1966. In other words the final List 'G' related only to the year 1966. The appellants who by then had not put in even four years' service could not have been promoted. [199 F, H]

2. Because of the extraordinary situation which had developed on the borders of the State, the State Government was driven to the necessity of making some

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ad hoc or temporary appointments, but it cannot be said that by reason of this, the appointments so made were made wilfully in derogation of the requirements of the rules or were meant to run down the appellants. [200 B]

3. However, the appellants' argument that the relaxation contemplated by r. 14 was restricted by considerations of "undue hardship" in any "particular case" and that it was not permissible for the State Government to reduce in the case of the respondents 4 to 37, the requirement of continuous service from six years to four for the purpose of eligibility for promotion is correct because r. 14 as it stood at the relevant time when respondents 4 to 37 were promoted did not permit any general relaxation of the nature ordered by the State Government in 1963 or 1965. The amended r. 14 could not avail the State Government because it came into force much later in January, 1969. [198 G-H, 199 C]

4. The argument that only those inspectors who had been confirmed as inspectors and held that post substantively were eligible for promotion is not correct. To accept that would only mean that an inspector who had put in six years' officiating service would not be eligible for promotion if he had not been confirmed. All that proviso (a) to r. 6 permits is that, in order to be eligible for promotion, an inspector should have got six years "continuous" service, including service in an officiating as well as substantive capacity. [198 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1849 of 1972.

Appeal by Special Leave from the Judgment and Order dated 10-11-1970 of the Punjab & Haryana High Court in C.W. No. 2547 of 1970.

Y. S. Chitale and Mrs. Urmila Sirur for the Appellant.

Hardev Singh and R.S. Sodhi for Respondents Nos. 2 and 3.

The Judgment of the Court was delivered by

SHINGHAL, J. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated November 10, 1970, by which the writ petition of the appellants was dismissed on the ground that the promotions challenged by them were made on the basis of list "G" of 1966 when they had not qualified for promotion. It has therefore to be examined whether that view of the High Court is incorrect in the facts and circumstances of the case.

A list of dates bearing on the controversy has been furnished by Mr. Y. S. Chitale, learned counsel for the appellants, and we have been told by the learned counsel for the respondents that it is correct. The facts which emerge from that list may be stated briefly for learned counsel agree that they are quite sufficient for the disposal of the appeal

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All the three appellants were appointed Inspectors of Police, by direct recruitment, on May 21, 1963, on a probationary period of three years. At that time the Punjab Police Service Rules, 1959. hereinafter referred to as the Rules, were in force, providing for appointment to the higher post of Deputy Superintendent of Police For purposes of this appeal, it will be sufficient to say that rule 6 of the Rules provided that recruitment to the Punjab Police Service, consisting of the cadre of Deputy Superintendents of Police, shall be made by promotion to the extent of eighty percent from the rank of Inspector and twenty percent by direct appointment. That was subject to the proviso that only those Inspectors would be eligible for promotion who had put in six years continuous service. It appears that as there were many vacancies in the posts of Deputy Superintendents of Police, the State Government took a decision on August 21, 1963, that the minimum requirement of six years continuous service for eligibility for promotion may be reduced to four years if about fifty percent of the vacancies were to be filled in any year; and an executive order to that effect was issued some time in 1965 under rule 14 of the Rules as it stood until its amendment on January 28, 1969. The State Government accordingly promoted the respondents Nos. 4 to 37 as officiating Deputy Superintendents of Police on ad hoc basis. As it was the requirement of sub-rule (2) of rule 6 of the Rules that appointments by promotion would be made from Inspectors "brought on list 'G' which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by Government in consultation with the Commission," a list was prepared by the State Government and it was sent for the approval of the Public Service Commission on January 7, 1966. The appellants were confirmed as Inspectors on September 10, 1966 with retrospective effect from May 21, 1966. The Government took up the question of regularising the ad hoc promotions of respondents Nos. 4 to 37 pending the approval of the draft list 'G' by the Commission. A supplementary list was prepared of Inspectors who had completed four years service after January 7, 1966, and it was sent to the Commission on September 29, 1966. Before the two lists could be examined by the Commission, the State of Punjab was reconstituted on November 1, 1966. The Commission thereupon sent a letter on December 30, 1966, to the Inspector General of Police, asking for information about the allocation of the police officers to the reorganised States and for information regarding the vacancies which remained to be filled in the State. The Inspector General of Police sent a reply on February 8, 1967. The appellants completed four years of continuous service on May 21, 1967. While the aforesaid two lists of

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1966 were pending with the Commission for the preparation of list 'G', the State Government substituted a new rule 14 on January 28, 1969. The appellants completed six years of service on May 21, 1969. The Public Service Commission asked for a seniority list of Inspectors some time in 1970, and

ultimately approved the list 'G' on September 7, 1970, consisting of the names in the two lists which had been sent by the State Government in 1966. The names of respondents Nos. 4 to 37 were thus included in that list but it did not contain the names of the appellants. They felt aggrieved and filed a writ petition in the High Court in September 1970, but it was dismissed by the High Court on November 10, 1970, as aforesaid. That is why they have come up in appeal to this Court by special leave.

Before examining the arguments which have been advanced before us, it will be proper to make a brief reference to the salient points mentioned in the reply of the State Government. It was stated there that a large number of vacancies occurred in the cadre of Deputy Superintendents of Police because several battalions of the Police force had to be sent to the Punjab-Pakistan border and it became necessary for the State Government to fill those vacancies immediately. The State Government had therefore, to reduce the minimum requirement of six years service for eligibility to appointment to the post of Deputy Superintendent of Police to four years. The State Government mentioned the circumstances in which it had to send two lists to the Commission in 1966 for the preparation of list 'G' and its ultimate approval by the Commission on September 7, 1970. The lists, it was pointed out, were prepared as in 1966, by which date the appellants had not completed four years service as Inspectors. That, according to the respondents, was the reason why their names could not be brought on that list. It was categorically stated that no names were recommended for inclusion in that list during the years 1967, 1969 and 1970, and that the assertion of the appellants to the contrary was incorrect.

It is in the light of these facts and circumstances that we shall examine the arguments which have been advanced before us by the learned counsel for the appellants. The main controversy is that relating to the meaning and the application of rule 6(1) of the Rules which provides as follows,-

"6. Method of recruitment.-(1) Recruitment to the Service shall be made-

(i) Eighty per cent by promotion from the rank of Inspector and twenty per cent by direct appointment:

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Provided that only those Inspectors will be eligible for promotion who-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service (officiating as well as substantive) in the rank of Inspector: and"

We are not concerned with part (b) of the proviso as it relates to the promotion of Prosecuting Inspectors.

It has been argued that only those Inspectors were eligible for promotion as Deputy Superintendent of Police who had been confirmed as Inspector and held that post on a substantive basis. A reading of part (a) of the proviso shows however that it cannot be said to restrict the eligibility for promotion only to the substantive holders of the post of Inspector. All that it permits is that, in order to be eligible for promotion, the Inspectors should have got six years "continuous" service, including service in an officiating as well as substantive capacity. We are therefore unable to think that an Inspector who had put in

six years officiating service was not eligible for promotion as Deputy Superintendent of Police.

It has next been argued that the requirement of six years service could not be relaxed by the State Government on August 21, 1963, or thereafter in 1965, because rule 14 of the Rules as it stood until its substitution on January 28, 1969, read as follows,-

> "Where the Government is satisfied that the operation of any of the rules causes undue hardship in any particular case, it may, by order, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that the case is not dealt with in a manner less favourable to the person concerned than provided by the relevant rule."

It has therefore been urged that the relaxation contemplated by that rule was restricted by considerations of "undue hardship", in any "particular case", and that it was not permissible for the State Government to reduce the requirement of continuous service from six years to four years for purposes of eligibility for promotion to the Punjab Police Service. The argument is correct because rule 14 as it stood at the relevant period of time when promotions of respondents (Nos. 4 to 37) were made, did not permit any general relaxation of the

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nature ordered by the State Government in 1963 or 1965. It is true that rule 14 was amended and a new rule was inserted on January 28, 1969, to the following effect-

> "7. General power to relax rules.-where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

That was a rule of general application, and it appears that there is justification for the argument of the learned counsel for the respondents that it could not authorise the kind of relaxation which was made by the State Government in 1963 and in 1965, but the fact remains that it could not avail the State Government as the new rule came into force much later on January 28, 1969. It would thus follow that the respondents were not eligible for promotion because the relaxation which was ordered in 1963 and 1965 was not warranted by the old rule 14 as it stood at that time. The question however remains whether the appellants could possibly succeed in their appeal before us for that reason.

While examining this aspect of the matter we shall have regard to the requirement of rule 6, as it stood before its amendment on January 28, 1969 and disregard the relaxation orders of 1963 and 1965 as they were not warranted by the provisions of that rule. And as that rule made a clear provision that only those Inspectors would be eligible for promotion who had got six years continuous service as Inspectors, it would follow that the appellants were not eligible for promotion until May 21, 1969 as they had been appointed only on May 21, 1963. In other words, they were not eligible for inclusion in list 'G', which was prepared under sub-rule (2) of rule 6, as it was prepared in 1966 on the basis of the State Government's recommendations dated January 7, 1966, and September 29, 1966. It may be recalled that the State Government have categorically stated that they did not send any list thereafter, for the Commission's approval. We have made a reference to the facts and

circumstances in which the Commission did not find it possible to finalise list 'G' until 1970, but the fact remains that the list contained names upto the year 1966. In other words, the final list 'G' related only to the year 1966, and as the appellants had not put in even four years of service by then, what to say of six years service in terms of clause (a) of the proviso to sub-rule (1) of rule 6 of the Rules, their names could not possibly be included in that list. When that was so, they could not have been promoted as Deputy Superintendent of
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Police because that was the basic requirement of sub-rule (2) of that rule. We have made a reference to the circumstances in which the State Government was driven to the necessity of making some ad hoc or temporary promotions because of the extraordinary situation which had developed on the border of the State, and as it was the Public Service Commission which delayed the finalisation of list 'G', it cannot be said that the ad hoc appointments of the respondents were wilfully made in derogation of the requirement of the Rules, or were meant to run down the appellants. In fact, as has been explained above, the appellants were, in any view of the matter, not eligible for promotion as their names were not included in list 'G' as it emerged from the Public Service Commission in 1970. The High Court therefore cannot be blamed if it took the view that as the appellants had not qualified for promotion when list 'G' was drawn up by the State Government in 1966, they could not succeed in their claim in the writ petition. Their names did not appear in list 'G' which was approved by the Commission in 1970, whereas the names of respondents Nos. 4 to 37 appeared in it and it is not in dispute that they had all completed 6 years' continuous service much before the appellants. The appellants have not therefore been able to show that they had any legal right for promotion before the respondents.

There is thus no force in the arguments which have been advanced by the learned counsel for the appellants and the appeal is dismissed. In the circumstances of the case, we shall leave the parties to bear their own costs.

N.V.K. Appeal dismissed.
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