

PETITIONER:
SATNAM SINGH AND ORS.S.K.SINGAL AND ORS.

Vs.

RESPONDENT:
THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH, THROUGH ITS

DATE OF JUDGMENT: 07/02/1997

BENCH:
J.S. VERMA, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO.3704 OF 1990
J U D G M E N T

J.S. Verma, J.

High Court Establishment (Appointment and Conditions 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.

Rule 16 of the above Rules prescribed the quota for filling the posts of Assistants by specifying that 50% of the posts shall be filled 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.

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 promotes and Civil Appeal No. 3705 is by direct recruits against the same judgment dated February 21, 1989.

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 I, 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 promotes 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 promotes 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 promotes 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 Vs. 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 promotes - has to 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.

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 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. The distinction has been overlooked by the High Court in applying the decision of Sunder Sham Kapoor in the present case also.

The relevant part of Article 229 is as under:

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

(1) xxx xxx xxx

(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 allowances, 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 the 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.

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 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 accordingly and the vacancies have to be filled on that basis. The High Court is 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 of vacancies available to direct recruits and promotees on this basis and to make consequential adjustment in the cadre of assistants, accordingly.