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TARSEM SINGH AND ANR.

v.

STATE OF PUNJAB & ORS.

JULY 12, 1994

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[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

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Service Law—Punjab Labour Department (State Service Class- III) Rules 1969—Rule 8(1)(a)(i)—Post of 'Labour Inspector—Promotion of ministerial staff—Whether Superintendents' in pay-scale of Rs.350-450 can seek "promotion" to post of labour inspector having pay-scale of Rs. 200-450. Suggestion made for revision of Rule 8(1)(a)(i).

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Respondents were promoted to the post of Assistant in the Punjab Labour Department in 1975 and 1977 respectively. Appellant joined the department as Stenographer in 1976. Respondents were senior to the appellants in the cadre of Assistant/Stenographer. Respondents were further promoted to the post of Superintendent in 1988. The appellants were promoted to the post of Labour Inspector Grade I under Rule 8(1)(a)(i) in 1991. The respondents challenged the promotion of the appellants before the High Court on the ground that the post of Superintendent held by them, was a ministerial post and as such they being ministerial employees were entitled to be promoted to the post of Labour Inspector earlier to the appellants.

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The question for consideration was whether the Superintendents in the pay-scale of Rs. 350-450 (revised Rs. 2000-3500) can seek "promotion" to the post of Labour Inspector having the pay-scale of Rs. 200-450 (revised Rs. 1500-2600). The High Court answered the question in the affirmative. This appeal by way of special leave is against the judgments of the High Court.

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Allowing appeal, this Court

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HELD : 1.1. The language of Rule 8(1)(a)(i) of the Punjab Labour Department (State Service Class-III) Rules 1969 on the face of it is deceptively ambiguous. There is no indication in the rule as to how and in what manner the promotions of such a large number of ministerial employees (16 cadres) to the cadre of labour inspector is to be regulated. [456-E; 457-A]

1.2 Only those ministerial employees are eligible for promotion under Rule 8(1)(a)(i) who are in the pay-scale which is equal or lower than the pay scale of the post of the Labour Inspector. The State Government was justified in issuing the instructions dated May 5, 1991 to the effect that promotions to the posts of Labour Inspector Grade-II and Grade-I from the ministerial cadre shall be from the incumbents holding the posts of lower scales or the same scale and the persons holding posts carrying higher scale of pay shall be deemed to have forfeited their right to be considered for promotion to the rank of Labour Inspector Grade-I. It is, therefore, justifiable to hold that when an Assistant/Stenographer accepts promotion to the post of Superintendent he would be deemed to have foregone his option to be considered for the post of Labour Inspector.

[457-E-F; 458-C-D]

1.3 The State Government is requested to reconsider the whole question of promotion of ministerial employees to the post of Labour Inspector afresh. It would be advisable to revise Rule (8)(1)(a)(i) by proper application of mind. In case the post of Assistant/Stenographer continues to be in the grade higher than that of Labour Inspector, it would be open to the State Government to exclude the same as feeder category for appointment as Labour Inspector by way of promotion under Rule 8(1)(a)(i) of the Rules. [459-A-B]

1.4 In the instant case, since the post of Assistant/Stenographer has always been considered to be a lower post than that of the Labour Inspector, this court is not inclined to interfere with the promotion of the appellants to the post of Labour Inspector. [459-A]

CIVIL APPELLANTE JURISDICTION : Civil Appeal Nos. 3335-36 of 1993.

From the Judgment and Order dated 12.2.93 of the Punjab & Haryana High Court in L.P.A.Nos. 6 & 7 of 1992.

P.P. Rao, Anant Vijay Palli, Atul Sharma and Ms. Rina Agarwal for Mrs. Rekha Palli for the Appellants.

D.V. Sehgal, Balram Gupta and A.K. Mahajan for the Respondent Nos. 3 & 4.

R.S. Yadav and G.K. Bansal for the Respondent.

A The Judgment of the Court was delivered by

B **KULDIP SINGH, J.** The recruitment and conditions of service of persons appointed to Class III Service in the Punjab Labour Department are regulated by the statutory rules called the Punjab Labour Department (State Service Class III) Rules, 1969 (the Rules). Rule 8(1)(a)(i) of the Rules is relevant for the purposes of these appeals. It would, however, be useful to reproduce rule 8(1) as a whole:-

"8. Recruitment to the Service shall be made in the manner indicated below:-

C 1. Field and Technical Staff

(a) In the case of Labour Inspectors-

D (i) by promotion from amongst the Wage Inspectors and ministerial employees who are members of the Punjab Labour Department (State Service Class III) having three years' experience of the working of labour laws as such;

E (ii) by transfer of a person who possesses educational and other qualifications as provided for in rule 9 and is already in the service of the Government of India or of a State Government; and

(iii) by direct appointment:

F Provided that 60 per cent of the vacancies shall be filled in by the method prescribed by sub-clause (i) (35) per cent out of Wage Inspectors and 25 per cent out of ministerial employees mentioned in sub-clause (i) and 40 per cent of the vacancies shall be filled in by methods prescribed by sub-clauses (ii) and (iii) and the number of persons appointed by transfer shall not exceed 5 per cent of the total personnel recruited through the method of direct appointment."

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H The expression "ministerial employee" has not been defined under the rules. Appendix 'A' to the rules, however, mentions 16 posts including Superintendent, Head Assistant, Legal Assistant, Accountant, Assistant/Head Assistant, Stenographer etc. under the heading "ministerial staff". It is, therefore, assumed that all the persons who are working against

the 16 posts mentioned under the heading "ministerial staff" are ministerial employees and, as such, are eligible for promotion to the post of Labour Inspector. Appendix 'A' to the rules indicates the scales of pay - as initially fixed - of various posts governed by the rules. The pay-scale for the post of Labour Inspector, which is a part of the field and technical staff, was Rs.200-10-300/15-450/. The pay-scales of the relevant ministerial staff were as under:-

1. Superintendent Rs.350-20-450

2. Assistant/Head Clerk 116-8-180-10-250

3. Stenographer 160-8-180-10-250

The order of filling the vacancies in the cadre of Labour Inspectors by promotion/direct appointment/transfer under the rules is as under:-

"(1) Labour Inspectors (out of a block of twenty vacancies)

By promotion of Wage Inspectors-1st 2nd, 6th, 10th, 11th, 14th and 18th vacancy.

By promotion of ministerial staff - 3rd, 9th, 13th, 17th and 19th vacancy.

By direct appointment including transfer - 4th, 5th, 7th, 8th, 12th, 15th, 16th and 20th vacancy."

Rule 10 of the rules provide that persons appointed to the service shall remain on probation for a period of two years if recruited by direct appointment and one year if recruited otherwise. The second proviso to the rule, however, provides that the total period of probation including extension, if any, shall not exceed three years. Rule 12 of the rules provides that the seniority *inter-se* of the members of the service in each cadre shall be determined by the continuous length of service on a post in the cadre of the service.

The question for our consideration is whether the Superintendents in the pay-scale of Rs.350-450 (revised Rs.2000-3500) can seek "promotion" to the post of Labour Inspector having the pay-scale of Rs.200-450 (revised Rs.1500-2640). A learned single Judge of the Punjab and Haryana High

- A Court has answered the question in the affirmative. The Letters Patent Bench has upheld the judgment of the learned single Judge. This appeal by way of special leave is against the judgments of the High Court.

- B Naresh Kumar and Tarsem Kumar, respondents in the appeals herein, were promoted to the post of Assistant in the Punjab Labour Department on December 4, 1975 and February 17, 1977 respectively. Tarsem Singh - appellant, joined the department as Stenographer on March 15, 1976. Roshan Lal - appellant, was promoted to the post of Assistant on March 3, 1977. It is not disputed that Naresh Kumar and Tarsem Kumar were senior to the appellants in the cadre of Assistant/Stenographer. The respondents were further promoted to the post of Superintendent on July 22, 1988. The appellants were promoted to the post of Labour Inspector Grade I under rule 8(1)(a)(i) of the rules on May 8, 1991. The respondents challenged the promotion of the appellants to the post of Labour Inspector by way of a writ petition before the High Court on the ground that the post of Superintendent held by them, was a ministerial post and as such they being ministerial employees were entitled to be promoted to the post of Labour Inspector earlier to the appellants. As mentioned above, this contention of the respondents was accepted by the High Court.

- E We are constraint to say that the language of rule 8(1)(a)(i) on the face of it is deceptively ambiguous and, has led to this unnecessary litigation between the employees. Often, we come across statutory rules/executive instructions, purporting to regulate the conditions of service of the government employees, which are drafted in such a casual manner that they create problems for the employees rather than straightening their service - conditions. Lack of application of mind is writ large on most of the statutory rules/executive instructions regulating the recruitment and conditions of service of the employees. It is high time that the concerned government authorities should have a fresh look at the existing rules/executive instructions with a view to make them simple and easy to operate.

- G Rule 8(1)(a)(i) of the rules provides that 25 per cent of the posts of Labour Inspector are to be filled by way of promotion from amongst the ministerial employees. There are 16 cadres under the heading "ministerial staff", employing large number of persons. Every ministerial employee can stake his claim to be considered for promotion to the post of Labour

Inspector. There is no indication in the rule as to how and in what manner the promotions of such a large number of ministerial employees to the cadre of Labour Inspector is to be regulated. A

A person holding the post of Superintendent may be a "ministerial employee" but unless his appointment to the post of Labour Inspector can be made by way of promotion, he is not eligible under Rule 8(1)(a)(i) of the Rules. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour. Opting to come to a lower pay-scale or to a lower post cannot be considered a promotion, it is rather a demotion. A Superintendent in the Labour Department who is holding a higher pay-scale and higher status cannot seek promotion to the post of Labour Inspector which post is lower in grade and status. Since a ministerial employee - under Rule 8(1)(a)(i) - can be appointed Labour Inspector only by the process of promotion, a Superintendent, who is in a higher pay-scale, cannot seek promotion to the post of Labour Inspector and as such is not eligible for the same under Rule 8(1)(a)(i). Even otherwise it is difficult to comprehend why a person drawing a higher pay-scale and enjoying a better status as a civil servant should hanker for a post which is carrying lesser pay and is comparatively of lower status. We are, therefore, of the view that only those ministerial employees are eligible for promotion under Rule 8(1)(a)(i) who are in the pay-scale which is equal or lower than the pay-scale of the post of the Labour Inspector. The State Government was justified in issuing the instructions dated May 5, 1991 to the effect that promotions to the posts of Labour Inspector Grade-II and Grade-I from the ministerial cadre shall be from amongst the incumbents holding the posts of lower scales or the same scale and the persons holding posts carrying higher scale of pay shall be deemed to have forfeited their right to be considered for promotion to the rank of Labour Inspector Grade-I. The High Court fell into patent error in holding that the instructions ran counter to the provisions of Rule 8(1)(a)(i) of the Rules. When examined in view of the meaning given by us to the expression "promotion", the instructions are only supplemental to the Rules and are not contrary to the same. B
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We may examine the question from another angle. The appellants and the respondents were working as Assistants/Stenographers and were ministerial employees in the service of the Labour Department of the H

- A Punjab Government. The respondents were promoted to the post of Superintendent in the year 1988. Thereafter some more persons may have been appointed as Superintendents by way of transfer or by direct recruitment. If the respondents, after holding the post of Superintendent for more than three years, are permitted to seek appointment as Labour Inspectors and the appellants in turn are promoted as Superintendent then an anomalous situation regarding seniority may arise. It may not be possible to appoint the appellants in place of the respondents with retrospective effect from the year 1988 as, meanwhile, some persons may have been appointed as Superintendents by direct recruitment or by way of transfer. The appellants are bound to be given seniority below these persons. In any case it would be difficult rather impossible to operate the rules homogenously. It is, therefore, justifiable to hold that when an Assistant/Stenographer accepts promotion to the post of Superintendent he would be deemed to have foregone his option to be considered for the post of Labour Inspector.
- D It was argued by the learned counsel for the respondents that as at present the pay-scale of the post of Assistant/Stenographer is higher than that of Labour Inspector and, as such, even the appellants are not eligible for promotion to the post of Labour Inspector under Rule 8(1)(a)(i). It is no doubt correct that as a result of re-revision of the pay-scales the Assistants/Stenographers have been given a higher pay-scale. According to the Labour Commissioner the matter regarding the revision of the pay-scale of the Labour Inspectors vis-a-vis Assistant/Stenographer is still under consideration. It is not disputed that till January 1, 1986 the Assistants/Stenographers were in a lower pay-scale as compared to the Labour Inspectors and from the date, on the recommendation of the Third Pay Commission, Assistants/Stenographers/Labour Inspectors Grade I were given the pay-scales of Rs.1500-2640. Thereafter on further representation by the ministerial staff and on the recommendation of the Anomalies Committee the Government has re-revised the pay-scale of Assistants/Stenographers to Rs. 1800-3200 by the rules which came into force on June 15, 1990. The pay-scale of the Labour Inspectors however, has not as yet been revised. The Labour Commissioner, Punjab in his letter dated February 25, 1991 addressed to the Secretary to Government, Punjab, Labour & Employment Department, Chandigarh has stated that there is great resentment in the Inspectorate staff and there is a hope that their pay-scales would be revised very soon especially when the Third Pay

Commission had put the Assistants/Stenographers and Inspectors in one category. Since the post of Assistant/Stenographer has always been considered to be a lower post than that of the Labour Inspector, we are not inclined to interfere with the promotion of the appellants to the post of Labour Inspector. We, however, request the State Government to reconsider the whole question of promotion of ministerial employees to the post of Labour Inspector afresh. It would be advisable to revise Rule 8(1)(a)(i) by proper application of mind. In case the post of Assistant/Stenographer continues to be in the grade higher than that of Labour Inspector, it would be open to the State Government to exclude the same as feeder category for appointment as Labour Inspector by way of promotion under Rule 8(1)(a)(i) of the Rules.

We, therefore, allow the appeals, set aside the judgment of the learned single Judge and of the Division Bench of the High Court and dismiss the writ petitions filed by the respondents before the High Court. No costs.

A.G.

Appeals allowed.