

PETITIONER:
RAM SARAN AND ANR. ECT.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS. ETC.

DATE OF JUDGMENT 22/02/1991

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
AHMADI, A.M. (J)
RAMASWAMI, V. (J) II

CITATION:
1991 SCR (1) 729 1991 SCC (2) 253
JT 1991 (1) 569 1991 SCALE (1) 359

ACT:

Service and Labour Law: Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956/Punjab Excise and Taxation Department (State Service Class II) Rule 57 Punjab Excise Subordinate Service Rules, 1943-Rules 7(a)(ii).

Rule 5-Punjab Excise and Taxation Department (State Service Class-II) Rules-Promotion of ministerial staff cadre as Excise and Taxation Officers-Abolition of cadre of Assistant Excise and Taxation Officers eligibility requirement for Excise/Taxation Inspector 5 years minimum experience as such-Employees on deputation/transfer or holding post in different cadre not entitled to claim service in that cadre to be treated experience in the ministerial cadre.

HEADNOTE:

In the Punjab Excise and Taxation Department there were two separate cadres known as "Assistant Excise & Taxation Officers" governed under the State Service Class III-A Rules, 1956 and "Excise & Taxation Officers" governed by the State Service Class II Rules. Under the class II Rules, appointments were made in the ratio of (a) 50% by direct recruitment and (b) 50% by promotion from amongst Assistant Excise and Taxation Officers. Likewise under the Class III-A Rules 50% of the vacancies were filled by direct recruitment and 50% by promotion from the subordinate staff comprising the Taxation Inspectors, Excise Inspectors, Ministerial Staff Head Office and Ministerial Staff Sub-office who within themselves had shares as laid down.

The Writ Petitioners and the contesting respondents-Ram Saran and O.P. Singhla had initially joined the Punjab Excise and Taxation Department as clerks and were confirmed as such. The Petitioners were promoted and appointed as Excise/Taxation Inspectors by transfer under Rule 7(a)(ii) of the Punjab Excise Subordinate Service Rules, 1943 and their lien in the taxation department suspended under Rule 3.14(b) of the Punjab Civil Service Rules. Whereas Ram Saran and O.P. Singhla continued in the ministerial cadre and were Assistant and Superintendent respectively at the relevant time.

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Following reorganisation of the department, the carde of Assistant Excise & Taxation Officers was abolished and all the Assistant Excise & Taxation Officers were redesignated as Excise and Taxation Officers. Consequently Class III-A Rules became redundant. As under Class II Rules there was no provision for promotion of subordinate staff direct as Excise & Taxation Officers the Government in order to provide avenues of promotion to the ministerial carde including Taxation Inspectors and Excise Inspectors brought in suitable amendments to these Rules on the following terms.

"Rule 5. The members of the service shall be recruited in the following manner namely:

(a)

(b). In the case of an Excise and Taxation Officer;

(i) by promotion from amongst the Taxation Inspectors and Excise Inspectors who have an experience of working as such for a minimum period of five years; or

(ii) by promotion from amongst the Superintendents, Assistant Accountants and Senior Scale Stenographers working in the Excise and Taxation Commissioners Head Office and in the Divisional and District Offices of the Department of Excise and Taxation, Punjab."

Applying the draft amended Rules before they were formally promulgated the contesting respondents Ram Saran and O.P. Singhla were promoted as Excise & Taxation Officers on 22.8.1983. The Writ Petitioners who had been transferred earlier to other cadres of Excise/Taxation Inspectors and worked there for 14/15 years beyond the probation period were not considered. They therefore, filed writ petitions in the High Court challenging the promotion of the appellants mainly on the ground that on the basis of their seniority and lien in the ministerial cadre, they had a right to be considered for promotion prior to the appellants.

The appellants and the State contended that if the Petitioners wanted to be considered for this post on the basis of their lien in the ministerial cadre, they may seek reversion to this cadre and thereafter their case would be considered on merits in accordance with the eligibility as prescribed under the amended Rule 5-which includes experience of working as such for a period of five years in the ministerial

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cadre. To this reply of the Writ Petitioners was that if the service rendered by them in the other cadre as Excise and Taxation Inspectors was not considered as service rendered in the ministerial cadre, they would be ineligible for consideration to this post. The learned single judge accepted the petitioners' contention and in allowing the Writ Petitions held that there was no conscious decision to apply the draft rules and consequently the Petitioners were entitled to be considered for the post of Excise & Taxation Officers without any bar of eligibility as their juniors had already been considered. On appeal, the Division Bench took the view that the draft rules, though not promulgated were rightly implemented. However on the question whether service rendered by the Petitioners on transfer to the other cadres could be considered as having been rendered in the Ministerial cadre, the Division Bench relying on the decision of this court in State of Mysore & Anr. v. P.N. Nanjundiah & Anr., [1969] 3 SCC 633, held that it did and that if that is counted the petitioners would be eligible for promotion under the relevant rules with their suspended lien reviving with effect from the date it had suspended and

they shall be considered forthwith. Against this order Ram Saran and O.P. Singhla have preferred appeals by special leave and so has the State separately. Reversing the decision of the High Court and allowing the appeals dismissing the writ petitions, this Court,

HELD: From the scheme of the Rules and the method of recruitment it is clear that the petitioners while working as Inspectors on appointment by transfer to that cadre had the advantage of being considered for promotion as Officers under the amended Rule 5 out of the quota for Inspectors, while the ministerial staff to the exclusion of the Inspectors were entitled to certain percentage. [739E]

The petitioners without being on the ministerial cadre even by reversion could not claim promotion as a member of the ministerial cadre without revival of the lien. Such revival could be effected only on reversion and not while the lien remained suspended. [739F]

If the Government employee was on deputation or holding a post in another cadre, the lien shall revive as soon as he ceased to hold the post in another cadre. There is no revival of the lien during the period the employee continues to hold a post in another cadre. Therefore, during the period the suspension is operative, the employee cannot claim that he had been continuing in the post in the parent cadre and gaining experience. [740G]

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When the rule is clear and specific that for the purpose of promotion from the cadre of Superintendents, Assistants, Accountants, Senior Scale Stenographers to the post of Excise and Taxation Officers, the eligibility qualification is 'experience of working' as such for five years, the employee is not entitled to claim the experience in the ex-cadre as experience of working in the ministerial cadre. [740H-741A]

State of Mysore & Anr. v. P.N. Nanjundian & Anr., [1969] 3 SCC 633, distinguished.

C. Narasinga Rao & Ors. v. State of Andhra Pradesh by its Secretary, Vol. 2 1968 S.L.R. 644 relied upon.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 945-47 of 1991.

From the Judgment and Order dated 8.8.1990 of the Punjab & Haryana High Court in L.P.A. Nos. 266, 267 and 268 of 1986.

P.P. Rao, J. Lal, Ms. Yasmin Tarapore, S.K. Bagga and C.M. Nayar for the Appellants.

G.L. Singhi, J.K. Sibal and Ms. Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. Special leave granted.

These Civil Appeals arise from the common judgment dated 8.8.1990 of the High Court of Punjab and Haryana dismissing Letters Patent Appeals against the judgment dated 12.2.1986 of the single Judge allowing writ petitions filed under Articles 226 and 227 of the Constitution of India. Civil Appeals arising out of S.L.P. (C) Nos. 14471-73 of 1990 are filed by the State of Punjab and Civil Appeals arising out of S.L.P. (C) Nos. 14236-38 of 1990 are filed by Ram Saran and O.P. Singhla, the respondents in the writ petitions. We shall hereinafter refer the contesting respondents Ram Saran and O.P. Singhla as 'the appellants' and writ petitioners as 'the petitioners' for the sake of

convenience.

In the Punjab Excise & Taxation Department, there were two separate and distinct cadres known as Assistant Excise and Taxation

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Officers governed under the Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956 (hereinafter referred to as Class III/A Rules') and the Excise and Taxation Officers governed by the Punjab Excise and Taxation Department (State Service Class II) Rules. Under the Class II Rules, appointment to the cadre of Excise and Taxation Officers was made (a) by direct recruitment to the extent of 50% and (b) by promotion from amongst Assistant Excise and Taxation Officers to the extent of 50%. Under Class III-A Rules, subordinate staff was eligible for promotion to the extent of 50% of the vacancies of Assistant Excise and Taxation Officers and their shares were as under:

- | | |
|-------------------------------------|---------|
| (i) Taxation Inspector | 25% |
| (ii) Excise Inspector | 12 1/2% |
| (iii) Ministerial Staff Head Office | 6 1/4% |
| (iv) Ministerial Staff Sub-Office | 6 1/4% |

The appellants as well as the writ petitioners joined the ministerial cadre of the Excise and Taxation Department as Clerks and were confirmed as such. The writ petitioners were promoted to the higher post and later appointed as Excise/Taxation Inspectors in 1971-72 by transfers under Rule 7(a)(ii) of the Punjab Excise Subordinate Service Rules, 1943. On such transfer as Excise/Taxation Inspectors, the lien of the writ petitioners was suspended in accordance with the provisions of Rule 3.14(b) of the Punjab Civil Services Rules (Volume I Part-I). The appellants continued in the ministerial cadre, Ram Saran as Assistant and O.P. Singhla as Superintendent.

The Excise and Taxation Department was reorganised on 18th May, 1977. The cadre of Assistant Excise and Taxation Officers was abolished on 18th May, 1977 and the Assistant Excise and Taxation Officers were redesignated as Excise and Taxation Officers. Thereafter Class III-A Rules became redundant and inoperative and under Class II Rules became redundant and inoperative and under Class II Rules, there was no provision for promotion from subordinate staff direct as Excise and Taxation Officers.

The Government in order to provide avenues of promotion to the subordinate staff decided to make suitable amendment to the Class II Rules on the following terms:

"Rule 5. The members of the service shall be recruited in

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the following manner, namely:

- a. xxx xxx xxx
- b. In the case of an Excise and Taxation Officer;
(i) by promotion from amongst the Taxation Inspectors and Excise Inspectors who have an experience of working as such for a minimum period of five years; or
(ii) by promotion from amongst the Superintendents, Assistant, Accountants and Senior Scale Stenographers working in the Excise and Taxation Commissioners Head Office and in the Divisional and District Offices of the Department of Excise and Taxation, Punjab,"

It was further provided that there will be certain quota for each of the above categories for promotion to the rank of Excise and Taxation Officers. The State Government decided to adopt and apply the draft provision of Rule 5 in

the matter of filling up of the vacancies in the cadre of Excise/Taxation Officers before rules could be formally promulgated. Thus on 22.8.1983, Ram Saran and O.P. Singhla were promoted as Excise/Taxation Officers. The writ petitioners having been transferred to the other cadres of Excise/Taxation Inspectors have continued there for 14/15 years beyond and period of probation and also qualified the departmental test for Inspectors and they were not considered for the promotion as Excise and Taxation Officers. The writ petitions were, therefore, filed challenging the promotion of the appellant mainly on the ground that on the basis of their seniority and lien on the post in the ministerial cadre, the writ petitioners had a right to be considered for promotion to the post of Excise and Taxation Officers prior to the appellants.

The contention of the appellants as well as the State was that though the lien of the writ petitioners in the ministerial cadre was suspended in terms of Rule 3.14(b) of the Punjab Civil Service Rules, if the petitioners wanted that they should be considered for the post of Excise and Taxation Officers on the basis of their lien in the ministerial cadre, they may seek reversion and thereafter their case would be considered on merits and under rules. It was clarified by the Financial Commissioner in the order dated 7.8.1985 that the case of the writ petitioners would be considered in the light of the eligibility under the

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relevant rule, that is to say, the amended Rule 5. The eligibility prescribed under the said rule for promotion from amongst Superintendents etc. in the ministerial service includes experience of working as such for a period of five years. The writ petitioners felt that if the service rendered by them as Excise and Taxation Inspectors was not being considered as service rendered in the ministerial cadre, they would be ineligible for consideration to the post of Excise and Taxation Officers.

The learned single Judge accepted the contention of the writ petitioners that there was no conscious decision to apply the draft rules and consequently for the post of Excise and Taxation Officer, the writ petitioners are entitled to be considered without any bar of eligibility as their juniors had already been considered for the post. On appeal, the Division Bench proceeded on the assumption that the draft rules though not promulgated were rightly implemented. The Division Bench dealt with the question whether the service rendered on transfer to the ex-cadre would be available to the writ petitioners in the matter of their promotion to the higher posts thus:

"In view of this, question that calls for determination is as to whether on the return of the writ petitioners from the post of Excise and Taxation Inspectors to the Ministerial cadre, the service rendered by them on the post of Excise and Taxation Inspector could by deeming fiction be considered as having been rendered in the Ministerial cadre? The answer to this question is that such a service is to be counted as if the petitioners were always in the Ministerial cadre. Once it is held that the petitioner lien was only suspended under Rule 3.14(b) of the Punjab Civil Service Rules, the petitioners had a right to come back to their posts in the Ministerial cadre and once that is so, the rest would follow as if for all times deeming they were in the Ministerial cadre."

The Division Bench relied on the decision of this Court in State of Mysore & Anr. v. P.N. Nanjundiah & Anr., [1969] 3 SCC 633, and opined that the entire service rendered by the petitioners as Excise and Taxation Inspectors will be considered in the Ministerial cadre and if that is counted the petitioners would be eligible for promotion under the relevant rules. It rejected the contention that the petitioners could not be said to be retaining a lien in the Ministerial cadre as they had successfully completed the period of probation as Excise and Taxation

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Inspectors and they will be deemed to be confirmed there. The Division Bench endorsed the view that the revival of the lien essentially means that it stands revived with effect from the date it had been suspended, and dismissed the appeals observing:

".....we may observe that the petitioners shall now be considered forthwith for the posts of ETOs from the date their juniors were promoted and if found suitable they will be promoted to that rank from the dates their juniors were promoted and they would be entitled to all the consequential benefits arising out of their promotion from the said date."

Shri P.P. Rao, the Senior Counsel for the appellants, and Shri G.L. Sanghi, the Senior Counsel for the respondents (writ petitioners), conceded that both parties claim promotion to the post of Excise and Taxation Officers only by virtue of the provision in the amended Rule 5 of Class II Rules and, therefore, the question whether there had been conscious application of the said rule before promulgation is only academic. We agree with the view of the High Court that for the purpose of present controversy we have to assume that the amended Rules were rightly implemented before they were formally promulgated in effecting the promotions now challenged.

The appellants maintain that the Division Bench as clearly wrong, and that the petitioners in order to claim the benefit of promotion from the ministerial cadre under the amended Rules have necessarily to satisfy the eligibility test. To be more specific, they should have actual experience of five years in the ministerial cadre even when they are reverted back to that cadre.

We have said that the petitioners were appointed as Inspectors by transfer under Rule 7 of the Punjab Excise Subordinate Service Rules, 1943 and thereafter they belonged to a different cadre. Their lien had also been suspended after three years.

The Punjab Civil Services Rules, Volume, I, Part I, Rule 3.14 reads:

"3.14. (a) A competent authority shall suspend the lien of a Government employee on a permanent post which he holds substantively; if he is appointed in a substantive capacity-

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- (1) to a tenure post, or
- (2) to a permanent post outside the cadre on which he is borne, or
- (3) provisionally, to a post on which another Government employee would hold a lien, had his lien not been suspended under this rule.

(b) A competent authority may, at its option, suspend the lien of a Government employee on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause

(a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien, for a period of not less than three years.

(c) xxx xxx xxx

(d) If a Government employee's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the Government employees appointed to hold it substantively shall acquire a lien on it: Provided that the arrangements shall be reversed as soon as the suspended lien revives.

Note 1. xxx xxx xxx
Note. 2.-When a post is filled substantively under this clause, the appointment will be termed "a provisional appointment"; the Government employee appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

(e) xxx xxx xxx

(f) A Government employee's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceased to be on deputation out of India or on foreign service or to hold a post in another cadre ..."

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According to the appellants, the respondents having been transferred to the cadre of Excise and Taxation Inspectors and having continued there for 14/15 years beyond the period of probation, their lien over ministerial post was suspended. The consideration of their names for the purpose of promotion as Excise and Taxation Officers from the ministerial post did not arise. The amended Rule introduced eligibility that would exclude the service rendered by the petitioners in other posts and if such service is excluded, the petitioners would be ineligible. The lien of the petitioners had been suspended by the competent authority under the mandatory provisions of Rule 3.14(b) referred to. They could seek reversion to their parent ministerial cadre and claim consideration for promotion to the post of Excise and Taxation Officers according to their eligibility and suitability. The next below rule does not apply to the case of promotion to the higher posts in other cadres under specific rules governing promotions to those cadres.

The recruitment to the post of Excise and Taxation Officer is governed by Punjab Excise and Taxation Department (State Service Class II) Rules, 1956. The eligibility of Taxation Inspectors and Excise Inspectors and members of ministerial establishment for the post is governed by the amended Rule 5. According to the proposed Rule 5(b)(ii), promotion to the post of Excise and Taxation Officer is to be made from amongst the Superintendents, Assistants, Accountants and Senior Scale Stenographers working in the Excise and Taxation Commissioners Head Office and in the District and Divisional Offices. In view of this provision, the Taxation Inspectors and Excise Inspectors whose lien against their posts in the ministerial cadres has been suspended and who are not working on the eligible ministerial establishment posts and who have been working as Taxation Inspectors and Excise Inspectors for a long number of years cannot claim that they are to be considered automatically for recruitment to the post of Excise and

Taxation Officer. The normal line of promotion within the cadre for the members of the ministerial establishment was from the lowest post of a Clerk to the highest post of a Superintendent. So also the further channel of promotion was open to the Inspectors to the post of Excise and Taxation Officer. If the Inspectors are to be considered for the post of Excise and Taxation Officer from the quota of the ministerial establishment, that will result in the Inspectors getting two avenues for promotion while the ministerial staff losing even the one which had been provided.

The appointment to the ex-cadre posts of Excise and Taxation Inspector is made by transfer in accordance with the provisions of Rule

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7 of Subordinate Service Rules, 1943 which provide that appointment to the cadre post shall be made by transfer or deputation of an official already in Government service. It implies that any Government employee irrespective of his office can be appointed as Excise or Taxation Inspector. The Excise and Taxation Inspectors' cadre is distinctly different from the ministerial cadre having duties or functions altogether different in nature and content. Instead of waiting for their turn to be promoted from the Inspectors quota, the petitioners have laid the claim to the quota in the ministerial service. The appellants are also persons who have been confirmed in the ministerial cadre and have worked for more than 20 years as such. The result would be that there would be no promotions to the post of Excise and Taxation Officer from the ministerial staff as such, and those who got transferred as Inspectors would be getting double benefit by claiming promotion to the post of Excise and Taxation Officer as members of the ministerial staff while retaining their right to claim promotion from within the quota specifically provided for the Inspectors. The petitioners with suspended lien on the post of Clerk and continuously holding the Inspector's post for over 13 years cannot be considered to be at par with officials continuously working on the ministerial post for over 21 year.

From the scheme of the Rules and the method of recruitment, it is clear that the petitioners while working as Inspectors on appointment by transfer to that cadre had the advantage of being considered for promotion as Officers under the amended Rule 5 out of the quota for Inspectors, while the ministerial staff to the exclusion of the Inspectors were entitled to certain percentage. The petitioners without being on the ministerial cadre even by reversion could not claim promotion as a member of the ministerial cadre without revival of the lien. Such revival could be effected only on reversion and not while the lien remained suspended. When the rule requires members of the ministerial staff to have experience as such for five years to satisfy the eligibility requirement, the Inspectors cannot claim that service in the different cadre with their lien suspended be equated to service in the ministerial cadre and treated as experience in the ministerial cadre even if the functions and duties of the Inspectors may be of identical nature. The purpose of the rule is to provide promotional avenues to different categories within specified limits. The benefit intended for one category cannot be extended to another category by stretching the rules, particularly when no injustice would result. The argument that the petitioners if found ineligible would remain in the lower cadre while their juniors are being promoted to the higher

cadre

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cannot be countenanced. Even when the juniors continued in the lower ministerial cadre for long years, the petitioners were in a different cadre which had a larger promotional avenue and they are satisfied in that post. If the petitioners did not exercise their option to revert back to the ministerial cadre at the right time to qualify themselves for further promotion, the appellants cannot be deprived of the benefit they derived by continuing in the lower cadre on account of that situation. The High Court was clearly wrong in holding that the petitioners have acquired eligibility by rendering service in the cadre of Inspectors since their lien had been suspended.

The decision in State of Mysore's case (supra) is distinguishable on facts. Rule 53(b)(i) of the Mysore Service Rules considered in that case provided that service in another post whether in a substantive or officiating capacity shall count for increments in the time scale applicable to the post on which the Government servant holds a lien or as well as in the time scale applicable to the post, if any, on which he would hold a lien had his lien not been suspended. The Court noticed that the service of an officer on deputation to another department is treated as equivalent to the service in the parent department under the rule. On account of that equation between the service in the two departments, it was held that the service on deputation should be deemed to be rendered in the parent department. The ratio of the decision is, therefore, not applicable in the present case.

In C. Narasinga Rao & Ors. v. State of Andhra Pradesh by its Secretary, Vol. 2 1968 S.L.R.644, Rule 9 of the Andhra Pradesh State and Subordinate Service Rules provided that service rendered in the transferred department should be deemed to have been rendered in the parent department for promotion and seniority. And when the rule is thus specific, it was held that the petitioners' service in the police department should be deemed to have been rendered in the parent department entitling them to promotion.

If the Government employee was on deputation or holding a post in another cadre, the lien shall revive as soon as he ceased to hold the post in another cadre. There is no revival of the lien during the period the employee continues to hold a post in another cadre. Therefore, during the period the suspension is operative, the employee cannot claim that he had been continuing in the post in the parent cadre and gaining experience. When the rule is clear and specific that for the purpose of promotion from the cadre of Superintendents, Assistants, Accountants, Senior Scale Stenographers to the post of Excise and

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Taxation Officers, the eligibility qualification is 'experience of working 'as such' for five years' the employee is not entitled to claim the experience in the ex-cadre as experience of working in the ministerial cadre.

In the light of what has been stated above, we are unable to uphold the decision of the High Court. The writ petitions are liable to be dismissed. Accordingly, we allow the appeals.

R.N.J.

Appeals allowed.

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