

his intention by sending a notice to the Insecticide Inspector, to lead evidence to controvert the report. If the notice in writing is not given, as envisaged under sub-section (3) of section 24, the provisions of sub-section (4) of section 24 will not come into play. Sub-sections (3) and (4) of section 24 have to be harmoniously read, and the provisions of either of the two sub-sections cannot be read in isolation of the other and on harmonious construction, the irresistible conclusion is that the person from whom the sample was taken on receipt of the test report, must intimate the Insecticide Inspector of his intention to lead evidence to controvert the report. If the notice in writing has been served on the Insecticide Inspector, the court may on the request of either of the parties send the sample for testing or re-analysis. The petitioners did not exercise the option under sub-section (3) of section 24 of the Act. At this stage it cannot be urged that their valuable right sub-section (4) of section 24 of the Act was infringed.

(5) Learned counsel for the petitioners cited some authorities to contend that sub-section (4) of section 24 of the Act gives a very valuable right to the petitioners, from whom the sample was taken. Those authorities have no applicability to the facts of the instant case, since in those authorities the dispute did not arise, rather it was not disputed that the person from whom the sample was taken, exercised his option under sub-section (3) of section 24 of the Act.

(6) The manufacturer has not challenged the complaint, and has not joined the petition; presumably it wants the matter to be tried.

(7) For the reasons stated above, the petition fails and is accordingly dismissed. The trial Magistrate is directed to proceed expeditiously with the trial of the complaint.

J.S.T.

Before : J. L. Gupta, J.

BHAGAT RAM.—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS.—Respondents.

Civil Writ Petition No. 10371 of 1991

February 11, 1992

Constitution of India 1950—Art 226 and 227—Punjab Department of Public Works (Buildings and Roads Branch) Circle offices (Class III Ministerial) Service Rules 1988—Promotion—Challenge

made to appointment of private respondents as Superintendent Grade-II—Contention of petitioner that rules create and constitute one service and state is not entitled to treat each circle as constituting a separate cadre and service—That petitioner has a right to be considered for appointment to post of Superintendent Grade-II prior to others—Held that department has consistently maintained that each circle constitutes a separate cadre—No infirmity in the impugned order.

Held, that the admitted position that ever since their entry into service. The parties have earned their promotions within their respective circles. It was on this basis, that the petitioner who had entered service as a clerk in December 1961 became a Senior Assistant in Bathinda circle on May 14, 1975 while respondents Nos. 3 and 4 who had entered service many years prior to him, were promoted as Senior Assistants later than the petitioner. Taking the totality of the circumstances into consideration and on an examination of the rules, I am of the considered view that the department has consistently maintained that each circle constitutes a separate cadre. It is on this basis that the *inter se* seniority and promotions have been ordered hithertofore. Even promotions to the rank of Superintendents Grade II have been ordered on that basis. This does not violate any of the provisions of the rules.

In view of the above, I find no infirmity in the impugned orders. The writ petition is accordingly dismissed.

(Para 5)

G. C. Gupta, Advocate, for the Petitioner.

Varinder Pal Singh, AAG (P), J. C. Nagpal, Advocate, for the Respondents.

ORDER

Jawahar Lal Gupta, J. (Oral)

(1) The petitioner herein claims that the Punjab Department of Public Works (Buildings and Roads Branch) Circle Offices (Class III Ministerial) Service Rules, 1988 (hereinafter to be referred to as the Rules) Create and constitute one service and that the respondents are not entitled to treat each circle as constituting a separate cadre and service. On this premises, the petitioner impugnes the promotions of respondents Nos. 3 to 5 from the posts of Senior Assistants to those of Superintendents Grade-II. A few facts as relevant for the decision of this controversy may be noticed.

(2) The petitioner was recruited as a Clerk in Bhatinda circle on December 12, 1961. He was promoted as a Senior Assistant in the same circle on May 14, 1975. As against this, respondent No. 3 was recruited as a clerk on September 10, 1955 in Patiala circle. Respondent No. 4 was appointed as a Clerk on May 7, 1956 in Sangrur circle. Respondent No. 5 was recruited as a Clerk in Bhatinda Circle after

the petition on May 8, 1969. It may be added that he belongs to the category of scheduled caste. Thereafter, respondent No. 3 was promoted as a Senior Assistant in Patiala circle in the year 1978. Similarly, respondent No. 4 was promoted as a Senior Assistant in Sangrur circle on June 20, 1975. Respondent No. 5 got promotion as Senior Assistant on June 6, 1975. In the year 1991, respondents Nos. 3 to 5 have been promoted as Superintendents Grade-II. While respondents Nos. 4 and 5 were promoted in their respective circles, respondent No. 3 was initially promoted in Chandigarh circle but was later on reverted to Patiala circle in October 1991. Aggrieved by these promotions, the petitioner has approached this Court. The promotions of respondents Nos. 3 to 5 as Superintendents Grade-II have been challenged primarily on the ground that the petitioner having been promoted as Senior Assistant earlier than all of them, had a right to be considered for appointment to the post of Superintendent Grade-II prior to the respondents.

(3) Two separate written statements have been filed. In the written statement filed on behalf of the official respondents viz. 1 and 2, it has been *inter-alia* averred that the post of Superintendent has to be filled up by promotion from amongst the Assistants of that circle and that a joint seniority list of the personnel working in different circles is not required to be prepared. With regard to respondent No. 5, it has been explained that he was promoted in Bhatinda circle against a reserved vacancy in his parent circle. With regard to respondent No. 3, it has been pointed out that he was promoted against the post of Patiala circle as a stop gap arrangement due to administrative reasons and that he has now been transferred back to his parent circle.—*vide* orders dated October 1, 1991. To similar effect are the averments made in the written statement filed on behalf of respondents Nos. 3 and 4.

(4) I have heard Mr. G. C. Gupta, learned counsel for the petitioner and Messrs Varinderpal Singh and J. C. Nagpal, for the respondents. Mr. Gupta, contends that the rules constitute one service. With reference to Appendix 'A', he points out that posts in different cadres like Superintendents Grade-II, Steno-graphers, Assistants, etc. etc. have been sanctioned. There is no mention of any post in a particular circle. To illustrate, he submits that a total of 19 posts have been sanctioned in the cadre of Superintendents Grade-II. In this situation, the learned counsel submits that it was incumbent on the department to prepare a joint seniority list of the personnel working in different circles and to consider the claims of the eligible persons in order of seniority for promotion to the rank of Superintendents Grade-II. The claim made on behalf of the petitioner has been controverted by the learned counsel for the respondents.

(5) A perusal of the rules no doubt shows that under rule 3, the service comprises the posts shown in Appendix 'A'. It is also correct that in Appendix 'A', the posts have not been sanctioned circle-wise. However, there is a Note in Appendix 'A' to the effect that "the number of posts indicated above give the combined strength of each category of posts in the Circle Cadres". A perusal of this Note indicates that the rule-making authority intended to constitute circle cadres. Furthermore, a perusal of rule 7 shows that "all appointments in the Service shall be made by the Superintending Engineer——" with a proviso that "in the case of Superintendent Grade II, appointment shall be made by the Chief Engineer." It is also clear from the rules that circle "means the area under the control of a Superintending Engineer". On a combined reading of the rules, I am satisfied that Superintending Engineers have been authorised to make appointments to the service in the areas under their respective control. Further, the Chief Engineer has been empowered to make appointment to the post of Superintendent Grade-II. Even the *inter-se* seniority under rule 10 of the members of the service, in each cadre, has to be determined by the length of their continuous service on a post in that cadre. Rule 10 further shows that by these rules, the provisions of the Public Works Subordinate Services (Buildings and Roads Branch) Rules, 1934 as also other certain rules were repealed. **It is also the admitted position that ever since their entry into service.** The parties have earned their promotions within their respective circles. It was on this basis, that the petitioner who had entered service as a clerk in December 1961 became a Senior Assistant in Bhatinda circle on May 14, 1975 while respondents Nos. 3 and 4 who had entered service many years prior to him, were promoted as Senior Assisants later than the petitioners. Taking the totality of the circumstances into consideration and on an examination of the rules, I am of the considered view that the department has consistently maintained that each circle constitutes a separate cadre. It is on this basis the *inter se* seniority and promotions have been ordered hithertofore. Even promotions to the rank of Superintendent Grade II have been ordered on that basis. This does not violate any of the provisions of the rules.

(6) In view of the above, I find no infirmity in the impugned orders. The writ petition is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.