

Before V. Ramaswami, CJ and G. R. Majithia, J.

MOHINDER PARTAP BAHL AND OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 562 of 1979 (O&M)

September 1, 1988.

*Punjab Civil Secretariat (State Service Class III) Rules, 1952—Rl. 9—Condition of service—Change by office order—Such order providing for competitive examination for promotion—Validity of such order—Fixation of 25 per cent quota for promotion—Validity of such fixation.*

*Held*, that the petitioners were recruited as Assistants by direct appointment against 25 per cent quota meant for the employees working in the sub-offices of the Directorate of Industries. Under the statutory rules, officials working in the Sub-Offices or the Head Office are eligible for appointment as Assistants after passing the qualifying test as provided in Rule 9(C)(iii) of the Punjab Civil Secretariat (State Service Class III) Rules, 1952. Fixation of 25 per cent quota for Clerks and Stenographers in the Sub-Offices for promotion to the post of Assistants in the Head office is justified. The office order prescribing for holding of a competitive examination is in consonance with the statutory rules and not in negation of it. It was not qualifying test but a competitive examination meant for all eligible employees of the Industries Department.

(Para 11).

*Petitioner Under Article 226/227 of the Constitution of India praying that:—*

- (i) *Send for the records of the case and after a perusal of the same.*
- (a) *Issue an appropriate writ, direction or order especially in the nature of writ of certiorari quashing the impugned seniority List, dated 8th/9th February, 1979, Annexure P. 5 and the impugned order dated 13th of February, 1979, Annexure P. 6 in pursuance whereof the settled seniority position of the petitioners has been upset to their disadvantage and the petitioner No. 1 has been reverted from the post of Officiating Head Assistant to that of Assistant only on the basis thereof, and*
- (ii) *Awards costs of this writ petition to the petitioners.*

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*It is further prayed that during the pendency of the writ petition, the operation of the impugned order, Annexure P. 5 be stayed and respondents 1 and 2 be restrained from making promotions and reversions on the basis of the impugned seniority List dated 8th/9th February, 1979 and Petitioner No. 1 be allowed to continue as Head Assistant ignoring the impugned order of reversion dated 13th of February, 1979, Annexure P. 6.*

*Civil Misc. No. 560 of 1986.*

*Application under Section 151 C.P.C. praying that this Hon'ble Court may be pleased to allow a copy of each of these clarifications, circulated by the Secretary Industries on 11th January, 1983 and 17th June, 1983, and 31st October, 1977 (copies of Annexure P. 9, P. 10, and P. 11) to be placed on record.*

G. K. Mahajan, Advocate, for the petitioners.  
D. N. Rampal, Advocate, for the State.  
P. S. Patwalia, Advocate, for the Respondents.

#### JUDGMENT

*G. R. Majithia, J.*

(1) The petitioners were Clerks in the Sub Offices of Punjab Industries Department. They were recruited as Assistants as a result of Assistant Grade Examination held by the Punjab Subordinate Service Selection Board in consequence of the instructions issued by the Director of Industries on 10th December, 1958.

(2) Respondents No. 61, 62, 63, 65, 67 and 71 (in the present writ petition) challenged the promotion by selection of the petitioners through C.W.P. No. 2062 of 1969 in this Court.

(3) The selection as challenged on twin grounds; (i) that the qualifying test for the post of Assistant prescribed by the Chief Secretary to Government of Punjab and adopted by the Director of Industries could not be prescribed as it did not find place in the service rules called The Punjab Industries Department (State Service Class-III) Rules, 1956 (for short referred to as the Rules) and (ii) that the Director of Industries by his order dated December 10, 1969 had fixed 25 per cent posts of Assistants in the Head Office for Clerks. Stenographers and other officials of Sub Offices which was also contrary to the rules.

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(4) This Court upheld the appointments of the petitioners. It was held that the writ petitioners could not challenge the appointment of the respondents (present petitioners) as when they joined the service, the impugned office order was in existence. The office order did not alter conditions of service to their prejudice and it formed part of their conditions of service. The second contention that the Director of Industries could not reserve 25 per cent posts of Assistants in the Head office for Clerks, Stenographers and other officials of Sub Offices was also negatived. The order of the learned Single Judge was challenged in L.P.A. No. 466 of 1971, but it was dismissed *in limine* on September 29, 1971.

(5) The Punjab Government issued instructions providing for qualifying test namely Assistant Grade Examination for purposes of promotion from Clerk to Assistant. These were challenged in this Court and ultimately the matter went to the apex Court and it was held that the Government cannot amend or supersede the rules by administrative instructions. If the rules were silent on any particular point, the Government could fill up the gaps and supplement the rules and to issue instructions not inconsistent with the rules already framed. The instructions issued by the Government prescribing qualifying test for promotion of Clerks to the post of Assistants added to the qualification prescribed in the rules. Punjab Civil Secretariat (State Service Class-III) Rules, 1952 (for short referred to as Secretariat Rules). By adding qualification already prescribed by the rules, the Government had altered the existing conditions of service. The instructions issued by the Government undoubtedly affected the promotion of the concerned officials, therefore, they relate to conditions of service. The Government is not competent to alter the rules framed under Article 309 of the Constitution of India by means of administrative instructions. Resultantly, the instructions prescribing for examination for promotion of Clerk to the post of Assistant were struck down. The judgment is reported as *State of Haryana v. Shamsher Jang Shukla and others* (1).

(6) In the wake of the judgment, instructions were issued by the Chief Secretary to the Government of Punjab,—*vide* letter No. 9049-SII(2)-76/15342, dated 17th June, 1976, that the Government instructions prescribing for holding of test for promotion to the post of Assistant should be deemed to have been rescinded in view of the

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(1) A.I.R. 1972 S.C. 1546.

judgment of the apex Court holding them *ultra-vires*. It was desired that fresh seniority list of the officials in the cadre of Assistants, Head Assistants, Deputy Superintendents and Superintendents, as the case may be, should be recast by restoring the *inter se* seniority as in the cadre of Clerks. The executive instructions in unequivocal terms provided that the persons who were recruited as Assistants either by transfer or direct appointment in accordance with the provisions of various service rules will not be affected in any manner in their seniority vis-a-vis promotees which should normally be determined with reference to the date of continuous officiation. It will be useful to reproduce para 12(iii) of the instructions which is as follows:—

“The persons who were recruited as Assistants either by transfer or direct appointment, in accordance with the provisions of various service rules, will not be affected in any manner in their seniority vis-a-vis promotees, which should normally be determined with reference to the date of continuous officiation. No supersession in their case should take place merely by recasting the seniority list. Thus the seniority list shall be recast firstly keeping in view the formula of one for one and second by bringing down to correct places the persons who were promoted by getting a jump in the seniority simply by passing the Assistant Grade Examination.”

(7) In the light of the instructions, referred to above, the seniority of the respondents No. 6, 9, 10, 13, 14, 15 and 16 in C.W.P. No. 2062 of 1969 (now petitioners in C.W.P. No. 562 of 1979) was redetermined and as a result thereto petitioner No. 1 was ordered to be reverted as Assistant.

(8) The petitioners who were respondents in C.W.P. No. 2062 of 1969, challenged the provisional seniority list and the resultant reversion of petitioner No. 1 through the instant writ petition. The principal ground of challenge is that these are contrary to the judgment of this Court rendered in C.W.P. No. 2062 of 1969 decided on 30th July, 1971 and the ratio of the judgment of the apex Court in *Shamsher Jang Shukla's case* (supra) was not attracted and the instructions of the State Government contained in letter No. 9049-SII(2)-76/15342 dated 17th June, 1976 were inapplicable to the present case and the present case falls under clause 12(iii) of the instructions. The respondent-State filed written statement and

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justified their action, primarily on the basis of the judgment of the apex Court in *Shamsher Jang Shukla's case*, referred to above. The validity of the executive instructions dated June 17, 1976 was sought to be justified on the ground that these were in conformity with the judgment of the Supreme Court whereby the instructions for holding the Assistant Grade Examination were struck down and the seniority list had to be recast by restoring the *inter se* seniority as in the cadre of Clerks. The writ petition came up for hearing before S. S. Sodhi, J. who in his order dated 30th April, 1986 observed that the matter deserves to be considered by a larger Bench in the context of the judgment of the Supreme Court in *Shamsher Jang Shukla's case* (supra). The order reads as under:—

“The matter here deserves consideration by a Larger Bench as it seeks to call into question the judgment of B. R. Tuli, J. in C.W.P. No. 2062 of 1969 (*Mohan Lal Agnihotri v. State of Punjab and others*) decided on July 30, 1971, some of the parties there being involved in the present petition too, in the context of the judgment of the Supreme Court in *State of Haryana v. Shamsher Chand Bahadur Shukla* 1972 S.L.R. 441, and the later decision of the Full Bench of this Court in *P. P. Kapoor and others v. State of Haryana* 1984(3) S.L.R. 597. The papers of this case are accordingly directed to be placed before the Hon'ble Chief Justice for constituting a Larger Bench.”

It is in these circumstances that the matter has been placed before us.

(9) The petitioners through C.M. No. 560 of 1986 sought permission to place on record the following two documents:—

- (i) The Chief Secretary to Government Punjab, Chandigarh, Endorsement No. 1(3)-Estt-Cell-78/3503, dated 17th April, 1980 Annexure P/7.
- (ii) The Legal Remembrancer and Secretary to Government Punjab, Chandigarh's memo No. 19648/CC-201/79 dated 12th July, 1982 Annexure P/8.

(10) No formal order has been passed on the application. However, pursuant to the directions of the learned Single Judge, an affidavit dated 29th March, 1986 of the Secretary to Government of Punjab Department of Industries was placed on the record. The

issuance of the two documents was admitted. It is desirable to reproduce the reply and it reads as under:

“The Directorate of Industrial Training, Punjab, Chandigarh, came into existence on 2nd May, 1962 consequent upon the bifurcation of the Directorate of Industries, Punjab. Some Assistants were allocated to the Directorate of Industrial Training, Punjab. Consequent upon the Hon’ble Supreme Court decision in the case of Shamsheer Jang Shukla whereby the stipulation of Assistant Grade Examination was held void, the Director of Industrial Training, Punjab sought advice regarding fixation of seniority of Assistants who were promoted/transferred against 25 per cent quota from the sub office on qualifying the Assistant Grade Examination from the Law Department,—*vide* their letter No. IT/A/HQ/Genl/91-II/22211T, dated 8th June, 1981 and D.O. reminder No. IT/A/HQ/Genl/91-II/13972T, dated 5th July, 1982. The Law Department,—*vide* their letter No. 19648/CO. 201/79 dated 12th July, 1982 advised that the Assistants appointed on competitive examination from amongst the employees of the Sub-Office and field cadre have acquired vested right against 25 per cent of the post of Assistants and as such they cannot be reverted on the basis of Shamsheer Jang Shukla case as that case is not relevant in the case of appointees appointed on competitive examination against 25 per cent posts reserved for them. It was further clarified by the Law Department that there is a clear distinction between the qualifying Assistant Grade Examination and being selected for appointment as Assistant on the basis of competitive examination. It is amply clear that the advice given by the Law Department relates to the Industrial Training Department only and not to the Industries Department, therefore, its acceptance by the Directorate of Industries, Punjab, does not arise.”

In view of the facts of this case, we allow C.M. No. 560 of 1986.

(11) It is unfortunate that the respondent-State did not recast the seniority list Annexure P/5 and rescind reversion order Annexure P/6, in the light of the advice of the Legal Remembrancer and Secretary Government of Punjab conveyed through memo No. 19648/CO-201/79 dated 12th July, 1982. In para No. 3 of the memo, it was

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specifically stated that an Assistant appointed on the basis of competitive examination from amongst the employees of the Sub Office had acquired vested right against 25 per cent posts of Assistants and could not be reverted on the basis of *Shamsher Jang Shukla's* case (supra). The note further recorded that there is a clear distinction between the qualifying test of Assistant Grade Examination and Competitive examination for selection for appointment as Assistants. Relying upon the advice, the State Government fixed the seniority in the Assistant cadre of the Headquarter of the Director of Industrial Training Punjab from the date of their continuous appointment. The case of the present petitioners is not distinct from those of the Assistants in the Directorate of Industrial Training. The distinction sought to be made by the respondents as is apparent from the affidavit of the Secretary dated March 29, 1986 between Assistants working in the Industrial Training Department and the Industries Department is unwarranted. The advice was applicable to both sets of employees. The respondent-State was not justified to dig out such a distinction when in fact it did not exist. Even otherwise the case of the petitioners falls within the exceptions mentioned in clause 12(iii) of the letter No. 9049-SII(2)-76/15342 dated 17th June, 1976. The petitioners were recruited as Assistants by direct appointment against 25 per cent quota meant for the employees working in the Sub offices of the Directorate of Industries. Under the statutory rules, officials working in the Sub Offices or the Head Office are eligible for appointment as Assistants after passing the qualifying test as provided in rule 9(c)(iii) of the rules. Fixation of 25 per cent quota for Clerks and Stenographers in the Sub Offices for promotion to the post of Assistants in the Head Office is justified. The office order prescribing for holding of a competitive examination is in consonance with the statutory rules and not in negation of it. It was not qualifying test but a competitive examination meant for all eligible employees of the Industries Department. The petitioners were selected as Assistants through the competitive examination. Thus, looking from any angle, seniority of the petitioners should have been determined in the light of clause 12(iii) of Memo No. 9049-SII(2)-76/15342 dated 17th June, 1976. The respondent-State, respondents No. 6, 9, 10, 13 to 16 and the writ petitioners are bound by the decision in Civil Writ Petition No. 2062 of 1969. This Court had held that the holding of test to adjudge the suitability of the Clerks for promotion to the post of Assistant is perfectly valid. This Court has further held that prescribing of quota of 25 per cent for the Clerks, Stenographers and other officials mentioned in rule 9(i)(g) of the Rules serving in the Sub office for appointment to the post of

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Assistant in the Head office was valid. The judgment *inter se* parties conclusively determined the rights of the parties. The decision in the previous case between the parties, even if erroneous, is binding on them. Even an erroneous decision on a question of law operates *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing on the question whether or not it operates as *res judicata*. In the earlier judgment, this Court had held that the promotion of the petitioners as Assistants was valid. The matter was not open to challenge as it stood finally adjudicated upon.

(12) In *M. S. M. Sharma v. Dr. Shree Krishna Sinha and others* (2), the question for the application of the general principles of *res judicata* arose for consideration before the apex Court in the following circumstances:—

(13) In a petition under Article 32 of the Constitution of India, the petitioners had impugned the validity of the proceedings before the Committee of Privileges of the Bihar Legislative Assembly. The debates of the Bihar Legislative Assembly were published in an English Daily Newspaper published from Patna in the State of Bihar. The Legislative Assembly initiated proceedings against the Editor. The action was challenged. The Hon'ble Supreme Court held that under Article 194(3) of the Constitution, a House of a Legislature of a State has the same powers, privileges and immunities as the House of Commons of the Parliament of the United Kingdom had at the commencement of the Constitution. The House of Commons at the relevant date had the power or privilege of prohibiting the publication of even a true and faithful report of proceedings of the House and had a fortiori the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debate or proceedings. The power or privileges of a House of State Legislature are the same as those of the House of Commons in those matters until parliament or a State Legislature, as the case may be, may by law define those powers or privileges. Until that event has happened the powers, privileges and immunities of a House of Legislature of a State or of its members and committees are the same as those of the House of Commons at the date of commencement of our Constitution.



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(14) The petitioners in the writ petition again raised the identical matter by way of writ petition under Article 32 of the Constitution of India, when a fresh notice was issued to them by the Legislative Assembly. It was in these circumstances, the Supreme Court observed as under:—

“The rule of res judicata is meant to give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy. There cannot be least doubt, though co nomine opposite party No. 2 were not the same, but there is no escape from the conclusion that the Committee of Privileges is the same Committee irrespective of its personnel at a given time so long as it was a committee constituted by the same Legislative Assembly. The question decided by this Court on the previous occasion was substantially a question affecting the whole Legislature of the State of Bihar and was of general importance and did not depend upon the particular Constitution of the Committee of Privileges. It cannot, therefore, be said that the question decided by this Court on the previous occasion had not been fully debated and had not been decided after due deliberation. That there was difference of opinion and one of the Judges constituting the Court held another view only shows that there was room for difference of opinion. It was a judgment of this Court which binds the petitioner as also the Legislative Assembly of Bihar. For the application of the general principle of res judicata, it is not necessary to go into the question whether the previous decision was right or wrong.”

(15) Applying the ratio of the decision of the Hon'ble Supreme Court, we hold that the earlier decision in C.W.P. No. 2062 of 1969 finally determined the rights of the parties and these could not be re-opened.

(16) In fairness to Mr. P. S. Patwalia, who with clarity put forward his case relying upon the ratio of the decision rendered in *Jagjit Rai Vohra and others v. The State of Haryana and others* (3), and *P. P. Kapoor and others v. State of Haryana and others* (4), urged that the judgment rendered by this Court in C.W.P. No. 2062 of

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(3) 1974(2) S.L.R. 27.

(4) 1984(3) S.L.R. 596.

1969 stood nullified as a result of *Shamsher Jang Shukla's case* (supra) and the seniority has been redetermined keeping in view the ratio of the subsequent judgments of this Court wherein this Court had held that the instructions relating to the holding of test for promotion to the post of Assistant were illegal, and the State has to redetermine the seniority of all those employees who were adversely affected by the instructions issued in the year 1958.

(17) In *Shamsher Jang Shukla's case* (supra) the apex Court has specifically observed that they had only dealt with the cases of those persons who were promoted from the cadre of Clerks in the Secretariat. The Secretariat rule did not apply to the employees other than those of the Secretariat establishment. The apex Court in para 7 specifically observed as under:—

“It may be noted that herein we are dealing only with those who were promoted from the cadre of Clerks in the Secretariat.”

The apex Court while dealing with *Shamsher Jang Shukla's case* clearly kept in mind the employees working in the Secretariat and in the Directorates. Different sets of rules govern the conditions of service of the employees working in the Secretariat and in the Directorates. In *Jagjit Rai Vohra's case* (supra), the petitioners were the members of the Haryana Civil Secretariat Service and the judgment of this Court relying upon *Shamsher Jang Shukla's case* (supra) held that the instructions contained in the Chief Secretary's letter dated 5th September, 1958 were contrary to the rules and they were invalid in view of the decision rendered by the apex Court in *Shamsher Jang Shukla's case*. The ratio of *P. P. Kapoor's case* (supra) is inapplicable to the instant case. The petitioners in that case were employees of the Civil Secretariat and their services were governed by the Secretariat Rules. The only question which the Bench of this Court answered was that the executive instructions prescribing test for promotion to the post of Assistant having been struck down by the Supreme Court, the benefit of that judgment has to be given not only to the employees who had gone to the Courts but all the employees affected by the executive instructions irrespective of their having approached this Court or not. Thus the ratio of these judgments has no application to the facts of the present case. Rules governing the conditions of service of the petitioners and the respondents were published on June 9, 1956. Rule 9(c) of the rules reads as under:—

“9. *Method of appointment.*—(1) Appointments to ministerial posts in service shall be made—

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