

apponitment had expired, the Government went on extending the appointments of the petitioners on *ad hoc* basis. If the Government, after the expiry of the period of six months from the date of initial appointment on *ad hoc* basis had not renewed the appointment of the petitioners, then admittedly they would have been reverted back to their substantive post in Class II Service. At that time, they could not have come to this Court and ask for a direction that they should be allowed to continue in the Service till the approval of the Commission was granted. That being so, I fail to understand as to how the petitioners can lay a claim as a matter of right to the post to which they were promoted on *ad hoc* basis. In the circumstances of this case, the petitioners' appointment being purely on *ad hoc* basis does not entitle them to knock the door of this Court and get relief in exercise of its powers under Articles 226 and 227 of the Constitution.

(22) No other point arises for determination.

(23) For the reasons recorded above, all these petitions are dismissed, but without any order as to costs.

C. S. Tiwana, J.—I agree.

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H.S.B.

Before A. D. Koshal, C.J. and S. S. Dewan, J.

ROSHAN LAL ANAND ETC.—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS—*Respondents.*

Civil Writ Petition No. 1385 of 1975

May 18, 1978.

*Punjab District Attorney Service Rules 1960—Rules 3, 5 and 12(1)—Word “transfer” occurring in Rule 5(2)(c)(ii)—Whether prohibits appointment by transfer which also operates as a promotion—Rule 12(1)—Whether applicable to persons appointed on the merger of their cadre.*

Held that the word ‘transfer’ occurring in sub-clause (ii) of clause (c) of sub-rule 5 of the Punjab District Attorney Service

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Rules 1960 does not prohibit an appointment which may also operate as a promotion. If a lower category officer is transferred to a higher post in another department, he would no doubt get a promotion but then it cannot be said that his promotion to the higher post is not by way of transfer. So long as the appointment satisfies the requirement that it amounts to a transfer, it would fall within the ambit of sub-clause (ii) of clause (c) even though it may also partake of the character of promotion or may have other characteristics.

(Para 3)

*Held* that seniority-cum-merit has to be the guiding principle in selecting District Attorneys under clause (i) of sub-rule (2) of rule 5. Seniority of persons whose appointments to the service were made not in the ordinary course but by way of a merger of their cadre into that envisaged by Rule 5, is governed by rule 12. In whatever way or for whatever reasons persons were appointed to the posts in the cadre, it was specifically stated in the order of appointment that they would be subject to the Rules. They are members of the cadre envisaged by rule 5 by reason of the provisions of sub-rule (2) thereof. In these circumstances there is no escape from the conclusion that they are governed by rule 12, the provisions of which are that seniority *inter se* of the members of the Service holding the same class of posts shall be determined by the dates of their continuous appointment to such posts in the Service.

(Para 7)

*Petition under article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, Direction or Order be issued, directing the respondent :—*

- (i) to produce the complete records of the case ;
- (ii) the orders of appointment of Respondents Nos. 3 to 49 Annexure 'P-2') as Assistant District Attorney be quashed.
- (iii) a writ of Mandamus be issued directing the respondents to consider the claims of the petitioners for appointment as District Attorneys before promoting any one out of Respondents Nos. 3 to 49. Promotions, if any actually made be also quashed ;
- (iv) this Hon'ble Court may also pass any other Order which it may deem just and fit in the circumstances of the case ;
- (v) this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc. etc.;

- (vi) the petitioners be exempted from filing the originals of Annexures 'P-1' and 'P-2' ;
- (vii) the petitioners be exempted from filing the copies of the writ petition for service on the respondents ;
- (viii) the petitioners be exempted from serving the five days notice as required under the High Court Rules and Orders Volume V ;
- (ix) it is further prayed that pending the disposal of the writ petition, the respondents be restrained from promoting any one out of Respondents Nos. 3 to 49 to the post of District Attorney ;
- (x) The costs of this writ petition may also be awarded to the petitioners.

J. L. Gupta, J. M. Sethi and H. S. Matewal, Advocates, for the Petitioner.

I. S. Tiwana, Addl. A.G. Punjab, Kuldip Singh Bar-at-law, for Respondents.

M. R. Agnihotri, Advocate, for Respondents.

#### JUDGMENT.

A. D. Koshal, C.J.—

(1) The circumstances giving rise to this petition under Article 226 of the Constitution of India may be briefly stated. In the year 1960 the Governor of Punjab promulgated the Punjab District Attorneys Service Rules, 1960 (hereinafter referred to as the Rules) which related to the recruitment and conditions of service of District Attorneys and Assistant District Attorneys to be employed by the Government of Punjab (hereinafter called the Government). The relevant part of rule 3 states:

“(3) (1) The service shall comprise the posts shown in Appendix ‘A’ to these rules :

“*	*	*	*
“*	*	*	*

“(2) Nothing in these rules shall affect the right of Government to make addition to, or reduction in, the cadre of the Service whether permanently or temporarily.”

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In Appendix 'A' are listed 8 posts of District Attorneys Grade I, 9 posts of District Attorneys Grade II and 9 posts of Assistant District Attorneys, all these being gazetted posts.

Rule 5 covers the method of recruitment to the Service and states:

"5. Posts in the service shall be filled in as under :—

(a) In the case District Attorneys—

(1) \* \* x \* \*

(2) \* \* x \* \*

(2) the remaining posts and all future vacancies shall be filled—

(i) by selection from amongst the District Attorneys Grade II or the Assistant District Attorneys; or

(ii) \* \* x \* \*

(iii) \* \* x \* \*

(b) \* \* \* \*

(c) In the case of Assistant District Attorneys—

(i) by selection from amongst the legal Assistants and Superintendents of the office of Legal Remembrancer; or

(ii) by transfer of an officer working under the Government of a State or of Union of India; or

(iii) by direct appointment ;

"(d) \* \* \* \*

\* \* \* \*"

Rule 12 in so far as it concerns us is also reproduced below:

"12. (1) The seniority *inter-se* of members of the service holding the same class of posts shall be determined by the dates of their continuous appointment to such posts in the Service :

\*                    \*                    \*                    \*

\*                    \*                    \*                    \*\*

(2) The ten petitioners were appointed to the posts of Assistant District Attorneys by the Government in the years 1970 and 1971 and each one of them is continuing to hold one of those posts till to-day. On the 28th of March, 1974, respondents Nos. 3 to 49, who were serving as Prosecuting Inspectors, were also appointed Assistant District Attorneys (*vide* Annexure P. 2 to the petition) with a direction that they would be governed by the Rules. In the first quarter of the year 1975 the Government proceeded to promote some of respondents Nos. 3 to 49 to the posts of District Attorneys without considering therefor the claims of the petitioners on the plea that such respondents had been serving the Government in the Prosecution Branch for long periods and that their claims for promotion at the fag-end of their career was therefore, preferable to that of the petitioners. This stand of the Government is not acceptable to the petitioners in view of the language of rule 12 and they in fact challenge the very appointment of respondents Nos. 3 to 49 as Assistant District Attorneys on the ground that such appointment was not a "transfer" within the meaning of sub-clause (ii) of clause (c) of sub-rule (2) of rule 5 but amounted to promotion which was not envisaged by the said clause (c). The prayer made by the petitioners, therefore, is that the appointment of respondents Nos. 3 to 49 as Assistant District Attorneys be quashed; that the Government and its concerned Director (who are respondents Nos. 1 and 2 before me) be directed by a writ of *mandamus* to consider the claims of the petitioners for appointment as District Attorneys before promoting any of respondents Nos. 3 to 49 as such and that if any promotions are actually made otherwise, the same be quashed.

(3) The contention raised by learned counsel for the petitioners that the appointment of respondents Nos. 3 to 49 as Assistant District Attorneys is vitiated by the contravention of clause (c) above mentioned is without substance. The use of the word "transfer" occurring in

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sub-clause (ii) of clause (c) does not prohibit an appointment which may also operate as a promotion. If a lower category officer is transferred to a higher post in another Department, he would no doubt get a promotion but then it cannot be said that his appointment to the higher post is not by way of transfer. So long as the appointment satisfies the requirement that it amounts to a transfer it would fall within the ambit of sub-clause (ii) of clause (c) even though it may also partake of the character of promotion or may have other characteristics.

(4) In support of his contention, Mr Gupta, learned counsel for the petitioners, has placed reliance on *O. P. Malhotra v. State of Punjab and others* (1). In that case, which was decided by the Supreme Court, rule 9 of the relevant rules provided that the Government in special cases and after consulting the Public Service Commission could transfer an officer already in the service of the Crown to the Punjab Service of Engineers, Buildings and Roads Branch. What the Government in that case did was to promote Assistant Engineers Class II in the Buildings and Roads Branch as Assistant Executive Engineers Class I. In holding that the promotions did not contain an element of transfer their Lordships observed :

“It is plain that rule 9 refers to the transfer of an officer employed in some service of the Crown other than the Punjab Service of Engineers in the Buildings and Roads Branch. Obviously an officer employed in the Buildings and Roads Branch of the Punjab Service of Engineers cannot be transferred to the same branch where he is already working. Respondents 2 to 4 before they were appointed as Assistant Executive Engineers, Class I, had been employed as Assistant Engineers Class II in the Buildings and Roads Branch. Clearly, their appointments to higher posts in the Buildings and Roads Branch could not have been by way of transfer as contemplated in rule 9”.

(5) Mr. Gupta lays emphasis on the words “their appointments to higher posts” and urges that what their Lordships meant was that the element of promotion militated against the appointments being transfers. To place such an interpretation on the observations would, in my opinion, be misreading them. What their Lordships stressed was that for

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(1) 1975 (2) Service Law Weekly Reporter 310.

an appointment to be a transfer to the Buildings and Roads Branch of the Public Works Department, the person appointed must be chosen from either another Branch or another Department. As the officers appointed in that case to the higher posts earlier belonged to the Buildings and Roads Branch itself, obviously their appointments in the same Branch to higher posts could not be considered transfers to that Branch and it was this aspect of the matter that was highlighted in the observations which, therefore, cannot be considered to lend support to the contention of Mr. Gupta.

(6) In the above view of the matter I hold that the appointment of respondents Nos. 3 to 49 to the posts of Assistants District Attorneys did not suffer from a contravention of sub-clause (ii) of clause (c) of sub-rule (2) of rule 5 of the Rules.

(7) The rest of the claim made by the petitioners must, in my opinion, succeed as it is not open to the Government to ignore the provisions of rule 12 of the Rules while making promotions to the posts of District Attorneys. It is admitted on all hands that respondents Nos. 3 to 49 are governed by the Rules just as the petitioners are and also that seniority-cum-merit has to be the guiding principle in selecting District Attorneys under clause (i) of sub-rule (2) of rule 5. It is urged on behalf of the Government that although the very appointment of the respondents was subject to the conditions envisaged in the Rules their seniority vis-a-vis the petitioners should not be governed by rule 12 because their appointments to the Service were made not in the ordinary course but by way of a merger of their cadre into that envisaged by rule 5. The argument is devoid of force. In whatever way or for whatever reason respondents Nos. 3 to 49 were appointed to the posts of Assistant District Attorneys, it was specifically stated in the order of their appointment that they would be subject to the Rules. It is also not denied that they are members of the cadre envisaged by rule 5 by reason of the provisions of sub-rule (2) thereof. I do not see how in the circumstances the Government or respondents Nos. 3 to 49 can escape the conclusion that they are as fully governed by rule 12 as the petitioners. The provisions in that rule being that seniority *inter se* of the members of the Service holding the same class of posts shall be determined by the dates of their continuous appointment to such posts in the Service, all the petitioners must rank senior to every one of respondents Nos. 3 to 49 in the posts of Distt. Attorneys, the former having been appointed thereto more than two years prior to any of the latter. And the criterion of selection covered by clause

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(i) of sub-rule (2) of rule 5 being admittedly seniority-cum-merit the petitioners have a right to be considered for promotion to the posts of District Attorneys before the names of any of respondents Nos. 3 to 49 are considered for that purpose.

(8) It is admitted at the Bar on behalf of the respondents that out of them respondents Nos. 3 to 8 have been given promotion to the posts of District Attorneys during the pendency of the petition without the names of any of the petitioners having been considered in that behalf. Such promotion, being illegal is, therefore, struck down and respondents Nos. 1 and 2 are directed to consider the claims of the petitioners for appointment as District Attorneys on the basis of seniority-cum-merit before promoting any one of respondents Nos. 3 to 49 to those posts. For the rest the petition is dismissed, the parties being left to bear their own costs.

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*H.S.B.*

*FULL BENCH*

*Before S. S. Sandhawalia, B. S. Dhillon and Harbans Lal, JJ.*

*CHARANJI LAL AND OTHERS—Petitioners.*

*versus*

*FINANCIAL COMMISSIONER, HARYANA, ETC.—Respondents.*

Civil Misc. No. 664 of 1978

and

Civil Writ Petition No. 5435 of 1975

April 27, 1978.

*Constitution of India 1950—Article 226—Calculated and deliberate suppression of material facts—Whether disentitles the petitioner to claim relief under the extra-ordinary writ jurisdiction.*

*Held that a mala fide and calculated suppression of material facts would disentitle the petitioners to any relief which they claimed under the extra-ordinary remedy available under the writ jurisdiction under Article 226 of the Constitution of India. In such a situation the conduct of the petitioners would disentitle them to the relief*