# The Indian Law Reports

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

SANTOKH SINGH AHLUWALIA AND OTHER,—*Petitioners*

*versus*

GOVERNMENT OF INDIA AND OTHERS,—*Respondents.*

**Civil Writ No. 944 of 1965**

December 16, 1968.

*The States Reorganisation Act (XXXVII of 1956)—Ss. 115 and 129—The Punjab Services Integration Rules (1957)—Rules—Whether* ultra vires *Sections 115 and 129 of the Act—Rule 19—Whether hit by Articles 14 and 16 of Constitution of India (1950).*

*Held,* that Punjab Services Integration Rules, 1957, are valid and are not unconstitutional or *ultra vires* section 115(5) or section 129 of the States Reorganisation Act, 1956, because (i) the Central Government retained in its own hands the general control over the activities of the State in matters of integration; (ii) that the work of integration entrusted to the State Committee and Council was merely of preparatory nature in order to have the benefit of the initial suggestions of the State authorities; (iii) that the ultimate power to approve or disapprove the provisional decisions of the State Government was retained and in fact exercised by the Central Government itself; (iv) that the steps taken by the State Government in pursuance of the broad policy decisions given by the Central Government did not amount to any delegation or abdication of the statutory functions of the Central Government and (v) that all the Central Government did in the case of integration of Punjab and Pepsu Services was to take the assistance of the State Government in matters effecting integration subject to Central Government's ultimate decision. (Paras 8 and 9)

*Held,* Article 16(2) of the Constitution of India prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1). The words "in respect of any employment" used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). Promotion to selection posts is included both under Article 16(1) and 16(2). There is, however, some difference between promotion itself and mere chances of promotion. Whereas rules relating to promotion would be *ultra vires* Article 16 if they are discriminatory, but the mere affecting of chances of promotion of a category of persons by certain rules would not always result in violation of the fundamental rights guaranteed under Article 16(2) of the Constitution. Moreover, question or discrimination can arise between two classes of persons who are otherwise equally situated in all material respects. The Punjab employees and the PEPSU employees were not exactly similarly situated in the matter of services rendered in covenanting States. Special provision had in the nature of things to be made for safeguarding the interests of the PEPSU employees, and no such safeguard was necessary for the Punjab Services. Rule 19 of the Rules, therefore, is not hit by Articles 14 and 16 of the Constitution. (Para 10)

*Petition under Articles* 226 *and* 227 *of the Constitution of India praying that a writ of* mandamus *or any other appropriate writ, order or direction be issued quashing the order, dated 9th August,* 1963, *circulated to the petitioners,*—vide *Endst. No.* 36-*Integ.* (*FC*)-63/2164-2204, *dated* 16*th November,* 1963.

H. S. WASU, SENIOR ADVOCATE, L. S. WASU, ADVOCATE, WITH HIM, for the Petitioners.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

NARULA, J.—Santokh Singh Ahluwalia and twenty-one others, the writ-petitioners in this case, were working as Assistants or Deputy Superintendents (the latter post being filled in by Assistants who are merely given an additional allowance for holding that post) in the Office of the Financial Commissioner of the erstwhile State of Punjab prior to its merger with the Patiala and East Punjab States Union (hereinafter referred to for the sake of brevity as PEPSU) in 1956. This petition has been filed under Article 226 and 227 of the Constitution on April 6, 1965, to declare the Punjab Services Integration Rules, 1957 (hereinafter called the impugned Rules) as being invalid and unenforceable and to annul the action taken by Respondent No. 1 in pursuance of those Rules. Additional relief has been claimed in this case for the issue of a *mandamus* to Respondents 1 to 3 to treat the Punjab officials including the petitioners and the erstwhile Pepsu officials on equal basis without giving undue advantage to either of those two categories in the matter of integration of their services.

(2) Though some allegations have been made in the petition about comparatively low standard of educational qualifications and administrative work of the Clerks and Assistants employed in the princely States of East Punjab before their formation into PEPSU in 1948 and about the quick and undue promotions given to them as well as the sudden upward revision of their pay-scales and equation of lower with higher posts (*vide* Annexure A) in PEPSU on the eve of the 1956 Merger all those matters have been rightly dropped by Mr. Wasu at the hearing of this petition except for the purpose of furnishing an introduction to the story of the petitioners. Reference is made in the writ petition to the formation of the Integration Department in the erstwhile State of Punjab and the circular letter issued by that Department to all the Secretaries in the various Departments of Punjab and PEPSU in May, 1956 (Annexure B) prescribing a time-table for performing and completing the work

of integration of services of the two States. The States Reorganisation Act, 1956 (hereinafter called 1956 Act) was passed on August 13, 1956, but came into force on November 1, 1956. On July 1, 1957, the Governor of Punjab framed the impugned Rules (Annexure C) in exercise of his powers under the proviso to Article 309 of the Constitution with retrospective effect from November 1, 1956. In part II of these Rules machinery for integration of the services and posts of the former States of Punjab and PEPSU was provided for. A sub-committee of the Council of Ministers (to be called the Integration Council) consisting of the Chief Minister and one other Minister one of whom was to be from the Punjab and the other from PEPSU, was vested by Rule 5 with the power to give decisions relating to the integration of the services in question. The Integration Council was to be assisted by an Integration Committee consisting of the Chief Secretaries of the Governments of Punjab and PEPSU. Procedure for equation of services was contained in Part IV consisting of Rules 11 and 12. The pattern of services and posts obtaining in the Punjab was to be taken as a norm and the Pepsu services were normally to be equated with the corresponding services and posts in the Punjab having regard to all relevant considerations. Proviso to Rule 11(a) authorised the Integration Committee to decide on an *ad hoc* basis any case of inequity of injustice which might be brought to its notice. Part VI consisting of Rules 14 to 19 contains provisions for determination of *inter se* seniority between the employees of the two previous States. Rule 14 stated *inter alia* that for the purposes of determining *inter se* seniority of the employees of the two States those services of the Punjab would be grouped together in respect of which the normal method of recruitment was by promotion from the lower service notwithstanding that some of the posts in any of the higher services were filled by direct recruitment. The services of the PEPSU equated according to Rule 11 to the group of services of the Punjab State were to be similarly grouped together and the members thereof arranged in the order of seniority applicable in the parent State. Proviso (iii) to Rule 14 stated that where grouping led to any hardship and anomaly in the fixation of *inter se* seniority as determined under rule 15 grouping may be amended or abandoned. Detailed procedure for determining *inter se* seniority was provided in Rules 15 to 17. Rule 19 was in the following terms:—

"19. (a) For the purposes of fixing *inter se* seniority service rendered by a PEPSU employee in a covenanting State

on the posts which had been equated with his PEPSU state service shall be taken into account to the same extent as was done while constituting the PEPSU State service.

(b) In case of services in which grouping is to take place under rule 14 for fixing *inter se* seniority service rendered by a PEPSU State employee in all such posts of a covenanting State which have been equated to PEPSU State services forming the group, shall be taken into account in the same manner as if such service had been rendered in the PEPSU State."

Rule 22 in part IX provided as follows—

"22. Any case of glaring inequality of apparent hardship that may result from the integration of service in accordance with these rules may be set right on an *ad hoc* basis by the Integration Council or to the extent empowered by the Council, by the Integration Committee."

When the question of grouping employees of the Office of the Financial Commissioner in Punjab with the corresponding service in PEPSU arose the petitioners wanted that the grouping should be from "Clerk to Superintendent" so that in the matter of determination of seniority and for purpose of promotion the services which had been rendered by the Assistants and the Deputy Superintendents as Clerks should also be counted to their credit because the services rendered by the Assistants in PEPSU originally as Clerks in the princely States was being counted in their favour. In the alternative, the petitioners wanted that the service of the Assistants in Punjab as well as PEPSU should be counted with effect from the date on which the employees in question were appointed as Assistants and their previous services as Clerks should be ignored in both the cases. The petitioners were unsuccessful in achieving their object on the general basis claimed by them and grouping was resorted to in their case from "Assistant to Superintendent". This resulted in the PEPSU employees generally gaining an advantage over the Punjab employees inasmuch as services of the PEPSU employees as Clerks in the princely States before becoming Assistants in PEPSU were taken into account but the corresponding advantage was not conferred on the Punjab employees. When this

matter came up for consideration as item number 2 in the meeting of the Integration Committee their final decision in this respect was recorded in the minutes of the meeting (Annexure E) to the following effect:—

> "In this case also there has been a long controversy as to whether the grouping should be from Clerk to Superintendent or from Assistant to Superintendent. The matter has been examined at great length even up to the level of the Revenue Minister and Chief Minister and they have ultimately agreed that the grouping should be from Assistant to Superintendent. The Committee also after hearing the representatives of both sides, came to the conclusion that the grouping should be from Assistant to Superintendent for the following reasons. (Then three reasons are ascribed in the minutes.)"

After taking notice of the representation of the Superintendents and Deputy Superintendents of the Punjab a decision was recorded to the effect that bearing in mind the apparent inequality and hardship which was likely to be caused to the Punjab employees it had been decided to prepare the joint seniority list keeping in view the ages, chances of promotion and other such circumstances. The decision regarding the case of Assistants to which category the petitioners belonged at that time, was recorded in the following terms:—

> "With regard to the Assistants, the Department has proposed *ad hoc* seniorities in respect of certain Punjab Assistant up to S. No. 101 with a view to balance chances of promotion on both sides. This has also been done in pursuance of the decision of the Integration Council taken in 1957 mentioned above. The Committee went through this aspect minutely and felt that with the list prepared in the normal group from Assistant to Superintendent, the chances of promotion of erstwhile PEPSU employees were being advanced by certain years and as against that the chances of the Punjab employees were being retarded very drastically and in certain cases even by 7 to 8 years. This was happening because the service of the Punjab employees rendered as Senior Clerk was not being counted even though the service rendered by some of the Pepsu employees as Clerks in grades much lower than that of Senior Clerk Punjab was being counted under Rule 19(a) of the Punjab

Services Integation Rule. The pay of the Punjab employees as Assistants was also practically higher than all the PEPSU employees and the total length of service was also comparatively longer. Shri Prem Sarup, however, pointed out that these *ad hoc* seniorities should not be given because such chances of promotion had not been considered in favour of the PEPSU Assistants when examining the joint seniority list of the group from Assistant to Superintendent in the Civil Secretariat. Keeping all the facts in view and after hearing the representatives of both sides the Committee agreed that the *ad hoc* seniorities proposed by the Department were most equitable with a view to balance the chances on both sides without causing any hardship to any one."

The result of the *ad hoc* seniorities was recorded in detail in the minutes of the meeting in accordance with the above-mentioned decision. The above-mentioned decision of the Integration Committee relating to Assistants was approved of in the meeting of the Integration Council held on June 8, 1959, in the following words (Annexure F):—

"Amongst the Assistants the Department has recommended and the Integration Committee has agreed to the *ad hoc* seniority to certain Punjab Assistants up to S. No. 101, keeping in view the chances of promotion on both sides. It was seen on careful examination that in the seniority list prepared in the grouping from Assistant to Superintendents the chances of Punjab employees were being retarded materially up to 7-8 years in certain cases and those of Pepsu employees were being improved. There was further consideration that in case of Pepsu employees certain services rendered by them in the Covenanting States even in very low grades had been counted as Assistant for the purposes of Integration, whereas service rendered as Senior Clerk even in much higher grade on Punjab side could not be counted as that of Assistant. Keeping in view all these pros and cons it was considered fair to give these *ad hoc* seniorities with a view to balance the chances of promotion on both sides and without causing the least hardship to the Pepsu employees. The *ad hoc* seniorities proposed by the Department and accepted by the Integration Committee

were, therefore, approved. Subject to these observations the list as drawn up by the Department and approved by the Committee was approved."

Since the hardship to which the petitioners might have been put as a result of the decision of forming the group from Assistant to Superintendent was alleviated on an *ad hoc* basis, in the above-mentioned decision of the Integration Committee as approved by the Integration Council they had nothing to seriously complain of. Both the services, however, represented to the Central Government against the decision of the Integration Department. Those of the Punjab employees who had not got full relief again laid their claim for being treated in the same manner as the PEPSU employees in the matter of giving them credit for service as Clerk. The PEPSU employees, on the other hand, represented against the grant of relief to the Punjab employees on an *ad hoc* basis contrary to the strict phraseology of the relevant rules. The Central Government rejected the representation of the Punjab employees and accepted that of the PEPSU ones. The decision of the Central Government was communicated to the Integration Department of the Punjab Government in the Office Order, dated the 16th November, 1963 (Annexure H). The Office Order stated that the representation of the PEPSU employees (officials mentioned in list Annexure B to the Office Order) against the joint seniority list prepared by the Integration Department of the Punjab Government had been accepted by the Government of India to the extent that *ad hoc seniority* shall not be allowed to any employee and that every one should be shown at the place that he would have got according to the strict application of the modified grouping formula. A copy of the joint seniority list, duly corrected in accordance with the above-said decision of the Government of India, was enclosed with the Office Order. A copy of the said modified joint seniority list is Annexure "I" to the writ petition. As the decision of the Central Government in the matter of integration was final, the petitioners were left with no remedy except to approach this Court on the writ side.

(3) The writ petition has been contested by the respondents. The Government of India (Respondent No. 1) has filed its return dated September 13, 1965, duly signed and verified by the Deputy Secretary, Government of India in the Ministry of Home Affairs. The Punjab Government (Respondent No. 2) has filed its separate return dated July 29, 1965, duly supported by an affidavit by the

Deputy Secretary to Government, Punjab, in the Home Department. The Financial Commissioner, Revenue, Punjab (Respondent No. 3) has not filed any separate return. The application of Phula Singh and twenty-two others (the list of which applicants is attached to C. M. 4008 of 1946) for being impleaded as respondents to the writ petition on the ground that they were likely to be affected by an order passed in this writ petition in favour of the petitioners was granted subject to all just exceptions by Shamsher Bahadur, J. All those applicants have, therefore, been impleaded as respondents. They have not filed any written statement in reply to the writ petition.

(4) At the hearing of this petition Mr. Harnam Singh Wasu, the learned senior counsel for the petitioners, has confined his arguments to the following four points :—

(1) That the impugned Rules are *ultra vires* Section 115(5) of the 1956 Act, as those have been framed by the Governor of Punjab whereas it is Central Government which alone could deal with matters relating to integration of services of the erstwhile States;

(2) If the first point fails, Parts IV to VI of the impugned Rules, i.e., Rules 11 to 19 and particularly Rules 14 and 19 are in any case unconstitutional and void as being violative of the equal protection of laws guaranteed by Articles 14 and 16 of the Constitution as those Rules give undue advantage to the services of PEPSU as compared with the corresponding Punjab services;

(3) The joint seniority list prepared by the Central Government (Annexure I) in pursuance of its impugned decision (Annexure H) and the promotions given by the Government from time to time in accordance with Rules 14 and 19 are illegal and void as the same have been made and ordered by the Central Government by completely ignoring Rule 22 though the said Rule had been properly applied to some extent by the Integration Committee, by the Integration Council and by a majority of the members to the Advisory Committee to the Central Government; and

(4) By Rules 14 to 19 of the impugned Rules the previous service conditions of the petitioners have been prejudicially

affected without the prior sanction of the Central Government requisite under the proviso to sub-section (7) of Section 115 of the 1956 Act.

I will now take up each of the above-mentioned contentions seriatim. The validity and vires of the impugned Rules are attacked on two grounds. It has firstly been submitted that the Central Government has been made the sole arbiter for integration of the services by sub-section (5) of section 115 of 1956 Act:—

"115(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to—

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons."

Section 114 applies to all-India services and is, therefore, not relevant for our purposes. Section 129 authorises the Central Government to make rules to give effect to the provisions of the 1956 Act by notification in the official gazette. Sub-section (2) of Section 129 states that all rules made under that section should be laid before both Houses of Parliament as soon as may be after they are made. The first submission of counsel is that in Chapter X of the 1956 Act, containing provisions as to services, the function of establishing advisory committees for the purpose of assisting it in regard to integration of services has been vested in the Central Government and the duty of integration has been exclusively enjoined on the Central Government and, therefore, the Governor of Punjab had no jurisdiction to frame the impugned Rules. It is submitted that the purpose of the impugned Rules was to integrate the services, i.e., to carry out the objects of Part X of 1956 Act and the authority to make rules for that purpose has been vested by section 129 exclusively in the Central Government and could not be usurped

by the Governor. On the authority of judgment of a Division Bench of this Court in *Bishan Singh* v. *The Central Government and others* (1), it is argued that the integration of services of the two erstwhile States could not be undertaken unless and until relevant rules had been framed under Section 129 of the 1956 Act and otherwise in accordance with that Act. In *Bishan Singh's case* (1) (supra) it was held after examining the relevant provisions of the Displaced Persons (Compensation and Rehabilitation) Act 45 of 1954, that it was necessary for the Central Government to frame rules for attaining the objects of the said Act relating to disposal of urban agricultural land. P. C. Pandit, J., (to whom Tek Chand, J., concurred) held in this connection as below:—

> "After examining the relevant provisions of the Act, I am of the view that it was necessary for the Central Government under the Act to frame rules for ths class of displaced persons also. These Rules are necessary in order that the objects of the Act may be attained. The Act really imposes a duty on the Central Government to make rules to carry out the purposes of the Act. The compensation pool has to be utilised in accordance with the provisions of the Act and the Rules made thereunder. Power given under this Act is to be used in a certain particular way. Displaced persons, for whose benefit these Rules have to be made, are entitled to get them framed and the conditions for the same are given in sections 8 and 40 of the Act."

While agreeing with the above-mentioned observations, Tek Chand, J., further held that the extensive rule-making power conferred on the Central Government under the 1954 Act was in the nature of subordinate legislation by the Executive but that sub-section (3) of that Act provided a desirable and essential legislative control of the same by directing that all rules made under section 40 of the 1954 Act may be laid for not less than thirty days before both the Houses of Parliament as soon as possible after they were made and those rules were to be subject to such modifications as the Parliament might make during the said period of thirty days. Council then referred to the observations of Falshaw, J., (as he then was) in the

(1) 1961 P.L.R. 75.

Full Bench judgment of this Court in *Prem Singh Lala Sunder Dass and others* v. *Deputy Custodian-General, Evacuee Property 'P' Block, New Delhi and others* (2), regarding the provisions of section 56(2)(i) of the Administration of Evacuee Property Act, 1950, which was clearly intended to enable the Government to lay down the principles and to specify the conditions under which the Custodian of Evacuee Property is to exercise his powers under section 12. Relying on the observations in the above-said two cases Mr. Wasu submitted that it was the duty of the Central Government to frame rules for the integration of the two services in question in exercise of powers under section 129 and so long as this was not done no legal integration of the services could take place on any final basis. In the alternative, Mr. Wasu contended that if section 115 is capable of authorising the integration of the services without the framing of any rules by the Central Government the section itself is unconstitutional as it gives unfettered discretion to the Executive to integrate the services in any manner it likes without laying down any guiding principles in that behalf.

(5) He then submitted that though the Advisory Committee had been appointed by the Central Government itself the real work of integration had been left to the Integration Committee and the Integration Council which had been appointed under the impugned Rules and had not been appointed by the Central Government and, therefore, the entire proceedings based on the foundation laid by the Integration Committee and the Integration Council were vitiated and were liable to be struck down.

(6) The second argument convassed on behalf of the petitioners to invalidate the impugned Rules was that the Rules intended to govern the matter of integration of their service had not only to be framed by the Central Government but were also to be laid before both the Houses of Parliament as required by sub-section (2) of section 129 and inasmuch as the impugned Rules were never laid before either of the Houses of Parliament they were *ultra vires* section 129 of the Act. There is no force at all in the last-mentioned contention of the learned counsel as it is only the Rules framed under sub-section (1) of section 129 which are required to be laid before both the Houses of Parliament and inasmuch as the

(2) A.I.R. 1955 Punjab 177.

impugned Rules were not made under sub-section (1) of section 129 there was no question of their being laid before both or either of the Houses of Parliament. In paragraph 17 of the return of the Central Government it has been stated *inter alia* after making a reference to sub-section (5) of section 115 of the 1956 Act as follows:—

> "From the above it follows that the function of Advisory Committees is merely to assist the Central Government. Their decisions are not final. Under section 115(5) Central Government is the final authority in regard to matters arising out of integration. Nowhere in the Act, it is written that the Central Government who are the final authority under section 115(5)(b) in regard to integration is bound by the decisions of the Advisory Committee as their role was primarily that of assisting the Central Government. Their advice was not binding on the Central Government."

So far as the other contentions of the learned counsel on this point are concerned, they have to be repelled in view of my judgment in *K. C. Gupta, Block Development and Panchayat Officer and others* v. *Union of India and others* (3). In that case I held that section 129 no doubt confers exclusive power on the Central Government to frame rules under the Act but the said provision by itself does not take away from the Governor of the State his normal authority to make rules regarding services under Article 309 of the Constitution. It was further held that inasmuch as the impugned Rules were framed by the Governor of Punjab after November 1, 1956, when the employees of the erstwhile PEPSU had already become subject to the control of the new State of Punjab, the authority of the Governor to frame those rules could not be questioned. For upholding the validity of the Rules in that case; I also relied on the averments in the return of the Central Government filed in that case to the effect that in fact the impugned Rules had been framed in consultation with the Central Government and had the approval of the Central Government. I am bound by my own judgment in *K. C. Gupta's case* (supra) (3) and counsel has not been able to persuade me on the basis of arguments addressed before me to day to hold to the contrary.

(3) 1967 S.L.R. 843.

(7) The last argument of Mr. H. S. Wasu on the first point was that by operation of Article 4 of the Constitution read with section 129 of the 1956 Act, the proviso to Article 309 of the Constitution is deemed to have been deleted in so far as the authority to frame rules relating to integration of the Services of the two previous States is concerned and that the word "May" in section 129 should be read as "Shall". Article 3 of the Constitution authorises the Parliament to make a law forming a new State by separation of territories from any State or by uniting two or more States or parts of States or to increase, diminish or alter the area of any State. Article 4 reads as follows:—

> "(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
>
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

The States Reorganisation Act, 1956, was made by the Parliament in exercise of its powers under Article 3. In order to give effect to the provisions of the 1956 Act relating to integration of Services, power was conferred to make rules, as already stated, under section 129. According to Mr. Wasu, the provisions of section 129 of the 1956 Act are supplemental, incidental and consequential and are necessary to give effect to the provisions of the said Act, and that in so far as they come into conflict with the powers of the Governor under Article 309 of the Constitution, the constitutional provision will give way to section 129 of the 1956 Act read with clause (1) of Article 4 quoted above. Counsel referred in this connection to certain observations of their Lordships of the Supreme Court in *Mangal Singh and another* v. *Union of India* (4) wherein it was held that the provision in the Punjab Reorganisation Act providing for a House of Legislature for the State of Haryana which did not fulfil the constitutional requirement regarding the minimum size of such a House, was a valid piece of legislation in view of the provisions contained in Article 4 of the

(4) A.I.R. 1967 S.C. 944.

Constitution. This question does not, in my opinion, arise in the present case as I am unable to see any conflict between the proviso to Article 309 of the Constitution on the one hand and section 129 of the 1956 Act on the other. In any event, the impugned Rules having been framed in consultation with the Central Government, and having been owned by the Central Government itself, and the ultimate impugned decision having been taken by the Central Government, and not by the Committee and the Council formed under the impugned rules, the question raised by Mr. Wasu is merely academic. Merely initial recommendations were made by the Regional Committee and the Regional Council and final decision was admittedly given by the Central Government with the aid of the Advisory Committee appointed by the Central Government itself. What the petitioners are aggrieved of in the present case is not the *ad hoc* relief which they got at the hands of the Integration Committee and the Integration Council, but the final order passed by the Central Government.

(8) Still another submission was made by Mr. Wasu in connection with the first point. He stated that sub-section (7) of section 115 makes it further clear that the State Government could not frame any rules for integration of Services on or with effect from the 1st of November, 1956. Sub-section (7) of section 115 of the 1956 Act, according to Mr. Wasu saves the operation of Article 309 of the Constitution (which Article is contained in Chapter I of Part XIV of the Constitution) only in relation to the determination of conditions of service of persons serving in connection with the affairs of any State AFTER the appointed day. What the counsel meant was that after the 1st of November, 1956, the Governor of Punjab could make rules under proviso to Article 309 of the Constitution for determination of the conditions of service of personnel for both the previous States, but the impugned Rules were invalid as they were brought into effect FROM November 1, 1956, and not after that date. I am not able to find much force in this submission for more than one reason. Firstly the impugned Rules were not framed on or before November 1, 1956, but were framed by the Governor on August 16, 1957. In the nature of things effect had to be given to those Rules from November 1, 1956. Secondly those Rules were framed in consultation with the Central Government and everything done in accordance with those Rules was subject to the final decision of the Central Government itself. In *Union of India and another* v. *P. K. Roy and others* (5) the Supreme Court set aside the judgment of the Madhya Pradesh High Court by

(5) 1968 S.L.R. 104.

which the preparation of provisional Gradation Lists by the State of Madhya Pradesh under the 1956 Act had been quashed as unwarranted by law as well as the final Gradation List prepared by the State Government under instructions from the Central Government with regard to the integration of officers of the Engineering Department of the Madhya Pradesh Government was declared illegal and *ultra vires* by the High Court. History of the process of integration was given by the Supreme Court in the aforesaid judgment. It was pointed out that subsequent to the passing of the 1956 Act, a meeting of the Chief Secretaries of various States that were being affected by the reorganisation was held in Delhi on May 18 and 19, 1957 at the invitation of the Central Government, and in that meeting certain decisions were taken as to the general principles that should be observed with regard to the integration work. In conformity with those decisions, the Central Government informed the State Governments concerned that the Central Government had decided that the work of integration of Services should be dealt with by the State Governments in the light of the general principles already decided in the abovesaid meeting of the Chief Secretaries. The State Governments were further informed by the Central Government that it was constituting Advisory Committees for assisting them in dealing with the representations from the officers affected by the reorganisation. The principles for integration of Services laid down in the impugned Rules are the same as were approved by the Central Government in the meeting of the Chief Secretaries. By notification, dated May 20, 1958, the Central Government constituted the Central Advisory Committee under sub-section (5) of section 115 for purposes of assisting the Central Government in dealing with problems arising out of the allocation and integration of Services. The Supreme Court has clearly found that the State Governments had appointed necessary committees to undertake the work of integration "as directed by the Central Government." In the case before me also provisional lists were prepared by the State Government and were forwarded along with the representations of the affected parties to the Central Government. Their Lordships of the Supreme Court stated that they did not propose to decide for purposes of the case before them as to which of the view points as to the interpretation of sections 115(3), 115(4) and 115(5) of the 1956 Act relating to the question whether the work of integration was exclusively entrusted to the Central Government or not was correct. Their Lordships assumed in favour of P. K. Roy and others that the aforesaid provisions in the 1956 Act confer exclusive power on the Central Government in regard to integration.

But even on that assumption the Supreme Court clearly held that the finding of the High Court to the effect that there had been improper delegation of the statutory powers of the Central Government in allowing the provisional integration work being done by the State Government was not correct. The judgment of the Supreme Court then stated :—

> "Generally speaking, the work of integration requires the formulation of principles on which the work has to be carried out, the actual preparation of preliminary gradation lists in accordance with the principles so settled, the publication of lists together with the principles upon which they have been compiled, the invitation of representations by the persons affected thereby, the consideration of representations and decisions upon those representations, and the publication of the final gradation list incorporating the decisions of the Central Government on the representations submitted. In the present case, there is no dispute that the Central Government laid down in their letter dated April 3, 1957, the principles with regard to the equation of posts and determination of relative seniority as between two persons holding posts declared equivalent to each other and drawn from different States. It also appears that the Central Government appointed two advisory committees for dealing with representations from the service personnel affected by the reorganisation. As directed by the Central Government in their letter dated April 3, 1957, the State Government also appointed two committees for the purpose connected with integration. Thereafter, the State Government prepared a provisional list fixing the *inter se* seniority of officers who had come into the cadre from different regions. The list was published and it was notified that any Government servant feeling aggrieved by the provisional list was entitled to send his representation to the Central Government. The principle upon which the list was prepared was published and it was notified that the principle was subject to any subsequent modification at the direction of the Central Government. Representations were thereafter received from officers including respondents 1 to 4, 6 and 7. The representations were sent to the Central Government to be dealt with in consultation with

the advisory committees that were constituted. On a consideration of these representations the Central Government directed the State Government to forward the alternative list prepared on the basis of the conventional formula laid down by the Central Government."

Thereafter reference was made to what actually happened in the Madhya Pradesh case. The conclusion of the Supreme Court was recorded in the following words:—

"In our opinion, the procedure adopted in this case does not contravene the provisions of section 115 (5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. It is manifest that there has been no delegation by the Central Government of any of its essential functions entrusted to it under the statute. It was pointed out by Mr. Asoke Sen, that in its letter, dated April 3, 1957, the Central Government had intimated that the work of integration should be left to the State Government. But what was meant by that letter was that only the preliminary work of preparation of the gradation lists on the principles decided upon by the Central Government should be left to the State Government concerned. It is clear that such work cannot be done by the Central Government itself since the necessary information regarding the officers can be obtained and tabulated only by the State concerned. It was also pointed out by Mr. Asoke Sen, that the preparation of the provisional and the final gradation lists by the State Government constituted a delegation by the Central Government. We do not think there is any substance in this argument. It is not disputed that the provisional and the final gradation lists were prepared by the State Government on the principles laid down by the Central Government itself subject to one change in the matter of determining seniority and the provisional gradation list was

sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim *delegatus non potest delegare'* has, therefore, no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its administrative authority is of a substantial degree, there is in the eye of law no *"delegation'* at all and the maxim *"delegatus non potest delegare'* does not apply. (*See Fowler*) *John and Co.* (*Leads*) v. *Duncan.* In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an intitial decision in matters entrusted to it, but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list, dated April 6, 1962 was *ultra vires* and illegal. Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in sections 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance

> of the State Government in the matter affecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter, it cannot be held that there has been any violation of the principle '*delegatus non potest delegare*' ".

In the face of the abovequoted observations of their Lordships of the Supreme Court it is impossible to agree with the contentions of Mr. Wasu on the first point, because it is clear from the facts of this case; (i) that the Central Government retained in its own hands the general control over the activities of the State in matters of integration; (ii) that the word of integration entrusted to the State Committee and Council was merely of preparatory nature in order to have the benefit of the initial suggestions of the State authorities; (iii) that the ultimate power to approve or disapprove the provisional decisions of the State Government was retained and in fact exercised by the Central Government itself; (iv) that the steps taken by the State Government in pursuance of the broad policy decisions given by the Central Government did not amount to any delegation or abdication of the statutory functions of the Central Government and (v) that all that the Central Government did in the case of integration of Punjab and Pepsu Services as to take the assistance of the State Government in matters effecting integration subject to Central Government's own ultimate decision.

(9) I have, therefore, no hesitation in affirming the view already taken by me in K. C. Gupta's case that the Punjab Services Integration Rules, 1957, are valid and are not unconstitutional or *ultra vires* section 115(5) or section 129 of the States Reorganisation Act, 1956.

(10) Regarding his second contention, Mr. Wasu has directly attacked the vires of rule 19(b) of the impugned Rules. The said sub-rule provides that in case of services in which grouping is to take place for fixing *inter se* seniority, "service rendered by a PEPSU State employee in all such posts of a covenanting State which have been equated to PEPSU State Service forming the group shall be taken into account in the same manner as if such service had been rendered in the PEPSU State". The grievance of the petitioners is that the abovesaid sub-rule gives the Assistants of PEPSU the benefit of taking into account their service rendered as Clerks in the

covenanted States, but in view of the grouping from Assistants to Superintendents, the service rendered by the Punjab employees as Clerks before becoming Assistants has been ruled out of consideration. Mr. Wasu, stated that the effect of the impugned rule is that chances of promotion of the petitioners have been affected. According to him it has been laid down by the Supreme Court in *General Manager, Southern Railway and another* v. *Rangachari* (6) and by a Full Bench of this Court in *Brij Lal Goswami* v. *The State of Punjab and others* (7), that chances of promotion are included in conditions of service and that any rule which is discriminatory and affects the chances of promotion of an existing employee of a State is, therefore, hit by Article 16 of the Constitution. All that was held by the Supreme Court in the *case of General Manager, Southern Railway* (supra) (6) was that matters relating to employment must include all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment for purposes of Article 16. Their Lordships held that Article 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1), and that the words "in respect of any employment" used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). It was in that context that it was held that promotion to selection posts is included both under Article 16(1) and (2). The Full Bench of this Court merely followed the dictum of the Supreme Court in the above respect. There, however, appears to be some difference between promotion itself and mere chances of promotion. Whereas rules relating to promotion would be *ultra vires* Article 16 if they are discriminatory, the mere affecting of chances of promotion of a category of persons by certain rules would not in my opinion always result in violation of the fundamental rights guaranteed under Article 16(2) of the Constitution. In the *State of Mysore and another* v. *G. N. Purohit and others* (8) their Lordships of the Supreme Court authoritatively held that they saw no force in the argument which was advanced before them on behalf of G. N. Purohit and others that as the chances of their promotion had been affected, their conditions of service had been changed to their disadvantage, "because chances of promotion are not conditions of service." Moreover, question of discrimination can arise between two classes of persons

(6) A.I.R. 1962 S.C. 36.
(7) 1966 P.L.R. 470.
(8) 1967 S.L.R. 753.

who are otherwise equally situated in all material respects. The Punjab State employees and the PEPSU employees were not exactly similarly situated in the matter of services rendered in covenanting States. Special provisons had in the nature of things to be made for safeguarding the interests of the PEPSU employees, and no such safeguard was necessary for the Punjab Services. At the same time the provision contained in rule 22 could in the discretion of the Central Government be invoked in appropriate cases to alleviate hardship on an *ad hoc basis*. I do not, therefore, think that rule 19 of the impugned Rules is *ultra vires* Articles 14 and 16 of the Constitution.

(11) The third contention of Mr. Wasu, is based on the assumption that the Central Government completely ignored the principles contained in rule 22 of the impugned Rules. There appears to be no warrant for such an assumption. The recommendation of the Integration Committee and the Integration Council had specifically referred to the relief granted to the petitioners on an *ad hoc* basis. I am also given to understand that majority of the members of the Advisory Committee of the Central Government had made similar recommendations. When the representation of the PEPSU employees against this recommendation was accepted by the Central Government and the *ad hoc* relief recommended for the Punjab employees was denied to them by the Central Government, it cannot possibly be said that the Central Government was not aware of its powers in the matter. There is no doubt that rule 22 had a specific purpose to find a practical solution for the special purpose of setting right any glaring inequality or apparent hardship, but it is the Central Government which is the Judge of facts which may or may not justify the invoking of the extraordinary powers conferred by rule 22 and it does appear to me to be possible to substitute my own opinion for that of the Central Government in this connection. The third submission of Mr. Wasu also, therefore, fails.

(12) This takes me to the last argument of the learned counsel for the petitioners to the effect that rules 14 to 19 of the impugned Rules have to be struck down as having been framed in contravention of the statutory requirement of the proviso to sub-section (7) of section 115 of the 1956 Act. Counsel referred to rule 23 of the impugned rules which states that for purposes of determining the seniority of any person or his chances of promotion by seniority the impugned Rules shall have effect notwithstanding any other rules relating to such person in force for the time being in the State of Punjab. By

operation of rule 23, it was contended by counsel, it is rules 14 to 19 which are the only rules by which the seniority of the petitioners and the chances of their promotion by seniority have now to be governed. Counsel assumes that these rules have effected a change in the rule previously in force relating to the said two matters, and argues that inasmuch as the rules for fixing the seniority and giving promotion by seniority to the petitioners have been varied to their disadvantage by rules 14 to 19 without the previous approval of the Central Government, the said rules as well as the action taken under them against the interest of the petitioners are liable to be quashed. I am unable to agree with this submission of counsel for the simple reason that the impugned Rules do not appear to have varied the existing rules relatitng to the seniority of the petitioners or relating to their promotion by seniority to their disadvantage. Counsel is no doubt correct that if the existing conditions of service of the petitioners were to be affected by any order made under the 1956 Act, that order would not be valid unless it were to be passed with the previous approval of the Central Government. This was indeed laid down by a Division Bench of this Court in *Sat Pal Sharma and another* v. *State of Punjab through Chief Secretary and others* (9), and has been held even by their Lordships of the Supreme Court in some cases. The petitioners were not prejudicially affected in any manner by the operation of implementation of the impugned Rules though their chances of future promotion may no doubt have been affected by the manner in which the process of integration was carried out. But such things are mere parts of the exigencies of service and the process of integration could not be stopped because it was in the nature of things bound to effect the chances of promotion of the existing incumbents in one State or the other and sometimes in both the previous States. I am, therefore, unable to find any force even in the fourth submission of counsel. Another consideration which cannot be lost sight of is that the process of integration consequent on the merger of PEPSU with Punjab with effect from November 1, 1956, having been almost completed during the last twelve years, it would not be either fair or beneficial to the Services to strike at the root of the machinery of integration by striking down the impugned Rules at this stage on hypertechnical grounds.

(13) No other point was argued before me in this case. For the foregoing reasons, the writ petition fails and is dismissed though without any order as to costs.

*R. N. M.*

(9) 1968 S.L.R. 484.