

appeared again in Part-IIA examination in those papers. It is further represented by the petitioners' counsel that he is not pressing the case of petitioners No. 1 and 2, namely Arun Kumar Mishra and Bijender Singh at this stage and the writ petition *qua* them be dismissed.

(11) Taking into account the fact that petitioners No. 3, 4 and 5 have completed the course of Part-IIA and by virtue of the interim order of this Court they have also appeared in Part-IIA examination, I do not consider it appropriate to put the clock back in spite of the fact that on the law point I am not agreeing with counsel for the petitioners. On wholly equitable grounds it is held that the result of Petitioners No. 3, 4 and 5 of Part-IIA examination would be declared taking it as if they had validly taken Part-IIA examination.

(12) Subject to the observations made above *qua* Petitioners No. 3, 4 and 5, this writ petition is dismissed. However, there will be no order as to costs.

Before parting with the judgment, I may observe that the indulgence shown by this Court *qua* Petitioners No. 3, 4 and 5 shall not be cited as a precedent.

J.S.T

Before Hon'ble A. L. Bahri, J.

BALBIR SINGH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 540 of 1989

November 5, 1993

Constitution of India, 1950—Art. 226—Punjab State Class (IV) service Rules 1963 as amended by the Punjab State (Class IV) service (Haryana second Amendment) Rules 1973—Rl. 9(e)—Selection grade—grant thereof.

Held, that the instructions cannot be interpreted to mean that persons already stood transferred would lose their seniority of service in the previous department or office. If that had been the interpretation, these instructions would be clearly in violation of Rule 9(e) of the Rules reproduced above. However, these instructions, if

correctly interpreted, indicate that it is only after the grant of the selection grade that a person transferred to another circle would lose his seniority as well as selection grade. These instructions thus are to be enforced prospectively and not retrospectively. There is no indication in these instructions to apply them retrospectively.

(Para 7)

Further held, that the instructions were issued in November, 1983, for the purposes of grant of selection grade. On that day it is to be seen as to who were the persons working as Class IV employees in the particular circle and then to grant selection grade to 20 per cent of the strength to the senior-most.

(Para 8)

C. M. Chopra, Advocate, *for the Appellant*.

S. S. Kheterpal, D.A. Haryana, *for the Respondents 1 to 3*.

S. S. Dalal, Advocate, *for Respondent No. 4*.

JUDGMENT

A. L. Bahri, J.

(1) Facts are not disputed, on the basis of which question of fixation of seniority of the plaintiff-appellant Balbir Singh *vis-a-vis* defendant-respondent Siri Ram was required to be determined on the posts of peons held by them in the Co-operative Training Institute, Rohtak. The trial Court decreed the suit filed by Balbir Singh holding him to be senior and the action of the official respondents treating Siri Ram as senior and granting him selection grade to be illegal. The plaintiff was held to be entitled to the grant of selection grade. On appeal the judgment and decree of the trial Court was set aside and the suit stood dismissed. Hence this regular second appeal by the plaintiff.

(2) Balbir Singh, plaintiff joined as peon in 1963 and was confirmed as such on September 5, 1966. Siri Ram was appointed as peon on November 16, 1964. The State of Haryana granted selection grade with effect from February, 1981. Such orders were implemented in the month of December, 1985 with retrospective effect. As stated above, selection grade was given to Siri Ram peon treating him to be senior. The defendants while contesting the suit admitted aforesaid facts but stated that as per instructions issued by the State, though earlier seniority was at State level, fresh seniority was determined circle-wise and the plaintiff, therefore, lost his seniority of his previous service at Jhajjar since he was transferred in April, 1981 to

the office of Co-operative Training Institute, Rohtak. The following issues were frame on the pleadings of the parties :—

- (1) Whether orders passed in December, 1985 declining the selection grade to plaintiff are honest, arbitrary and without jurisdiction as alleged ? OPP.
- (2) Whether the suit of the plaintiff is pre-mature ? OPD
- (3) Whether plaintiff has no cause of action ? OPD
- (4) Whether no valid notice under section 80 CPC has been served upon the defendants ? If so its effect ? OPD
- (5) Relief.

(3) The trial Court under issue No. 1 held that the plaintiff did not lose his seniority on his transfer from Jhajjar in implementation of the instructions which came into being thereafter. Such instructions were issued on November 7, 1983 Exhibit DW1/B. No options were obtained on enforcement of such instructions from the employees with regard to their maintenance of seniority. While fixing seniority circle-wise on such instructions, the period of service prior there to could not be ignored. The action of the respondents granting selection grade to Siri Ram ignoring the case of Balbir Singh was held to be illegal. Issues Nos. 2 to 4 were decided against the defendant and the suit was decreed. The lower appellate Court has reversed the finding of the trial Court under issue No. 1, holding that on transfer to Rohtak the previous period of service at Jhajjar could not be taken into consideration while determining the seniority.

(4) Before the Courts below the parties gave an impression that no Service Rules were applicable to the service of Class IV employees relation to the determination of mode of their seniority either at State level or at circle level. During arguments learned counsel for the respondent has referred to the Punjab State (Class IV) Service Rules, 1963 as amended by the Punjab State (Class IV) Service (Haryana Second Amendment) Rules, 1973 (hereinafter called 'the Rules') Rule 9 as amended which is relevant for determining seniority of the members of the Service reads as under :—

“9. Seniority of members of the service :—The seniority *inter se* of members of the service shall be determined by the length of continuous service on a post in the service in each department or office separately :

Provided that where there are different cadres in the service the seniority shall be determined separately for each cadre :

Provided further that in case of two or more members appointed on the same date, the seniority shall be determined as follows :—

- (a) a member appointed by direct recruitment shall be senior to a member recruited otherwise ;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer ;
- (c) in the case of members who are appointed by promotion seniority shall be determined according to their seniority in the appointment from which they are promoted ;
- (d) in the case of members appointed by transfer from the same offices seniority shall be determined according to seniority in the appointments previously held in that cadre ;
- (e) in the case of members appointed by transfer from different departments or offices of the Government seniority shall be determined according to pay of such members, preference being given to a member who was drawing a higher rate of pay in his previous appointment ; and if the rates of pay drawn are also the same then by their length of service in those appointments and if the length of such services is also the same an older member in these appointments shall be senior to a younger members ; and
- (f) the case of members appointed by direct recruitment seniority shall be determined by their age, an older member being senior to a younger member :

Provided that in the case of members appointed by direct recruitment the order of merit, if any, drawn up at the time of selection shall not be disturbed and persons recruited as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection."

(5) Before the Rule is applied to the parties, reference may also be made to the instructions Exhibit DW/1B issued on November 7, 1983 on the subject of grant of selection grade with effect from February 1, 1981. It further provides that if somebody is transferred from one Circle to another he will lose seniority as well as the selection grade granted. Further reference be made to Exhibit DW1/D issued on January 18, 1985 that it would not be appropriate to grant selection grade treating the employees in the State as such rather Circle wise strength should be taken into consideration while granting the selection grades. Since the petitioner was transferred from Jhajjar to Rohtak some time in April 1981, lower appellate Court took the view that he lost the benefit of his service of Jhajjar in the matter of the determination of his seniority at Rohtak. The authorities while passing the order of grant of selection grade to Siri Ram defendant in the order Exhibit DW1/C issued on December 11, 1985 observed that since selection grade was to be granted with effect from February 1, 1981, the persons in service at Rohtak as on the aforesaid date were only to be considered for the grant of selection grade. Since Balbir Singh plaintiff on that day was not in service at Rohtak he was declined the grant of selection grade and Siri Ram being the senior-most Peon at Rohtak out of four persons employed there, was granted selection grade which was permissible to 20 per cent of the strength. After giving due consideration to the rules aforesaid as well as the instructions. I am of the view that the authorities were not justified in declining the benefit of selection grade to Balbir Singh, plaintiff/Rule 9 providing mode of seniority of Class IV employees as rule produced above, which is applicable to the parties leaves no manner of doubt that it was contemplated that the Class IV employees were to be employed in the department or in the office and their transfers to other departments or offices was also contemplated. *Inter se* seniority of the Class IV employees in each department or offices separately was to be determined on the basis of length of continuous service on the post. Clause (e) of Rule 9 provides for contingency when a person stood transferred from one department or office to another. He was not to lose his seniority of the previous department on transfer. If the person transferred was getting higher pay he was to rank senior to the person recruited on the date of his transfer or earlier appointed but getting lower pay. I need not refer to other contingencies as Balbir Singh on his transfer from Jhajjar to Rohtak was getting more pay than Siri Ram. Balbir Singh was initially appointed on November 16, 1963. On completion of one Year' service he earned one increment on November 16, 1964. Defendant No. 4 Siri Ram Joined the service initially on November 16, 1964 as peon. Thus taking his pay which would be at the start

of the pay scale would obviously be less than that of Balbir Singh who on that very day had earned one increment. Thus, on transfer from Jhajjar to Rohtak, Balbir Singh was to stand senior to Siri Ram.

(6) It has been argued by Shri S. S. Dalal, Advocate for Siri Ram defendant, that on transfer Balbir Singh lost benefit of his previous service in the matter of determination of seniority. This contention could be accepted only if Balbir Singh had been transferred on his own request. There is no material produced on the file to indicate that Balbir Singh sought his transfer voluntarily and had agreed to any such conditions of losing benefit of his previous service. May be in spite of Rule 9(e) reproduced above, Balbir Singh might have foregone the benefit if he had sought voluntary transfer to Rohtak but this is not the case of anybody pleaded.

(7) Learned counsel for Siri Ram, respondent further relied upon the instructions DW1/B referred to above that it was not contemplated that the State level seniority was to be taken into consideration and on transfer from one circle to another the person was to lose seniority as well as benefit of selection grade. These instructions as matter of fact do not cover the case in hand. Firstly these instructions cannot be interpreted to mean that persons already stood transferred would lose their seniority of service in the previous department or office. If that had been the interpretation, these instructions would be clearly in violation of Rule 9(e) of the Rules reproduced above. However, these instructions, if correctly interpreted, indicate that it is only after the grant of the selection grade that a person transferred to another circle would lose his seniority as well as selection grade. These instructions thus are to be enforced prospectively and not retrospectively. There is no indication in these instructions to apply them retrospectively.

(8) While enforcing the instructions aforesaid in the matter of grant of selection grade with effect from February 1, 1981, the authorities took into consideration the person in service at Rohtak on that date. Obviously, on February 1, 1981, Balbir Singh was in service at Jhajjar and not at Rohtak such interpretation of the instructions is not at all called for. Instructions were issued in November, 1983, for the purposes of grant of selection grade. On that day it is to be seen as to who were the persons working as Class IV employees in the particular circle and then to grant selection grade to 20 per cent of the strength to the senior-most. Balbir Singh being senior-most at that time when these instructions came into force was entitled to be considered for the purposes of grant of selection grade. The order for the grant of selection grade was to be passed by the authorities

at Rohtak office, although it may have effect with respect to recovery of arrears from Jhajjar office. Since Balbir Singh was in service and was senior to Siri Ram defendant at Rohtak on November 7, 1983, he was entitled to grant of selection grade with effect from February 1, 1981. The trial Court thus rightly decreed the suit filed by Balbir Singh.

(9) For the reasons recorded above, this appeal is allowed. The judgment and decree of the lower appellate Court are set aside and that of the trial Court decreeing the plaintiff's suit are restored. There will be no order as to costs.

J.S.T.

Before Hon'ble G. R. Majithia & S. K. Jain, JJ.

KARMA,—Petitioner.

versus

COMMISSIONER, ROHTAK DIVISION AND
OTHERS,—Respondents.

Civil Writ Petition No. 11199 of 1993.

December 2, 1993.

Constitution of India, 1950—Art. 226/227—Punjab Village Common Lands (Regulation) Haryana Amendment Act 1980 (2 of 1981)—S. 13B—Scope—Order passed regarding claim of Panchayat with regard to title, right in immoveable property—Whether Block Development Officers and Panchayat Officers by virtue of the office they hold are competent to file appeals on behalf of Gram Panchayat.

Held, that under section 13A not only the Gram Panchayat but even the Block Development and Panchayat Officer can file a suit claiming right, title or interest in any land or other immovable property, which he claimed, either vested or deemed to have vested in the panchayat. The concerned Block Development and Panchayat Officer but virtue of the office which he is holding is entitled to prefer an appeal against the order of the Assistant Collector passed in a suit under Section 13A of the Act. Other persons referred to in Section 13A can file the suit or the appeal if they have been specifically authorised. But, in the case of Block Development and Panchayat Officer, the power to prefer the suit has been conferred under the statute. He can institute the suit by virtue of the office which he is holding and no specific authorisation is required. If he is not satisfied with the order passed by the Assistant Collector in