A

RAJENDRA NARAIN SINGH AND OTHERS

v.

STATE OF BIHAR AND OTHERS

April 11, 1980

B

[A. C. GUPTA AND E. S. VENKATARAMIAH, JJ.]

Constitution of India 1950—*Art* 309 *Proviso State Government whether can regulate its public service in exercise of its executive power.*

Bihar Police Service (Recruitment) Rules 1953—*Scope of.*

C

Fixing of inter-se seniority of promotees and direct recruits on basis of continuous officiation by promotees—Whether valid.

The appellants were appointed Inspectors of Police in 1953. After working as Inspectors for about 12 years, they were promoted by notification dated June 16, 1965 to officiate as Deputy Superintendents of Police. Before pro-
D motion they were subjected to the scrutinies prescribed by rules 22, 23 and 24 of the Bihar Police Service (Recruitment) Rules, 1953. Rule 648-B of the Bihar and Orissa Police Manual (Volume I) requires a promoted Deputy Superintendent of Police to pass an examination in accounts. The appellants passed the examination and satisfied all the requirements for confirmation. However, the posts in which they were officiating were temporary posts.
E Thereafter the Government by a notification dated August 22, 1974, confirmed the appellants and other similarly situated officers as Deputy Superintendents of Police with effect from the dates which according to these officers were arbitrarily chosen. On September 1, 1974 the Government published a combined gradation list in which these promotees were placed even below the direct recruits who were appointed in 1974. The appellants challenged this gradation list in the High Court by a Writ Petition and during the pendency
F of the said Writ, the State Government constituted "Saran Singh Committee", to assess the promotional prospects of different State services, examine the problem of "stagnation", and suggest remedial measures. The recommendations of the committee were accepted by the State Government by Resolution dated April 11, 1977. In the Writ Petition, the High Court directed the State Government to re-examine the matter and prepare a fresh gradation list on the basis of the statement made by the Government in the light of the committees' recommendations. None of the parties appealed against this order.

G

By notification dated January 7, 1978 the State Government appointed on probation the Officers who had been officiating in those posts with effect from the dates mentioned against their names in the notification and the notification issued previously promoting these officers on officiating basis was cancelled. The dates from which these officers were said to have been appointed on pro-
H bation were the dates of their promotion as officiating Deputy Superintendents of Police. The names of the appellants figured against serial numbers 23, 24 and 25 in the list given in the notification dated January 7, 1978. The revised gradation list which is under challenge was thereafter issued.

The appellants questioned the correctness of the Judgment of the High Court which allowed the two Writ Petitions made by two different groups of direct recruits challenging the gradation lists of permanent Deputy Superintendents of Police on February 24, 1978.

Accepting the appeal,

HELD: 1. The appellants were promoted to officiate as Deputy Superintendents of Police in the year 1965 (other promotees like the appellants had also been officiating as Deputy Superintendents of Police from different dates between 1948 and 1970), and by the Government order dated December 30. 1977 fifty-four temporary posts of Deputy Superintendent of Police created between 1948 and 1970 were made permanent from the dates these posts were created. [456D-G]

2. It is well settled that in the absence of any legislation on the subject, or a rule framed under the Proviso to Article 309 of the Constitution, the State Government can regulate its public services in the exercise of its executive power. [456 F-G]

B. N. Nagarajan v. *State of Mysore* [1966] 3 SCR 682, *Sant Ram Sharma* v. *State of Rajasthan* [1968] 1 SCR 111, referred to.

3. There is no statute or any rule framed under the Proviso to Article 309 to determine the seniority as between the direct recruits and the promotees. The determination of seniority on the basis of continuous officiation has been held valid in *S. B. Patwardhan's* case [1977] 3 S. C. R. 775. The gradation list cannot therefore be challenged on the ground that an arbitrary date was taken as its basis or that it offends Article 14 of the Constitution. [456G-H, 457A]

4. In the year 1977 exigencies of the situation prompted the Government to convert the temporary posts created between 1948 and 1970 into permanent posts with effect from the dates on which the temporary posts had been created. The appellants were promoted in 1965 to officiate as Deputy Superintendents of Police in posts which were then temporary. The Governor while exercising his powers under rule 3 in the year 1965 could not naturally take into account the number of posts made permanent in 1977 with effect from 1965. Whatever was done subsequently to increase the strength of the cadre in 1965 under compulsion of the situation cannot be said to have effected the validity of the action taken by the Governor in 1965. [457-F]

S. G. Jaisinghani v. *Union of India & Ors.* [1967] 2 S.C.R. 703; referred to.

5. Rule 3 of the Bihar Police Service (Recruitment) Rules, 1953 is not really a quota rule, it does not lay down a fixed proportion, all it does is to insist that the number of vacancies to be filled by promotion should not be less than half of the total number of vacancies to be filled in any year. Adding to the number of vacancies and filling them by promotees does not certainly violate the rule requiring, that no less than half of the vacancies must be filled by promottees. What the Governor had done in a previous year in exercise of his power under rule 3, if it was valid then, is not invalidated by the subsequent conversion of some posts which were temporary at the time into permanent posts with effect from the earlier year. If for administrative reasons

A such a measure was considered necessary, there is nothing in rule 3 to suggest a bar. Rule 3, as already mentioned, does not prescribe a fixed proportion of promotees and direct recruits for the vacancies to be filled in any year but only ensures not less than half of the vacancies for the promottees, that being so, filling more than half of the vacancies by promottees, cannot be an infringement of that rule. [457G-H, 458A-B]

B 6. The gradation list contains certain mistakes, and these shall be corrected by the concerned authority. [458F]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1309-1310 of 1978.

Appeals by Special Leave from the Judgment and Order dated C 29-6-1978 of the Patna High Court in C.W.J.C. Nos. 204-205 of 1978.

L. M. Singhvi, and *S. K. Verma* for the Appellants.

Dr. Y. S. Chitale, S. K. Sharma, R. K. Jain, R. A. P. Singh, R. P. Singh and *B. P. Singh* for the Respondent Nos. 3-10, 12, and 13 in CA 1309/78.

D *R. K. Jain* and *R. A. P. Singh* for RR 4, 6, 7 & 9 in CA 1310/78.

R. K. Garg, R. A. P. Singh and *B. P. Singh* for the RR 8 in both the appeals.

D. Goverdhan for the R 1 in both the appeals.

The Judgment of the Court was delivered by

E GUPTA J. The controversy in these two appeals by special leave relates to the question of seniority between the direct recruits and the promotees in the rank of Deputy Superintendent of Police in the Bihar Police Service. The appellants—the same persons in both appeals—are promotees who question the correctness of the F judgment of the Patna High Court by which the High Court allowed the two writ petitions made by two different groups of direct recruits challenging the gradation list of permanent Deputy Superintendents of Police published on February 24, 1978. Fifty-four temporary posts of Deputy Superintendent of Police created between 1948 and 1970 were made permanent "from the dates of their creation" by the G Government of Bihar in December, 1977. Earlier, the Government had decided that continuous officiating service of the promoted Deputy Superintendents of Police in these posts should be the basis of their seniority. Following this decision, after the temporary posts had been made permanent, the gradation list in question was prepared and published.

H Admittedly there is no statutory rule governing seniority inter-se of direct recruits and promotees. In the absence of any such rule

prescribing a different criterion, it cannot be disputed after *Patwardhan's* case(1) that continuous officiation is a reasonable basis for fixation of seniority. The High Court, however, allowed the writ petitions filed by the direct recruits on the view that the gradation list was invalid as it infringed rule 3 of the Bihar Police Service (Recruitment) Rules, 1953 framed under the Proviso to Article 309 of the Constitution of India. Rule 3 is in these terms :

> "The Governor shall decide in each year to number of vacancies to be filled in that year.
>
> Provided that the number of vacancies to be filled by promotion in the service in any one year shall not, unless the Governor is satisfied that there is not a sufficient number of officers fit for promotion, be less than half the total number of vacancies to be filled in any such year."

Before we proceed to consider the scope of this rule and its effect on the question of seniority in this case, it would be necessary to refer to a few more provisions of the Bihar Police Service (Recruitment) Rules and some facts forming the background to the controversy.

It is the Governor's duty under Rule 3 to decide "in each year" the number of vacancies in the Bihar Police Service required to be filled "in that year". The proviso to the rule states that the promotees to be appointed in any particular year shall not be less than half of the total number of vacancies to be filled in that year unless sufficient number of officers fit for promotion is not available. It is important to remember that rule 3 does not prescribe a fixed quota for each of the two categories, direct recruits and promotees, but only insists that at least half the vacancies in any year should be reserved for the promotees. Rule 2 of these Rules states that recruitment to Bihar Police Service shall be made by direct recruitment and by promotion. A third source of recruitment was later added in the Rules in 1975 with which we are not concerned in this case. The rules as regards direct appointment are included in part II of the Rules. Rules 22, 23 and 24, occurring in part III of the Rules lay down the method of recruitment by promotion. Under rule 22 a preliminary selection of officers for promotion is made in each Range by Range Selection Board. Those selected by the Range Selection Board have to appear before the Inspector General's Selection Board. The Inspector General's Selection Board has to nominate for appointment twice as many candidates as there are vacancies to be filled by

(1) [1977] 3 S. C. R. 775.

promotion and to send all relevant papers relating to the candidates nominated by it to the Bihar Public Service Commission and, at the same time, submit a list of such candidates to the Governor. The Public Service Commission after examination of the Papers is required to submit its recommendations to the Governor. Rule 24 says that the final selection of officers to be promoted shall be made by the Governor after considering the recommendations made by the Public Service Commission.

The appellants in both these appeals were appointed as Inspectors of Police in 1953. After working as Inspectors for about 12 years, they were promoted by notification issued on June 16, 1965 to officiate as Deputy Superintendents of Police. Before promotion they were subjected to the scrutinies prescribed by rules 22, 23 and 24 of the Bihar Police Service (Recruitment) Rules, 1953. Rule 648-B of the Bihar and Orissa Police Manual (Volume I) requires a promoted Deputy Superintendent of Police to pass an examination in accounts. This rule further says that a promotee shall be on probation for one year and at the end of the period, if he has passed the said examination and is found fit, he will be confirmed. The rule adds that if he has officiated as Deputy Superintendent for one year or more he may be confirmed without further probation on his passing the examination in accounts. The appellants passed the examination and thus satisfied all the requirements for confirmation. However the posts in which they were officiating were temporary posts. It appears from a memorandum issued by the State Government on December 28, 1955 that the Government considered it "desirable that all temporary posts of all categories, gazetted as well as non-Gazetted, which are in existence at present and which will be necessary for an indefinite period should be made permanent with effect from 1st April, 1956". This was followed by another memorandum on September 9, 1967 addressed to "All Departments of Govt." and "All Heads of Departments" on the "Policy regarding making temporary posts under Govt. in existence from a long period, permanent" which said that the Government had taken a decision that "steps should immediately be taken .... to make all those posts permanent which are in existence for more than three years and are likely to continue in future." A third memorandum on the subject issued on November 19, 1971 expressed dissatisfaction that "no effective step" had been taken to make the temporary posts permanent and requested all heads of departments to take "necessary steps" "immediately" to implement the Government decision. Apparently even the third memorandum failed to have any effect.

By a notification dated August 22, 1974 the State Government confirmed appellants and other similarly situated officers as Deputy Superintendents of Police with effect from dates which according to these officers were arbitrarily chosen. On September 1, 1974 the Government published a combined gradation list in which these promotees were placed even below the direct recruits who were appointed in 1974. The appellants challenged this gradation list in the Patna High Court by a writ petition (C.W.J.C.2011 of 1976). While that writ petition was pending, the Government of Bihar constituted a high power committee, known as the Saran Singh Committee, to assess the promotional prospects of different State services, examine the problem of "stagnation", and suggest remedial measures. The recommendations made by the Committee were accepted by the Government by resolution dated April 11, 1977. One of the decisions taken by the Government upon the recommendations of the Committee, which were set out in the schedule annexed to the resolution, was as follows :

> "The seniority of promoted officers vis-a-vis direct recruits should be determined by taking into account the continuous officiating service instead of on the basis of the length of substantive service in the cadre."

On behalf of the State Government it was submitted before the High Court at the hearing of the aforesaid writ petition (C.W.J.C. 2011 of 1976) that the Government proposed to re-examine the gradation list in the light of the Committee's recommendations. On this statement the High Court directed the State Government to re-examine the matter and prepare a fresh gradation list. None of the parties appealed against this order. Thereafter, on December 30, 1977, the State Government wrote to the Accountant General, Bihar, saying that on the basis of the Government decision that continuous officiating service of the promoted Deputy Superintendents of Police was to be the basis of their seniority, the Government had decided that "the temporary posts created in the Home (Police) Department would be made permanent from the dates of their creation." Accordingly 54 temporary posts brought into existence between 1948 and 1970 were converted into permanent posts by Government order No. 16161 also dated December 30, 1977. By notification dated January 7, 1978 the State Government appointed on probation the officers who had been officiating in those posts with effect from the dates mentioned against their names in the notification and the notification issued previously promoting these officers on officiating basis was cancelled. The dates from which these officers were said to have been appointed

A on probation were the dates of their promotion as officiating Deputy Superintendents of Police. The names of the appellants figure against serial numbers 23, 24 and 25 in the list given in the notification dated January 7, 1978. It is difficult to see why this method of converting the officiating appointment into one on probation was thought necessary. Rule 648-B of the Bihar and Orissa Police B Manual (Volume I) to which reference has been made earlier in this judgment provides that if a promotee has officiated as Deputy Superintendent for one year or more, he may be confirmed without further probation on his passing the examination in accounts. It has been already stated that all the appellants had passed the examination. However, the revised gradation list which is under challenge C was thereafter issued. This list, it was stated in a letter dated January 31, 1978/February 24, 1978 addressed by a Joint Secretary of the State Government to the Inspector General of Police, Bihar, Patna, had been "prepared on the basis of the date of appointment, officiating or peramanent, whichever is earlier, in the Bihar Police in the D light of Finance Department Resolution No. 3521 dated 11-4-77 and judgment of the High Court in C.W.J.C. No. 2011/76....."

In the context of the present controversy two important facts which have to be kept in mind are : (i) the appellants were promoted to officiate as Deputy Superintendents of Police in the year 1965 (other promotees like the appellants had also been officiating as Deputy Su- E perintendents of Police from different dates between 1948 and 1970) and (ii) by Government order dated December 30, 1977 fifty-four temporary posts of Deputy Superintendent of Police created between 1948 and 1970 were made permanent from the dates these posts were created.

F The only question here is whether there was anything wrong in fixing the inter-se seniority of the promotees and the direct recruits on the basis of continuous officiation by the promotees. It is well settled that in the absence of any legislation on the subject, or a rule framed under the Proviso to Article 309 of the Constitution, the State Government can regulate its public services in the exercise of G its executive power. (see *B. N. Nagarajan* v. *State of Mysore*(1) and *Sant Ram Sharma* v. *State of Rajasthan*(2). In the case before us there is no statute or any rule framed under the Proviso to Article 309 to determine the seniority as between the direct recruits and the promotees. The determination of seniority on the basis of continuous officiation has been held valid in *S. B. Patwardhan's* case H

(1) [1966] 3 S. C. R. 682
(2) [1968] 1 S. C. R. 111

(supra). The gradation list cannot therefore be challenged on the ground that an arbitrary date was taken as its basis or that it offends Article 14 of the Constitution. A

It is however contended on behalf of the respondents who were the writ petitioners in the High Court that rule 3 of the Bihar Police Service (Recruitment) Rules, 1953 framed under the Proviso to Article 309 of the Constitution, though it is not a seniority rule, does not permit the course adopted in this case by the Government, namely, converting the temporary posts created between 1948 and 1970 into permanent posts in the year 1977 with effect from the dates on which the temporary posts had been created. Under rule 3 the Governor has to decide in each year the number of vacancies to be filled in that year and to secure not less than half of the total vacancies for the promotees. The argument is that for the year 1965 or for that matter for any year prior to 1977 when the notification under challenge was issued, the Governor had duly exercised his power under rule 3 in that very year, and adding to the number of existing permanent posts by an order made in a subsequent year after the Governor had ascertained the number of vacancies required to be filled and had them filled according to the ratio prescribed by rule 3, would disturb that ratio and contravene rule 3. We are unable to accept this contention as correct. In the year 1977 exigencies of the situation prompted the Government to convert the temporary posts created between 1948 and 1970 into permanent posts with effect from the dates on which the temporary posts had been created. The appellants were promoted in 1965 to officiate as Deputy Superintendents of Police in posts which were then temporary. The Governor while exercising his powers under rule 3 in the year 1965 could not naturally take into account the number of posts made permanent in 1977 with effect from 1965. Whatever was done subsequently to increase the strength of the cadre in 1965 under compulsion of the situation cannot be said to have affected the validity of the action taken by the Governor in 1965. In *S. G. Jaisinghani* v. *Union of India & Ors.*(1) this Court held that when the quota was fixed for the two sources of recruitment, it could not be altered according to exigencies of the situation. But rule 3 is not really a quota rule, it does not lay down a fixed proportion, all it does is to insist that the number of vacancies to be filled by promotion should not be less than half of the total number of vacancies to be filled in any year. Adding to the number of vacancies and filling them by promotees does not certainly violate the rule requiring that not less than half of the vacancies must be B C D E F G H

(1) [1967] 2 S. C. R. 703

A filled by promotees. What the Governor had done in a previous year in exercise of his powers under rule 3, if it was valid then, is not invalidated by the subsequent conversion of some posts which were temporary at the time into permanent posts with effect from the earlier year. If for administrative reasons such a measure was considered necessary, there is nothing in rule 3 to suggest a bar. Rule B 3, as already mentioned, does not prescribe a fixed proportion of promotees and direct recruits for the vacancies to be filled in any year but only ensures not less than half of the vacancies for the promotees; that being so, filling more than half of the vacancies by promotees, cannot be an infringement of that rule.

C In the view we have taken, it is unnecessary to consider two other subsidiary questions raised : (i) whether the cadre consisted only of permanent posts or included both permanent and temporary posts : according to the appellants the cadre should include both temporary and permanent officers in the absence of any rule to the contrary. In this Judgmenf in reaching the conclusion stated above we have assum- D ed that the cadre consisted of permanent officers only; (ii) Whether rule 3 has ever been followed since the Rules were framed in 1953; according to the appellants rule 3 has really not been observed in any of those years and that no question of controvention of the rule can therefore be raised in this case.

E In the result we allow the appeals, set aside the judgment of the High Court and dismiss the writ petitions C.W.J.C. 204 of 1978 and C.W.J.C. 205 of 1978 filed in the High Court. It appears from an affidavit sworn by Shri Ashok Kumar Sinha, Under Secretary, Home (Police) Department, on behalf of the State of Bihar on August 31, 1979 and filed in this Court on the same day that the gradation list F in question contains certain mistakes; these shall be corrected by the concerned authority. In the circumstances of the case we make no order as to costs.

N.K.A. *Appeals allowed.*