
(2001) 03 DEL CK 0153

In the Delhi High Court

Case No : C.W. 2944 of 1995 and 500 of 1996

A.K. Mahajan and Others

APPELLANT

Vs

The Chief Justice and Others

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 226, 229

Delhi High Court Establishment (Appointment and Conditions of Services) Rules, 1972
— Rule 7

Citation : (2001) 4 AD 807 : (2001) 90 DLT 468

Hon'ble Judges : Chander Mohan Nayar, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : Chetan Sharma, for the Appellant; Sanjay Kaul, Viraj Dattar and Shivani Lal, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : High Court of Delhi and Another Vs. A.K. Mahajan and Others, AIR 2009 SC 2497 : (2009) 9 JT 306 : (2009) 8 SCALE 419 : (2009) 12 SCC 62 : (2009) 9 SCR 437 : (2009) 4 UJ 1829 : (2009) AIRSCW 4370

C.K. Mahajan, J.—These petitions are filed by Private Secretaries of the Delhi High Court challenging the Notification dated 7.8.1995 making amendment in Schedule II of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 with regard to selection to the post of Assistant Registrar. The dispute is between the Court Masters, Superintendents and Private Secretaries, the three categories of employees of the Delhi High Court.

2. Rule 3 of the Seniority Rules of 1971 provides for joint inter se seniority of confirmed employees in categories of equal status posts. It is not disputed that there is joint seniority list of the three categories of employees, i.e. Court Masters, Superintendents and Private Secretaries. The most of appointment provided in the pre-amended Delhi High Court Establishment (Appointment and

Conditions of Service) Rules, 1972 was as under:

"7. Mode of Appointment.

Except for appointment of officiating, temporary or ad hoc basis, the mode of and qualification for appointment to the post specified in Schedule II to these rules shall be as stated herein:

S.NO. Category Minimum of
post qualification

Mode of appointment.

1.

1.A.

2.

3. Assistant Registrar,

(Selection Post)

XX By selection on merit from confirmed

officers of categories 5, 6 & 7 of Class I

mentioned in Schedule I.

Categories 5, 6 and 7 of Class I mentioned in Schedule I is Superintendent, Court Master and Private Secretary respectively.

Respondent Nos. 1 and 2 acting on the basis of these rules sent letters to the petitioners calling upon them to appear in the interview for the five posts of Assistant Registrars. In all 14 employees of categories 5, 6, 7 and were called for the interview. Interviews were held on 7th and 8th November, 1994. On 7th August, 1995 the Mode of appointment to the Post of Assistant Registrar was amended with retrospective effect with effect from 1.7.1993 by Notification No. V.C. 18(2)95/Estt. 120. The amended rules read as under:

AMENDMENT IN SCHEDULE II

Sl.. No. Category of

post

Minimum

qualification

Mode of appointment.

1 2 3 4

3. Assistant

Registrar

(Selection Post)

By selection on merit from
confirmed officers of the categories
5, 6 & 7 of Class

II mentioned in Schedule I by
rotation in the following manner :

(a) First vacancy shall be filled in
from the officers of
category 7 of Class II mentioned in Schedule -I

(Private
Secretary)

(b) Second and third vacancies
shall be filled in from the officers of
categories 5 & 6 of Class II
mentioned in Schedule -I

(Superintendent and Court Master)
and so on

For the purposes of selection two
seniority lists, one of the officers of
category 7 of Class II mentioned in
Schedule I (Private Secretary) and
other joint seniority list of officers of
categories 5 and 6 of Class II
mentioned in Schedule I

(Superintendent and Court Masters)
shall be maintained :

Provided that if there be no officer available or found not fit for promotion out of the officers falling in consideration zone in any one of the above said categories, the vacancy may be filled from the other category by rotation as above subject to adjustment at the future selection/selections but without prejudice to the

seniority of the person(s) already appointed.

The above amendment shall come into force w.e.f. 1.2.1993."

3. On 9th August, 1995 the petitioners, except petitioner No. 8, were informed that the rules relating to appointment to the post of Assistant Registrar have been amended vide Notification No. V.G. 18(2)/95/Estt. 120 dated 7.8.1995. As a result of the amendment, the interviews held earlier on 7th and 8th November, 1994 were cancelled. The petitioners, except petitioner No. 8, were called upon to appear for interview before the Selection Committee on 11th August, 1995 at 3.00 p.m.

4. The petitioners filed a Writ Petition No. 2944/95 on 11th August, 1995 challenging the amendment of the rules which purport to take effect retrospectively. Another writ petition was filed by Mr. S.D. Sharma being CW 500/95 after the appointments were made by the respondents on the basis of the amended rules. We are disposing both these writ petitions by a common judgment.

5. It is submitted by the petitioner that they had acquired vested rights and were entitled to be considered for the post of the Assistant Registrar on the basis of the rules in force at the time their rights accrued. The retrospective effect of the amendment has taken away the rights which have accrued in their favor when the interview were held and each of the petitioners was considered eligible on the basis of the existing rules and the amended rules have completely disturbed the joint seniority list on the basis of which the selection process has to be carried out. The interview having been held the process should have been culminated into appointment. The petitioners have been superseded by the Court Masters and Superintendents who are much junior to them in the joint seniority list. It is also submitted that the Selection Committee was constituted by respondent No. 1 for making selection of the officers to the post of Assistant Registrar. The Committee instead of making appointments suggested amendment in the appointment rules. It was also argued that the respondent Nos. 1 and 2 should not have amended the rules in view of the judgment of the Supreme Court in S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others, .

6. In S.B. Mathur v. Hon. the Chief Justice of Delhi High Court and Ors. 1988 (4) SLR 505, the Superintendents of this Court approached the Supreme Court and challenged the selection process to the post of A.Rs. on the basis of joint seniority of P.S./C.M./Supdts. It was held by the Supreme Court that:

"All that could be pointed out by Mr. Thakur was that under the combined seniority list, for some time, relatively fewer superintendents will be within the zone of consideration for the post of Asstt. Registrars as compared to Private Secretaries to the Hon. Judges and Court Masters. We fail to see how any of the said Rules or the said combined or joint seniority list can be struck down on the basis of such a consequences in first place. It is well settled that no employee

has a right to promotion as such. As we have already pointed out the Rules does not exclude the possibility of Superintendents getting promoted to the posts of Asstt. Registrar. It may happen that the number of Superintendents in the zone of consideration might be fewer compare to the number of Court Masters and Private Secretaries within the zone. But that situation might well be reversed a few years later and it is impossible to hold that any of the said provisions is bad in law on that ground."

7. It was argued on behalf of the petitioners that the issue of selection to the post of A.Rs. on the basis of joint seniority of Supdt./Court Masters & Private Secretaries already stand settled by the Supreme Court. In these circumstances the respondent No. 1 has no power to amend the rule by way of retrospective amendment. It is submitted that by way of retrospective amendment the effect of the decision of the Supreme Court has been set at naught and the binding character of the judgment of the Supreme Court has been abrogated. Reliance was placed on a judgment of the Supreme Court in *Tamilnadu Ass. v. State of Tamilnadu* AIR 1998 SC 226 wherein it was held by the Supreme Court as under:

"Hence the passing of the impugned Government order will bring into existence the situation which was directed to be avoided by the Division Bench judgment. Enforcing the impugned Government orders will result in perpetrating something which was struck down by the High Court and the Supreme Court..... Right to combine seniority list as well as the promotional opportunities provided in G.O. 1968 became crystalised in the said writ of mandamus issued by the Madras High Court as upheld by this Court and the same could not be taken away by resorting to the rule making power of the State Government."

8. It was then argued that in the second interview one of the petitioners, petitioner No. 8 was not considered whereas he was considered and interviewed in the first interview. Therefore, the immediate effect of the retrospective amendment is that the right of consideration of petitioner No. 8 was taken away. It argued that the rules by its retrospective sweep could not destroy the fundamental rights of all those incumbents of a common cadre to be treated alike for all other available service benefits flowing from the common cadre. Reliance was placed on *K. Ravindranath Pai and another Vs. State of Karnataka and another*, .

9. The respondents No. 1 and 2 have stated in their counter affidavit that Hon"ble the Chief Justice amended the rules under Article 229(2) which is analogous to the corresponding power under Article 309 of the Constitution and Article 309 empowers to amend the rules retrospectively. Reliance was placed by learned Counsel for the respondents on a decision of the Punjab and Haryana High Court in *Brij Kishore Bhatia's case* 1985 1 SLR 121 wherein it was held that rules made under Article 309 of the Constitution can be given retrospective effect.

10. We have perused the judgment of the Supreme Court in *S.B. Mathur's case* (supra), heavily relied upon by the learned Counsel for the petitioners. The

process of making appointments to the post of Assistant Registrar in Delhi High Court was dealt with in details by the Supreme Court. Right to combine seniority list as well as the promotional opportunities provided in the pre-amended rules became crystalised in the said writ of mandamus issued by the Supreme Court and the same could not be taken away by resorting to the rule making power by respondent Nos. 1 and 2. There is no change in the circumstances. The amendment could only be made when there is such a change in the circumstances that in the given circumstances the Supreme Court would not have passed such an order.

11. The judgment of the Punjab and Haryana High Court in Brij Kishore Bhatia's case (supra) deals with the power of the Chief Justice to make retrospective Rule. It was held that under Article 229(2) the Chief Justice can make rules and enforce them with retrospective effect. It is not disputed. Of course, Chief Justice can make rules and enforce them with retrospective effect. But the facts of the present case are different. In the present case the Superintendents, Court Masters and Private Secretaries were parties to a writ petition filed by the Superintendents in S.B. Mathur's case. The Supreme Court dealt with the issue of joint seniority list and the selection avenues on the basis of the joint seniority list. Right to combine seniority list as well as the promotional opportunities provided in pre-amended rules became crystalised in a writ of mandamus issued by the Supreme Court and the same could not be taken away by resorting to the rule making power by the Chief Justice.

12. Secondly in the present case on 7th/8th November, 1994 fourteen officers from the joint seniority list, including the petitioners, were interviewed. It is submitted by the learned Counsel for the petitioners that a vested right had accrued in favor of the petitioners which was taken away by retrospective operation of the amended rules.

13. The expressions "vested right" or "accrued right" has been defined in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, . It was held by the Supreme Court as under:

"In many of these decisions the expression "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the manner of promotion, seniority, substantive appointment etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with under the rule in force at that time. It has been held that such an amendment having retrospective operations which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

14. The question is as to whether any benefit which was available to the petitioners prior to the retrospective amendment of the rule has been adversely

affected by retrospective operation of the rules.

15. To understand the controversy let us first examine the sequence of events detailed by the respondent Nos. 1 and 2 in their counter affidavit.

16. In March, 1994 there were five posts of Assistant Registrars. On 25th March, 1994 respondent No. 1 placed the matter before the Selection Committee comprising of Justice P.K. Bahri and Justice R.C. Lahoti. A representation was moved by the Superintendents/Court Masters on 2nd July, 1994 seeking amendment of the rules. The representation was placed before the Committee on 13th July, 1994. On 26th September, 1994 the Committee directed that the first seven senior most officers be called for interview on 7th of November, 1994 and the next seven officers be called on 8th November, 1994. The Committee interviewed the above said fourteen senior most officers, on the basis of the joint seniority list, including the petitioners, on 7th and 8th November, 1994. Subsequently the Committee considered the representation dated 2.7.1994 and recommended that necessary amendment be made in the rules so that 1/3rd posts each of Assistant Registrar may be reserved for promotion from the cadre of Private Secretary, Superintendent and Court Master. The Committee also observed that in case its recommendations are not agreed upon it can then make recommendations for filling up the then existing posts of A.Rs. from the candidates whom the Committee had already interviewed. Another representation was moved by the Superintendent/Court Masters which was placed before the Committee on 26th April, 1995. The Committee reiterated the opinion given by it earlier and suggested that the Registry may put up draft amendment of the rules for consideration. The recommendations of the Committee were approved by the Chief Justice on 18th May, 1998. The Committee suggested amendment of the rules on 26th July, 1995. Same day the recommendations were approved by the Chief Justice. On 7th August, 1995 the draft notification and the proposal for retrospective operation of the rules w.e.f. 1st of July, 1993 was approved by the Chief Justice. On 9th August, 1995 the Selection Committee was reconstituted comprising of R.C. Lahoti and Arun Kumar, JJ. On 9th August, 1995 the interview letters were issued calling upon them to appear for interview on 11th August, 1995. Two seniority lists--one of Private Secretaries and the other of Court Masters and Superintendents--were prepared and the interview letters were issued on the basis of two seniority lists and not on the basis of joint seniority list. Petitioner No. 8 was not called for interview. The Committee interviewed the candidates on 11th August, 1995 and 16th August, 1995 and selected the officers for the post of Assistant Registrar.

17. In their rejoinder affidavit the petitioners pointed out that the Chief Justice passed orders to the effect that these five posts of Assistant Registrars be filled up according to the then existing rules and the rules be amended prospectively. This order was passed subsequent to the representation of the Superintendents and Court Masters. On a perusal of the office file we found that there was an order to this effect. This fact was concealed by the respondent Nos. 1 and 2 in

their counter affidavit.

18. It is to be noticed that in the first interview all the petitioners were called for interview and in the second interview, i.e. after the retrospective amendment of the rules, petitioner No. 8 went outside the zone of consideration and hence was not called for interview. Hence the benefit of consideration which was available to petitioner No. 8 prior to the retrospective amendment of the rules was not available to him after the amendment of the rules. Instead of one joint seniority list the amended rules made provision for two seniority lists. The benefit of joint seniority list which was available prior to the amendment has also been taken away with the result that the officers who were senior in the joint seniority list became junior by the bifurcation of joint seniority list. We, Therefore, hold that vested right of the petitioners has been adversely affected by retrospective operation of the rules.

19. From the above facts it is clear that on 26th September, 1994 when the Committee decided to hold interview of the fourteen officers the representation of the Superintendents/Court Masters dated 2nd July, 1994 was before the Committee. Despite that the Committee decided to hold an interview and in fact an interview was held on 7/8.11.94. The Committee instead of making recommendation to the post of Assistant Registrar on the basis of the interview recommended for amendment of the rules. It was observed that in case its recommendations are not agreed upon, it can then make recommendations for filling up the then existing posts of Assistant Registrar from the candidates whom the Committee had already interviewed. It is apparent from the record that these recommendations of the Committee were rejected by the respondent No. 1 and the Committee was directed to make appointment on the basis of existing rules.

20. The Supreme Court in the High Court of Judicature for High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another, , had dealt with the authority of the Chief Justice of High Court under Article 229 of the Constitution. It was held as under:

"A Judge of the High Court individually or all the Judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion to the High Court staff so as to be appointed on post meant for officers from Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the administration independently so as not to brook any interference from any quarter, not even from his Brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority."

21. Under Article 229 of the Chief Justice of the High Court is the supreme authority in the matter of appointments of the High Court officers and servants.

Article 229 also confers rule making power on the Chief Justice for regulating the conditions of service of officers and servants of the High Court. The Chief Justice can constitute different Committees for his convenience. In the present case the Selection Committee was constituted by the Chief Justice to suggest/recommend the names of the officers for the appointment of Assistant Registrars. Instead of making appointments the Committee suggested amendment in the rules. It was also observed that if the suggestion is not acceptable to the Chief Justice they will make the appointments from the officers whom they interviewed. The Chief Justice rejected the recommendation of the Committee and passed orders directing the Committee to make appointments on the basis of the existing rules and then the matter of amendments of the rules will be considered prospectively. In these circumstances the Committee was left with no other option but to make appointments. But the Committee kept on waiting for the Superintendents/Court Masters to make another representation for the reasons best known to them, and on their second representation they again suggested amendment in the rules and directed the Registry to prepare draft rules. This act of the Selection Committee amounts to interfering with the jurisdiction of the Chief Justice.

22. It is admitted fact that after the amendment of the rules the Selection Committee was reconstituted. It is not clear to what necessitated the reconstitution of the Committee. On the one hand the Selection Committee slept over the matter for nine months after taking the interview and on the other hand unprecedented haste has been shown for the amendment of the rules and appointment of Assistant Registrar after the amendment of the rules.

23. In *S.P. Kapur v. State of H.P.*, AIR 1981 SC 2181, the Committee was constituted on the very next day of finalisation of seniority list of the candidates. One of the members of the Committee was on leave for a short period. Another person was included in the Committee. Selection was made and orders of appointment also issued on the very date of the constitution of the Committee. It was held by the Supreme Court:

"We are of the opinion that there is room for suspecting the reason why the whole thing was completed in haste on 3.11.1979 after the preparation of the final seniority list on 2.11.1979, in the light of the admitted position that the Deputy Directors and Director of Health Services, Himachal Pradesh were holding ad hoc appointments from 1973. The matter was not such as could not have been put off by a few days. Such rush is not usual in any State Government. The post-haste manner in which these things have been done on 3.11.1979 suggests that some higher-up interested in pushing through the matter hastily when the Regular Secretary, Health and Family Welfare was on leave. Therefore, we are of the opinion that the matter requires to be considered afresh."

24. In the present case on 7th August, 1995 the draft notification and the proposal for retrospective operation of the rules w.e.f. 1st of July, 1993 was approved by the Chief Justice. On 9th August, 1995 the Selection Committee was reconstituted. On 9th August, 1995 at 5.00 p.m. the interview letters were

issued calling upon the incumbents to appear for interview on the next working day i.e. 11th August, 1995. 10th August, 1995 was a holiday. In the interview letter it was stated that the rules have been amended. Even the amended rules were not circulated. The petitioners were kept in dark and were not aware as to what amendment has been made in the rules. The amendment of the rules, issuing interview letters and making appointment, without circulating the notification, was done in such a quick succession that we are unable to resist ourselves from raising our eye-brows.

25. Taking decision by the respondent to make appointments on the basis of the existing rules, disagreeing with the suggestion of the Selection Committee and then again changing his mind, taking a somersault, and amending the rules with retrospective effect shows non-application of mind by the respondents.

26. It is presumed that the Selection Committee in the first interview might have given some grading to the candidates who appeared before them. We are informed that no such record is available with the respondent. In view of the non-availability of the record we are left with no option but to draw an inference against the respondents.

27. During arguments it was submitted by the learned Counsel for the petitioners that if the retrospective effect of the amendment is removed and rules are made operative prospectively the petitioners will not press for quashing of the rules. Under the given circumstances and on the basis of the above discussion we are of the opinion that the Committee should have recommended names for appointment to the posts of Assistant Registrars from amongst the officers interviewed by them. The Chief Justice, respondent No. 1, once passed orders for making appointment to the posts of Assistant Registrar on the basis of the rules existing at that point of time should not have given retrospective effect to the impugned rules. He cannot blow hot and cold at the same time.

28. During the course of arguments we are informed that all the petitioners and respondents have been appointed to the posts of Assistant Registrars. They all were found fit by the Selection Committee at the time of selection. By the impugned amendment only quota system has been introduced. The eligibility conditions and qualification for selection to the post of A.R. remained the same. After the amendment of the rules one interview was held on 16th August, 1995. In between August, 1995 and July, 2000 no interview was held and the appointments to the posts of Assistant Registrar were made on the basis of two seniority lists -- one of Private Secretaries and the other of Court Masters/ Superintendents. Their seniority was not disturbed.

29. Learned Counsel for the respondents invited our attention to the fact that if the present petition is allowed it may result in reversion of the Asstt. Registrars appointed after the amendment of the rules. We find some substance in the submission. We find answer to this question in a judgment of the Supreme Court in *Ajit Singh and Others Vs. The State of Punjab and Others*, . Relevant portion is

as under:

"It is automatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc.If a Court decides that in order only to remove hardship such roster-point promotees are not to face reversions--then it would, in our opinion be, necessary to hold--consistent with our interpretation of Articles 14 and 16(1)--that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship."

30. In A.C. Thalwal Vs. High Court of Himachal Pradesh and Others, , the Supreme Court has given a solution to this problem.

31. There is an interim order passed by this Court that all the appointments to the post of Asstt. Registrar shall be subject to disposal of the present writ petition. We are told that it is also written on the appointment letter issued to the A.Rs. and D.Rs. that their appointment is subject to disposal of the writ petition. they are in the knowledge that a writ petition is pending and their appointment can be quashed in case the writ petition is allowed.

32. For the foregoing reasons the writ petitions are allowed. The retrospective operation of the impugned rules is quashed.

33. With a view to balance equities and avoid any hardship to the persons already appointed as A.Rs. and D.Rs. it is directed that in spite of the quashing of the retrospective effect of the amended rules, the respondents and other A.Rs./ D.Rs. shall continue to hold the posts presently held by them on ad hoc basis. The matter be considered afresh for appointment on regular basis. The vacancies which fell vacant prior to the date of amendment, i.e. 7th August, 1995, shall be filled according to the pre-amended rules and thereafter in accordance with the new amended rules. The petitioners, respondents and other eligible officers shall be considered for the posts of Assistant Registrars at a point of time when they would have become eligible for such consideration according to the rules applicable, and if found fit they shall be so selected and for future their seniority in the cadre of Assistant Registrars shall be reckoned from the date of such selection. In any case till such consideration, they shall continue to hold the posts presently held by them on ad hoc basis, as a special case.

34. This may result in reversion of some A.Rs. and D.Rs. already appointed. Justice to greater number of employees is preferable even if that results in hardship to some of the employees. There cannot be a decision which would satisfy each and every employee. What is to be judged is whether it is fair, reasonable and does justice to the majority of the employees. However, in view of the facts and circumstances of the present case, the High Court shall endeavor to accommodate all officers in the posts which they may be presently holding and not resort to reversions by creating fresh posts as the quantum of working

will amply justify the same.

35. The writ petitions are disposed of in terms of the above directions.

Nor order as to costs.

36. Writ Petitions allowed.