
(2014) 12 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 19061 and 24284 of 2012 (O&M) and 18259, 18491, 18389, 20107, 20121 and 21184 of 2013

Balwant Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 187, 226, 309

Citation : (2015) 178 PLR 588 : (2015) 1 SCT 535

Hon'ble Judges : Satish Kumar Mittal, J;Deepak Sibal, J

Bench : Division Bench

Advocate : Sanjay Bansal, Akshay Bhan, Sr. Advocates, Parvesh Saini, Brij Mohan Monga, Alok Mittal and Johan Kumar, Advocates for the Appellant; Ravi Dutt Sharma, D.A.G, Advocates for the Respondent

Judgement

Deepak Sibal, J.—Through the present judgment we propose to decide a bunch of eight writ petitions being CWP Nos. 19061 and 24284 of 2012, 18259, 18389, 18491, 20107, 20121 and 21184 of 2013. As the writ petitions are interconnected and involve similar issues we are deciding all the earlier mentioned writ petitions through the present common order. For the sake of convenience, facts have been taken from CWP No. 19061 of 2012 titled as "Balwant Singh v. The State of Haryana and others". The petitioner is working as an Under Secretary in the Haryana Vidhan Sabha and knocks the doors of this Court primarily seeking to challenge the Haryana Vidhan Sabha Secretariat Service (Amendment) Rules, 2012 (hereinafter referred to as the "2012 Rules"). According to the petitioner in the impugned Rules the qualifications set out for the appointment to the post of Joint Secretary and Deputy Secretary in the Haryana Vidhan Sabha Secretariat are a result of colourable exercise of power on behalf of the Government. According to the petitioner, the impugned Rules are also liable to be set aside on the ground that they are arbitrary and thus violative of Articles 14 and 16 of the Constitution of India. The petitioner further challenges orders Annexures P-4 and P-8 promoting respondent Nos. 4 and 5

and seeks setting aside of the appointment of respondent No. 6 from the post of Deputy Secretary.

2. Before we proceed further, it would be necessary for us to cull out the historical background of the Service Rules governing the appointment to the posts of Joint Secretary and Deputy Secretary in the Haryana Vidhan Sabha Secretariat. Through notification dated 24.09.1981 in exercise of powers conferred under clause (3) of Article 187 of the Constitution of India, the Governor of Haryana, after consultation with the Speaker, Haryana Vidhan Sabha, made the Haryana Vidhan Sabha Secretariat Service Rules, 1981 (hereinafter referred to as the "1981 Rules") regulating the recruitment and conditions of service of persons appointed to the Haryana Vidhan Sabha Secretariat Service. Rules 8 & 9 of the 1981 Rules along with relevant extract of Appendix B attached to these Rules is reproduced below:-

"Rule 8:- No persons shall be appointed to any post in the Service, unless he is in possession of qualification and experience specified in column 3 of Appendix B to these rules in case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of recruitment other than by direct recruitment.

Rule 9:- The method of recruitment to any post in the service other than to the post of Secretary, shall be determined by the Speaker.

Method of recruitment: (1) Recruitment to the service shall be made:-

(i) by direct recruitment; or

(ii) by promotion; or

(iii) by transfer or deputation of an officer/official already in the service of any State Government or the Government of India.

2. The appointing authority shall determine the method of recruitment as and when a vacancy arises.

3. From a perusal of the above reproduced Rules and Appendix-B attached to these Rules, it is clear that as per Rule 8 of the 1981 Rules no person could be appointed to any post in the Service, unless he was in possession of qualifications and experience specified in column 3 of Appendix-B to these Rules in case of direct recruitment and those specified in column 4 of the Appendix in the case of recruitment other than by way of direct recruitment. As per Rule 9, the method of recruitment to the posts in the service has been laid down. Under Rule 9(2) it was provided that the appointing authority would determine the method of recruitment as and when a vacancy arose. So far as the Appendix-B is concerned for the post of Joint Secretary, no qualification was prescribed for direct recruitment as the post could be filled up only by way of promotion/transfer/deputation. So far as the qualifications for the post of Joint Secretary were concerned, it was provided that a Law Graduate with three years experience as Deputy Secretary or five years experience as Under Secretary in

the Haryana Vidhan Sabha Secretariat was eligible for being considered for appointment to the post of Joint Secretary by way of promotion/transfer/deputation. So far as the post of Deputy Secretary was concerned, for a person to be appointed by way of direct recruitment, he was required to be a Law Graduate with six years experience in office administration in a supervisory capacity or in Parliamentary procedure or at the Bar or in Government Service involving in legal practice or duties. For promotion to the post of Deputy Secretary, a Law Graduate with three years experience as Under Secretary in the Haryana Vidhan Sabha Secretariat was eligible.

4. Through notification dated 19.12.1997 Appendix-B attached to the Rules was amended/substituted. The relevant portion of amended/substituted Appendix B is reproduced below:-

5. From a perusal of the above, it is clear that the primary change that was brought about in the qualifications for the post of Deputy Secretary, Joint Secretary and Secretary were that instead of a Law Graduate now only a LL.B. Professional Degree holder was made eligible. The experience of six years" in the case of appointment as a Deputy Secretary on direct recruitment basis and three years" experience required for appointment as Deputy Secretary by way of promotion was held constant as contained in the unamended Appendix-B attached to the 1981 Rules.

6. The above Appendix was again amended, through notification of the Government of Haryana dated 27.08.2012. After the amendment made in the year 2012 brought through the notification dated 27.08.2012 relevant portion of Appendix B now read as under:-

7. The above quoted portion of Appendix B shows the creation of a new post of Additional Secretary to be filled up only by way of promotion from a Law Graduate holding a professional degree and having two years experience as Joint Secretary in Haryana Vidhan Sabha.

8. So far as the post of Joint Secretary is concerned, under the earlier amendment made in the year 1997, the same could be filled up by way of promotion from a Deputy Secretary who held a LL.B. (Professional Degree) with three years experience or as Under Secretary/Secretary to the Speaker with five years experience. Through the impugned 2012 Rules, the condition of possession of LL.B. (Professional Degree) was completely done away with and the requirement of three years experience as Deputy Secretary as required under the 1997 amendment, was substituted with two years experience as Deputy Secretary. So far as the requirement of five years experience as Under Secretary or Secretary to the Speaker is concerned, the same was downgraded to four years experience instead of five years.

9. So far as the post of Deputy Secretary was concerned, as per the 1997 amendment, the same could be filled up by way of direct recruitment from a person holding LL.B. (Professional Degree) with six years experience in Office

Administration or six years experience at the Bar. As per the 2012 Rules the requirement of having six years experience in Office Administration was completely done away with and so far as the requirement of six years experience at the Bar was concerned the same was downgraded to two year years. By way of promotion, the post of Deputy Secretary, as per the 1997 amendment could be filled up by a person holding LL.B. (Professional Degree) with three years experience as Under Secretary or Secretary to the Speaker. In the 2012 Rules, the requirement of LL.B. (Professional Degree) was substituted with a Graduate Degree and the requirement of three years experience was downgraded to two years.

10. Note (iii) at the end of the 2012 Rules, which is also relevant is reproduced below:-

"(iii) In case of non-availability of qualified/experienced persons from within the office, the posts in different categories shall be filled by direct recruitment."

11. It is the qualifications prescribed in the 2012 Rules for appointment to the post of Deputy Secretary and Joint Secretary which are primarily challenged by the petitioner in the present writ petition.

12. We would have normally not entered into this field of challenge to the qualifications as laid down by an employer as according to us it is the prerogative of the employer to laid down qualifications for different posts as per its needs and requirements but the case in hand is not one of those normal cases. The admitted facts which we would now refer would show that the case in hand is one of those cases where the impugned qualifications have been laid down as a result of colourable exercise of power so vested in the Government and are arbitrary and thus, violative of Articles 14 and 16 of the Constitution of India. Why we say so, is for the reason that when we have dug into the record of the case and scrutinized it, we have found that the impugned qualifications have been tailor-made to suit each of the private respondents. The following admitted facts are the reason why we hold as above.

13. We would take the case of each of the private respondents one by one.

14. Respondent No. 4-Subhash Chander, while working as Secretary to the Speaker was promoted on officiating basis as Deputy Secretary vide order dated 01.01.2010. It may be useful to submit here that in the year 2010, the qualifications for appointment to the post of Deputy Secretary were contained in the 1981 Rules as amended in the year 1997 (as reproduced earlier). As per the prevalent Rules on 01.01.2010, only a person who was holding LL.B. (Professional Degree) with three years experience as Under Secretary or Secretary to the Speaker could be promoted as Deputy Secretary. Respondent No. 4 was neither holding LL.B. (Professional Degree) nor had three years experience as required. Nonetheless he was appointed. While he was working on such post the impugned 2012 Rules were made to accommodate him. As per the impugned Rules, a Graduate with two years experience as Under Secretary or

Secretary to Speaker was now made eligible. These were the qualifications which would perfectly suit respondent No. 4 and make him eligible to hold the post of Deputy Secretary since he did not hold the LL.B. (Professional) degree which was an essential qualification as per the Rules prior to the impugned amendment. As if this was not enough to favour him, in the qualification for the post of Joint Secretary also the requirement of possessing LL.B. (Professional Degree) was done away with. Also that the three years experience required as Deputy Secretary for promotion to the post of Joint Secretary was downgraded to two years experience. This was so because, at the time when 2012 Rules were made, respondent No. 4 had gathered an experience of only two years as Deputy Secretary and not 3 years as required as per the rules prior to the impugned amendments. Thus, on the impugned Rules having been made on 27.08.2012, without losing much time, vide order dated 01.09.2012 he was now promoted as Joint Secretary.

15. From the above, it is clear that on 01.01.2010 when respondent No. 4 was promoted to assume charge as Deputy Secretary he was not even eligible to hold the post nonetheless he was still appointed and further that he was allowed to continue on that post for over two years and after he had gathered experience as Deputy Secretary for two years, the 2012 Rules were made through which the requirement of possession of LL.B. (Professional Degree) was done away with and the experience was downgraded from three years to two years only to regularize the appointment of respondent No. 4 as Deputy Secretary. Not only this, the requirement of possession of LL.B. Degree (Professional) which was an essential qualification for the last several years for promotion to the post of Joint Secretary was also done away with to pave a smooth path for respondent No. 4 to travel by way of promotion from the post of Deputy Secretary to the Joint Secretary. It may be noted here that the requirement of LL.B. was there since the year 1981 and the same was done away with after 31 years. On a question being posed by us to the learned counsel appearing on the behalf of the State so as to what occasioned such change, the answer was a complete silence. To satisfy ourselves we had summoned the record and after perusing the same, we found no reason recorded before such drastic change and that to which had stood the test of time for over three decades. From the record as also from the arguments of the learned counsel appearing on behalf of the State no answer came in the affirmative to our question so as to whether there was any change in the nature of duties assigned to the post of Deputy Secretary and Joint Secretary occasioning the change in qualifications.

16. In view of the above, we have no hesitation to hold that the above impugned amendments made to the Service Rules in the year 2012 were made only to accommodate and facilitate the appointment and promotion of respondent No. 4.

17. So far as, respondent No. 5-Joga Singh is concerned, while he was working as Superintendent in the Haryana Vidhan Sabha Secretariat, vide order dated 04.07.2009, he was permitted to officiate as an Under Secretary against the post

of Deputy Secretary. Relevant portion of the order to that effect is reproduced below:-

"HARYANA VIDHAN SABHA SECRETARIAT ORDER

The Hon"ble Speaker, Haryana Vidhan Sabha has been pleased to make the following appointments/promotion with immediate effect on probation for a period of one year as required under the Haryana Vidhan Sabha Secretariat Service Rules, 1981, as amended upto date:-

1 to 3. XX XX XX

4. Shri Joga singh, Superintendent, as an officiating Under Secretary in PB-3, Rs. 15600-39100 + Grade Pay of Rs. 6000/-, against the post of Deputy Secretary, vacated by Shri Data Ram, on his promotion as Joint Secretary.

6 to 9. XX XX XX"

18. The above order shocks us. How could a Superintendent be made to Officiate as an Under Secretary against the post of a Deputy Secretary? As if this was not enough, to further compound the illegality through the impugned 2012 Rules made on 27.08.2012, the qualifications for promotion to the post of Deputy Secretary were diluted. The requirement of LL.B. (Professional Degree) were done away with and predictably soon thereafter, respondent No. 5-Joga Singh who was a simple Graduate was promoted as Deputy Secretary through order dated 01.09.2012 i.e. 3 days of the promulgation of the 2012 Rules.

19. Respondent No. 6-Naren Dutt is a classical example of hold discretionary power was wielded arbitrary by the respondents. Respondent No. 6 made an application on 29.02.2012 seeking appointment to the post of Deputy Secretary by way of direct recruitment. In the application, he stated that he had come to know from some reliable source that one post of Deputy Secretary was lying vacant in the Haryana Vidhan Sabha Secretariat. Claiming himself to be eligible, he offered his services for appointment to the post of Deputy Secretary. His application was processed by the office on 29.02.2012 itself and an objection was raised by the office questioning his eligibility as under:-

"In this connection it is submitted that from the perusal of the documents of the applicant enclosed with the PUC it reveals that he does not fulfill the required experience as laid down in entry 3 column 2 of Appendix-B of the Service Rules, 1981 as he having about two years experience at Bar against requirement of six years experience."

20. After that objection had been raised, the Secretary of the Haryana Vidhan Sabha placed the matter before the competent authority as under:-

"Hon. Speaker may peruse the office note. As pointed out in the office note at N.P. 1 ante, the applicant does not fulfill the requisite qualification. Therefore, in view of the same, the case is submitted for kind consideration and orders of the Hon"ble Speaker."

21. On the above note, shockingly, the competent authority passed the following order:-

"I have gone through the office noting. In view of the exigency of work, the appointment be made and thereafter the relaxation be obtained from the Government."

22. From the above, what we wish to highlight is that the above processing of his application was done within a single day. He moved the application on 29.02.2012 and file was processed by the office and also put up before the competent authority on the same day and he passed the orders for appointing him on that very day itself. Further, in spite of the clear cut objection raised by the office, the competent authority ordered the appointment of respondent No. 6, in complete disregard to the statutory rules, which at least bound him. A perusal of the noting shows that respondent No. 6 was ordered to be appointed subject to relaxation being obtained from the Government. This order is dated 29.02.2012. Till date, no such relaxation has been shown to us. The noting/order by the competent authority ordering appointment of respondent No. 6 further reveals that he had ordered his appointment in view of the exigency of work. On perusal of the record, we found no such urgency so recorded by the office which had been brought to the notice of the competent authority. In fact, a perusal of the office note does not show any such urgency requiring immediate appointment of a Deputy Secretary. Even assuming that there was exigency of work requiring appointment of a Deputy Secretary then there were several officers like the petitioner in the Haryana Vidhan Sabha Secretariat itself who could have been appointed in place of a complete stranger to the Secretariat like respondent No. 6.

23. The above arbitrary action does not end here. A perusal of the application moved by respondent No. 6 shows that he was holding a degree of LL.B. (Professional) with less than two years experience at the Bar against the required six years experience as provided in the 1981 Rules as also in the amendment made in the year 1997. After appointing respondent No. 6, through the impugned rules, the requirement of six years experience at the Bar was downgraded to two years. Thereafter, on the basis of the amended rules an advertisement was issued for filling up the post of Deputy Secretary by way of direct recruitment against which respondent No. 6 applied and was predictably appointed on 16.04.2013.

24. As observed above, we had summoned the record and after perusal of the same we found absolutely no reason so as to why after 31 years the time tested qualifications of six years experience at the Bar after possessing of LL.B. degree was amended. A question posed to the learned State counsel to this effect drew a complete blank from his side.

25. The above facts persuade us to come to an irresistible conclusion that the impugned Rules were made only to facilitate the appointments of the private

respondents. The facts speak for themselves that the impugned action is a result of colourable exercise of power at the hands of the respondents. So far as, the learned State counsel is concerned, he did not dispute the above facts though he did argue that it was the discretion of the competent authority to recruit from any source as provided under the Rules i.e. by way of direct recruitment or by way of promotion/transfers/deputation. For this relied on Rule 9(2) of the 1981 Rule, which is reproduced below:-

"Rule 9(2):-The appointing authority shall determine the method of recruitment as and when a vacancy arises."

26. On the basis of the above, learned counsel submitted that there being no challenge to Rule 9(2) of the 1981 Rules, the present petition deserved to be dismissed. The submission made by the learned counsel appearing on behalf of the State requires to be considered only to be rejected. There is no dispute that under Rule 9(2) of the 1981 Rules, the competent authority has a right to make appointment from any source provided under the Rules but the question in the case in hand which arises for consideration is somewhat different and therefore, we do not intend to go into the power of the competent authority under Rule 9(2) of the 1981 Rules. Even otherwise, it is settled law that discretion at the hands of an Authority, howsoever, high is it, is required to be exercised in a reasonable, justifiable and lawful manner.

27. In view of the above facts, we find that in the present case, the discretion so exercised was arbitrary.

28. Learned counsel appearing on behalf of the private respondents submitted that the issue raised in the present petition was beyond the purview of this Court under Article 226 of the Constitution of India. It was submitted that the qualifications to be prescribed for a post lies exclusively within the domain of the employer and in the absence of any case of proven mala fide we should restrain ourselves from entering into this dispute. For this proposition, the judgment of the Apex Court in the case of Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others, , was relied upon Para No. 22 of the judgment which was referred is reproduced below:-

"It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonable relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. (See J. Ranga Swamy v. Govt. of A.P. and P.U. Joshi v. Accountant General). In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered

to be necessary and reasonable. Therefore, it cannot be said that the prescription of Pd. D is unreasonable."

[emphasis by us]

29. There is no quarrel with the proposition of law as set out above but a closer reading of the law settled by the Apex Court, as above, shows that the judgment cited by the private respondents, in fact, goes against them. In above reproduced paragraph, the Apex Court as held that the prescribed qualifications should be reasonably relevant and should have a rational nexus with the functions and duties attached to the post. In the case in hand, we have found that the essential qualifications of LL.B. degree and experience of six years which were there in the rules for the last over three decades were substituted vide the impugned amendments. On repeated questions being posed by us so as to what occasioned such change, learned counsel appearing on behalf of the State drew a complete blank. On being questioned by the Court whether there was any change in the nature and duties to the posts in question which occasioned such change in qualifications the answer came in the negative. At this stage, we wish to refer to a letter written by the Secretary of the Haryana Vidhan Sabha quoting the Speaker through which the importance of having LL.B. (Professional) as one of the essential qualification to the post in question was highly recommended:-

"SUMIT KUMAR

D.O. No. HVS-P55-96/17559 Dated: 22nd Oct., 96.

Dear Shri,

This with reference to the Joint Secretary Political & Services Department D.O. No. 3/19/93-POL(IP), dated 12th August, 1996 regarding amendment to the Haryana Vidhan Sabha Secretariat Service Rules, 1981. The matter was placed to the Hon"ble Speaker for his consideration and the Hon"ble Speaker has been pleased to order as under:-

"I have gone through the proposed Service Rules. The designation of the post of Senior Personal Assistant be redesignated as Personal Assistant as the pay scale of the posts of Personal Assistant and Senior Personal Assistant are identical at present and the same is vacant. Wherever the qualification of Law Graduate for the posts were prescribed in the Service Rule of 1981, the same may be replaced as LL.B. (Professional) and a foot note with regard to this may be mentioned in the Rules to amply clear the position. I have seen that alternative qualifications were proposed with regard to certain posts and it was not required therein to have a LL.B. (Professional) essential for those posts and this proposal was sent to the Government. In this regard, I am of the opinion that the alternative qualification with regard to the posts of Joint Secretary and Deputy Secretary are not in accordance with the scheme of the Rules and the nature and functions those are required to be discharged by the holders of the posts of Joint Secretary and Deputy Secretary are such where law qualification is essential.

I am of the opinion that the Law Qualification (Professional) is essential keeping in view the nature of work to be discharged in the Sabha Secretariat by various categories of officials/officers such as work relating to Tenth Schedule to the Constitution of India, Privileges Committee, Rules Committee, Subordinate legislation Committee and Rajya Sabha elections etc.

In addition to the above, the post of Additional Secretary has been abolished in the public interest in view of economy measures, therefore, entry of this post from the Service Rules may also be deleted. The proposal earlier sent is approved with the modification as suggested above by me."

In view of the above recommendations of the Hon'ble Speaker the Annexure "A" & "B" in English and Hindi versions are enclosed for notification by the Government with a request that necessary action as desired by the Hon'ble Speaker may kindly be taken in the matter as the same is pending since long."

30. It is on the basis of the above that the amendment dated 19.12.1997 was made and LL.B. (Professional) was made an essential qualification. We are informed by the learned counsel appearing for the State that since the year 1997, till date, there has been no change in the nature of duties of a Deputy Secretary in the Haryana Vidhan Sabha Secretariat.

31. The rules which are a result of a subordinate legislation can be challenged on the ground that they are arbitrary, unreasonable and if they offend Article 14 of the Constitution of India. The law in this regard is well-settled. We can safely refer to a recent judgment of the Apex Court in *Sudhir Kumar Consul Vs. Allahabad Bank*, of the judgment, which is relevant is extracted below:-

"17. It is well - settled law that the vires of any subordinate legislation can be challenged on the ground that it is arbitrary, unreasonable and offends Article 14 of the Constitution of India. The 1979 Regulations were introduced with a view to standardize and provide comprehensive and compact set of rules in respect of wages and perquisites of the officers of the Bank. In furtherance of this object, Regulation 46(1) of the 1979 Regulations provides pension in lieu of gratuity only to the officers appointed prior to or on 1-7-1979 and not to officers appointed, recruited or promoted thereafter. In this view, we are of the opinion that the said Regulation 46(1) lays down a reasonable criteria for differentiation between the officers appointed prior to or on 1-7-1979 and after the said date. Hence the said Regulation 46(1) is in consonance with Article 14 of the Constitution of India."

[emphasis by us]

32. In view of the above, we have no hesitation to hold that the impugned amendments in the qualifications prescribed for the posts of Deputy Secretary and Joint Secretary in the Haryana Vidhan Sabha Secretariat have no rational nexus with the object sought to be achieved. The changes so brought about are also not relevant. In view of the above facts, the impugned action is liable to be declared as a result of colourable exercise of power and arbitrary, thus, violative

of Articles 14 and 16 of the Constitution of India. Resultantly, the present petitions bearing CWP Nos. 19061 and 24284 of 2012, 18259, 18389, 18491, 20107, 20121 and 21184 of 2013 are allowed. The qualifications for the posts of Deputy Secretary and Joint Secretary as prescribed in the impugned 2012 Rules are quashed. As a consequence, the impugned orders of promotion of respondents No. 4 and 5 and the appointment of respondent No. 6 through Annexures P-4, P-8 and P-26 respectively, also stand quashed. The respondents are directed to now consider the cases of all eligible persons for promotion/appointment to the posts of Deputy Secretary and Joint Secretary as per the Haryana Vidhan Sabha Secretariat Service (Amendment) Rules, 1981 as amended vide notification dated 19.12.1997, in accordance with law.