
(2013) 01 P&H CK 0268
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 977 of 2011 (O and M)

Bhupinder Singh	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) LabIC 3107

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Anurag Goyal, for the Appellant; Anil Rathee, Addl. A.G. and V.K. Jindal, for the Respondent

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order dated 25.1.2011 passed by the learned single Judge dismissing the writ petition filed by the appellants in which they had prayed for issuance of writ in the nature of quo-warranto against Respondent Nos. 3 & 4 holding the post of Workshop Superintendent on account of promotion order dated 9.8.2006 being wholly ineligible and for the writ in the nature of mandamus directing the respondents to consider the case of all the eligible candidates including the appellants for promotion to the said post. Counsel for the appellant has alleged that Group-A employees of Haryana Technical Education Department are governed by the provisions of service rules, namely, Haryana Technical Education Department (Group A), Service Rules, 1986 (for short "the Rules"). Recruitment to the post of Workshop Superintendent is provided in Rule 9(1)(z) of the Rules, which is reproduced as under:--

Method of Recruitment:

9(1) Recruitment shall be made:

(z) in the case of Superintendent Workshop:

(i) 50% by promotion from amongst lecturers in Production Engineering or

Foreman Instructors; and

(ii) 50% by direct recruitment; or

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

(2) All promotions, unless otherwise provided, shall be made on seniority cum merit basis and seniority alone shall not give any right to such promotions.

2. The qualification for the said post is provided under Rule 7 of the Rules which reads thus:

Qualification 7. No person shall be appointed to any post in the service unless he is in possession of qualifications and experience specified in column 3 of Appendix "B" to these Rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment.

Provided that in case of direct recruitment, qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of the Commission or any other recruiting authority in case sufficient number of candidates belonging to Scheduled Castes/Backward Classes/Ex- Servicemen and Physically handicapped candidates possessing the requisite experience are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.

3. Appendix "B" of Rule 7 of the Rules reads as under:

4. In this case, Rule 17 of the Rules is also relevant which reads as under:--

Power of relaxation:

17. Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provision of these rules with respect to any class or category of persons.

5. It is submitted by counsel for the appellant that as per column No. 4 of Appendix "B" in case of appointment other than direct recruitment for the post of Superintendent Work-shop, a candidate has to possess Bachelor's degree in Mechanical/Production Engineering from a recognized University/Institute or diploma in Chemical/Production Engineering for three years duration recognized by the State Board of Technical Education and 10 years' experience as Lecturer in Production Engineering or Foreman Instructor.

6. The case set up by them are that Respondent Nos. 3 & 4 did not fulfill the basic essential academic qualification as per the aforesaid Rules because vide information (Annexure P-2), it is clear that both of them are having qualification of ITI and CTI Training. Respondent No. 3 is having only required experience but he is not having academic qualification and Respondent No. 4 is neither having academic qualification nor experience as per Rules, therefore, both are not in

possession of the basic qualification to hold the post to which they have been promoted. It is also submitted that Rule 17 of the Rules has been misinterpreted by the Court as Rule 7 of the Rules is couched in the negative language that a candidate not possessing academic qualification cannot be considered for promotion and the said Rule cannot be even (sic) records in terms of Rule 17 of the Rules. He has relied upon the Division Bench judgment of this Court in the case of "Anil Sagar v. State of Haryana and others", 2008 (4) SCT 402.

7. It is further argued by counsel for the appellant that it is specifically mentioned in the written statement filed by the official respondents that the post of Workshop Superintendent was lying vacant since 2002 and in view of proposed Rules for appointment other than by way of direct recruitment, Respondent Nos. 3 & 4 were ordered to be promoted in terms of the draft Rules. He submits that the draft rules cannot supersede the Statutory Rules and the department could have filled up the posts of Workshop Superintendent by opting the method of deputation or transfer or by making adequate promotion from eligible candidates till the availability of eligible candidates for promotion in the department itself but the department should not have opted for promotion of ineligible candidates by compromising with the basic essential required academic qualification. In this regard, he has relied upon a Division Bench judgment of this Court in the case of "Punjab State Electricity Board v. Narinder Singh and others", 2009(1) SCT 704.

8. In the end, he has submitted that the appellant has the qualification of Bachelor's degree in Mechanical Engineering but lacks experience which can be relaxed but Respondent Nos. 3 & 4, who did not possess the basic academic qualification, have been wrongly promoted and are holding the posts in question only on the basis of experience.

9. In reply, learned Counsel for the respondents has basically relied upon Rule 17 of the Rules and has contended that revision of service Rules for the post of Workshop Superintendent has been proposed in respect of qualification and service conditions in the recruitment of the post by way of promotion and in the proposed service rules by way of appointment other than direct recruitment, the provision of 10 years as Foreman Instructor" has been laid down. It is also alleged that draft service rules have been approved by the competent authorities but are not notified so far. It is also submitted that the appellant being lower in merit with the Foreman Instructor was not entitled to raise grievance in respect of the promotion of Respondent Nos. 3 & 4 to challenge the exercise of power of relaxation.

10. We have heard learned Counsel for the parties and have perused the record.

11. It is not in dispute that the prayer made in the writ petition is for issuance of writ in the nature of qua-warranto. The qualification for the post of Workshop Superintendent is enumerated in Rule 7 of the Rules, Appendix "B". It is amply clear that for promotion to the post of Workshop Superintendent, a Bachelor's

degree in Mechanical/Production Engineering from a recognized University/Institute or Diploma in Chemical/Production Engineering of 3 years duration recognized by the State Board of Technical Education and 10 years experience as Lecturer in Production Engineering or Foreman Instructor is required. Admittedly, Respondent Nos. 3 & 4 did not possess the aforesaid qualifications and have been promoted only on the basis of experience that too as a Foreman Instructor in terms of the proposed revised service Rules which have not been notified.

12. The first question that arises for consideration is "as to whether experience could be a substitute for educational qualification prescribed in Statutory Rules"? In this regard, reference could be made to the decision in the case of Anil Sagar (supra) referred to by the counsel for the appellant in which Rules 7 and 17 of the Haryana Public Works Department (Buildings and Roads Branch) Research Laboratory (Group B) Service Rules, 1996 were interpreted. According to the qualification prescribed in the aforesaid Rules, for the purpose of appointment by promotion on the post of Assistant Director (Lab), a degree of M.Sc./Bachelor of Engineering/Bachelor of Technology or an equivalent degree with five years experience as Research Assistant was required. Rule 7 of the aforesaid Rules read as under:--

No person shall be appointed to any post in the service, unless he is in possession of qualifications and experience specified in column 2 of appendix B to these Rules in the case of direct recruitment and those in column 3 in the aforesaid Appendix in the case of appointment other than by direct recruitment:

Provided that in the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50% of the discretion of the Commission or any other recruiting authority in case sufficient number of candidates belonging to Scheduled Castes, Backward Class, Ex-Servicemen and physically handicapped categories, possessing the requisite experience are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.

13. In the said case the conceded position was that private respondent was not possessing degree of M.Sc., however, because of the relaxation contemplated by Rule 17 of the said Rules, he was promoted. In the said background, it was observed by the Division Bench that the requirement of Rule 7 is mandatory and under Rule 17 of the Rules relaxation could be granted in case of necessity or expediency. It is also held that the experience could not be a substitute for educational qualification prescribed in Statutory Rules and in this regard reliance was placed upon a decision of the Supreme Court in the case of " State of Madhya Pradesh and Another Vs. Dharam Bir, .

14. Now the second question arises "as to whether the respondents could have relied upon proposed revised Rules in which 8 years experience as Foreman Instructor is to be added as a qualification and could have been followed in the presence of the Statutory Rules"? In this regard, decision in the case of Punjab

State Electricity Board (*supra*) would be helpful to the appellant in which it has been held that the draft rules/regulations could be relied upon only when no rules governing the matter were in existence. However, in the present case, Rule 7 of the Rules is already there which provides for the qualification in case of promotion to the post of Workshop Superintendent.

15. Moreover, it has been projected by the respondents that since the post was lying vacant since 2002, therefore, situation had warranted the filling of such post by exercising the power of relaxation. To our mind, as per the decision in the case of Anil Sagar (*supra*), there could be relaxation in the matter of experience but not in the matter of educational qualification especially where post is a technical post as in the present case, for the post of Workshop Superintendent, Bachelor's degree in Mechanical/Production Engineering is required or diploma in Chemical/Production Engineering of 3 years duration which is recognized by the State Board of Technical Education, but Respondent Nos. 3 & 4 are admittedly only qualified as ITI and CTI which is nowhere near to the degree/diploma of engineering as prescribed in the educational qualification especially when Rule 7 of the Rules is couched in a negative language that no person shall be appointed to any post in the service unless he is in possession of the qualification and experience those specified in Column 4 of Appendix "B" in the case of appointment other than by direct recruitment.

16. The appellant has also claimed that he is having Bachelor's degree in Mechanical Engineering but lacks experience. In that circumstance by relaxing the experience he could have been considered for the post by promotion but insofar as, the promotion order of Respondent Nos. 3 and 4 is concerned, in our considered opinion, it is patently in violation of Rule 7 of the Rules and as such they are holding the post without required eligibility. In view of the aforesaid discussion, present appeal is allowed. Impugned order passed by the learned single Judge is hereby set aside as well as the order of promotion of Respondent Nos. 3 & 4 is also set aside and a direction is issued to respondents to consider all eligible candidates who are educationally qualified in terms of Column 4 of Appendix "B" of Rule 7 of the Rules and may comply the Regulations in terms of Rule 17 of the Rules insofar as the experience is concerned. Let this exercise be done within a period of three months from the date of receipt of certified copy of this order.