

(1978) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 164 of 1974

Chandra Shekhar Sharma

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 14-02-1978

Acts Referred:

Constitution of India, 1950 — Article 326

Factories Act, 1948 — Section 49

Factories Welfare Officers Rules, 1955 — Rule 13, 9

Citation : (1978) 02 AHC CK 0046

Hon'ble Judges : K.N.Singh, J and S.D.Agarwala, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

The petitioner was selected and appointed as Labour Welfare Officer, Grade III, by the Management of the Ajudhia Sugar Mills in the district of Moradabad. As the petitioner was more than 26 years of age he applied to the State Government for exemption from the age restriction. The State Government by its order dated October 27, 1971 granted exemption to the petitioner from the requisite qualification of age. The petitioner thereafter continued in service. On August 25, 1972 the State Government however, passed another order cancelling the exemption granted to the petitioner. The petitioner made a representation to the State Government for the review of its order dated August 25, 1972. The State Government refused to review the order and rejected the petitioner's application by its order dated August 31, 1971. The petitioner thereupon filed this petition under Article 226 of the Constitution challenging the validity of the orders of the State Government dated August 25, 1972 and August 31, 1973.

Section 49 of the Factories Act, 1948, requires every factory employing five hundred or more workers to appoint Welfare Officers. The State Government is empowered to prescribe qualifications and conditions of service of Labour Welfare Officers. In pursuance of the said requirement the State Government of Uttar

Pradesh framed Factories Welfare Officer's Rules, 1955 prescribing qualifications and other conditions of service of the Welfare Officers. Rule 9 lays down that no person shall be appointed as a Welfare Officer unless he fulfills the qualification mentioned therein. Rule 9 contains five clauses, (a), (b), (c), (d), and (e). which lay down that a person must be a citizen of India or a subject of Sikkim and he must be within the age group as mentioned in clause (h) and he must have thorough knowledge of Hindi in Devanagari script under clause (d) and he must possess a degree of a University established by law in case of appointment to Grade III under clause (d). Clause (e) requires that he must possess diploma of Labour Training College or Social Science class or Social Technique from the institutions named therein. Rule 13 confers powers of the State Government to exempt any person from all or any of the qualifications prescribed in Rule 9 if such person is a graduate of a University established by law and has three years practical experience of work relating to Labour Welfare in the case of Grade I, two years in the case of Grade II and one year in the case of Grade III. Rule 13 confers power on the State Government to grant exemption from all or any of the qualifications prescribed in Rule 9 in case of only those persons who fulfilled the two conditions prescribed therein. The petitioner prior to his selection and appointment in the Ajudhia Sugar Mills was employed as Assistant Welfare Organiser in the Coal Mines Welfare Organisation under the Ministry of Labour and Employment, Government of India, for a period of three and a half years. While working as Assistant Welfare Officer in the Coal Mines the petitioner had acquired three years' practical experience of work relating to the Welfare of Labour. He holds a degree in Master of Arts in Political Science and also holds the degree of Master of Social Work from the University of Agra. The petitioner, therefore, fulfilled the two requisite qualifications necessary to claim exemption under Rule 13. The State Government found the petitioner entitled to exemption and thereupon it issued the order dated October 27, 1971 granting exemption to the petitioner under Rule 13 read with Rule 9(b)(iii).

Learned counsel for the petitioner urged that the order of the State Government dated August 27, 1972 was passed in violation of principles of natural justice inasmuch as the petitioner was not afforded any opportunity of hearing or explanation on behalf of the State Government it is not disputed that the petitioner was not given any opportunity prior to the issue of the order dated August 25, 1972. An order granting exemption under Rule 13 of the Factories Welfare Officer's Rule, 1955 is no doubt an administrative order and it is open to the State Government to review or revise the same if the order is found to have been issued on account of any misrepresentation, fraud or mistake. Any order issued under Rule 13 granting exemption from any of the qualifications prescribed in Rule 9 confers right on the person to secure employment as Welfare Officer and any subsequent order passed by the State Government cancelling that exemption granted by it earlier would adversely effect the right of the person concerned. In this view, it is imperative for the State Government to afford opportunity to the person concerned against whom the order of review

may be passed cancelling the exemption granted in his favour. No doubt the Rules do not contain any provision for review for affording any opportunity to the person concerned but it is well settled that whenever the right of a person is affected by the order passed by a statutory authority it must act in accordance with the principles of natural justice. As the order of cancellation would affect the rights of person in whose favour the exemption may have been granted, it is necessary for the State Government to afford opportunity to the person concerned any order passed in violation of the principles of natural justice would be illegal and void. In the instant case State Government's order dated August 25, 1972 was passed without affording any opportunity to the petitioner, therefore, the order is rendered void.

Learned Standing Counsel urged that the State Government had no jurisdiction to grant exemption from the age restriction under Rule 13 of the Factories Welfare Officer's Rules, 1955. He submitted that the age restriction as contained in Rule 9(b) is not a qualification, therefore, no exemption could be granted to a person under Rule 13 in respect of age restrictions. We find no substance in the contention. Rule 13 clearly lays down that the State Government may, if it is satisfied that it is expedient so to do, exempt any person from all or any of the qualifications prescribed in Rule 9. We have already referred to Rule 9 and noted that the said rule lays down that no person shall be appointed as a Welfare Officer unless he fulfills the qualifications prescribed therein. The expression "qualifications" is necessarily not confined to the educational qualifications only, it refers to other matters also laid down in Rule 9 which requires that a person must be a citizen of India or a subject of Sikkim and he must not be less than 21 years and not more than 26 years of age in case of Appointment to Grade III and that he must have thorough knowledge of Hindi in Devanagari Script. All these matters relate to qualifications for appointment to the post of Welfare Officer. Citizenship, age and educational efficiency all fall within the scope of the expression "qualifications". This view is further amplified by the expression any of the qualifications prescribed in Rule 9 occurring in Rule 13. In our opinion Rule 13 clearly intended to confer a wide power on the State Government to grant exemption to a person from any of the qualifications prescribed in Rule 9. The use of the word "any" is significant. "Any" means one or more of the qualifications prescribed in Rule 9. If the intention was to confer power of exemption in respect of the educational qualifications only Rule 13 would have been specific and the power of exemption would have been limited to the qualifications prescribed in clause's (c), (d); (e) only. In the absence of any such restriction, it is difficult to accept the submission raised by the learned Standing Counsel. We have no hesitation in holding that the language used in Rule 13 is indicative of the intention of conferring wide powers on the State Government to grant exemption from all or any of the age restrictions.

In view of the above discussion we allow the petition and quash the order of the State Government dated August 25, 1972. The petitioner is entitled to his costs.