

(1991) 10 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5691 of 1985

Darshan Ram Suman and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Punjab Excise and Taxation Subordinate Service Rules, 1943 — Rule 7

Citation : (1993) 1 ILR (P&H) 107

Hon'ble Judges : B.C. Verma, C.J.; Ashok Bhan, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant; O.P. Goyal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

B.C. Verma, C.J.—The Petitioners are clerks in the office of the Excise and Taxation Commissioner, Punjab. Their claim is that they are entitled to be considered for promotion to the post of Excise/Taxation Inspectors and that in this behalf they are governed by the Punjab Excise and Taxation Subordinate Service Rules, 1943, (hereinafter referred to as the 1943 Rules). Certain persons juniors to them were promoted as Excise/Taxation Inspectors. This led them to file writ petitions in this Court. By a common judgment delivered in Civil Writ Petition No. 6849 of 1974, this Court held that the Petitioners were governed by the 1943 Rules and were, therefore, entitled to be considered for promotion to the post of Excise/Taxation Inspectors. A direction was, therefore, issued to consider the Petitioners for such promotion in accordance with 1943 Rules. By order, Annexure P.2, dated February 6, 1984, Petitioner No. 5, was informed that he was considered, but was not found suitable for promotion to that post. That order was again challenged by the Petitioners on the ground that it did not contain any reasons and was cryptic. This Court agreed with this contention and quashed the order, Annexures P.2, with a direction to the authorities to re-consider the Petitioners' case on merits and to pass a reasoned speaking order.

By order Annexure P.4 dated July 3, 1985, Petitioner No. 1 was not held suitable for that promotion and his claim was rejected. Similar orders have been passed in respect of other Petitioners rejecting their claims for such promotion. It is this order, Annexure P.4 and similar other orders in respect of the other Petitioners which are challenged in this writ petition under Articles 226 and 227 of the Constitution.

2. The substance of the order dated July 3, 1985, Annexure P. 4, holding the Petitioner not entitled to promotion as Excise/ Taxation Inspector is that earlier the clerical staff was not entitled to any such promotion/appointment by transfer. However, with a view to give incentive to the ministerial staff of the offices of the Excise and Taxation Department and only as a matter of concession, instructions were issued by Government of India from time to time that the clerical staff be appointed by transfer as Excise/Taxation Inspector. At the same time, they were also permitted to compete directly for appointment to such posts; provided they possessed the prescribed minimum qualification of being a graduate. These instructions issued by the Government only provided for the method of recruitment and did not lay down any channel of promotion. Government instructions contained in memo No. 5Q19-AK-5/70/3152 dated July 8, 1970, prescribe graduation as the minimum qualification for appointment to the post of Excise/Taxation Inspector by a departmental candidate. It was followed by yet another instruction contained in Memo No. 7136-ETV-73/6253 dated October 1, 1973, prescribing that 10 per cent posts of Excise/Taxation Inspectors should be filled from the under-graduate clerks. These instructions became effective from July 8, 1970. Since 10 per cent posts so reserved for under-graduates were already filled in from amongst the ministerial staff of Jullundur Division and by persons senior to the Petitioners, the Petitioners did not have any chance of being so appointed. It is on these premises that the Petitioners' claim for such appointment has been rejected.

3. The return filed by the Respondent-State adopts all the reasons mentioned in Annexure P.4. It is added that the earlier writ petitions mentioned above, only directed the Respondents to consider the Petitioners' claim for promotion, which has been done. The Petitioners, therefore, can possibly, have no grouse against the impugned order.

4. To begin with, Shri P.S. Patwalia, the learned Counsel for the Petitioners, submitted that for all intents and purposes, the writ issued in Civil Writ Petition No. (5849 of 1974, Annexure P.I, concludes the Petitioners' right to be considered/selected for promotion/ appointment to the post of Excise/Taxation Inspector and that it was not within the domain of the Respondents to hold the Petitioners ineligible for such appointment. To appreciate this contention, it shall be just to reproduce the directions issued in that case. Those directions are as follows:

In the light of the above discussion, I allow these petitions and direct the Respondent authorities to consider the case of the Petitioners for promotion to

the post of Excise and Taxation Inspector with effect from the dates their juniors were promoted and to grant them all consequential reliefs due to them in case they are found entitled to such promotion in accordance with law and the observations made above." (underlining is ours)

In our opinion, the above directions mean that the Petitioners are to be considered for promotion to the post of Excise/Taxation Inspectors only if found entitled to such promotion in accordance with law. This will only clothe the Petitioners with a right to be considered for promotion and nothing more. It was left to the department to take a decision if the Petitioners are found to be entitled to such promotion in accordance with law which may well include the existing rules and instructions. Viewed in this light, the Petitioners can claim no more than a consideration of their case for such promotion. We do not find ourselves in agreement with the contention raised on behalf of the Petitioners that they are entitled to such promotion, or that the department was left with no option but to consider their appointment as such in preference to their juniors who are graduates. It cannot be denied that, -vice Annexure P.4, their cases for promotion/appointment were considered, and if we may say so, in all details, and in the light of the existing rules and instructions. We do not find anything in the impugned order which may suggest that rules other than 1943 rules have either been considered or taken into account. All that has been done is to test the Petitioners' case on the anvil of the directions issued by the Government from time to time. This, in our opinion, was the only method to consider the Petitioners' case, for the reason that Rule 7 of the 1943 Rules does not lay down any method of promotion/appointment vis-a-vis persons borne on the clerical cadre at the relevant time. We do not find any infirmity or illegality in this process of reasoning adopted by the department while considering the Petitioners' claims.

5. As observed earlier, presumably, to give incentive to the persons falling into the Petitioners' category, the Government, subsequently, decided to reserve 10 per cent posts out of the quota, to be filled in by promotion/appointment from the clerical cadre who are matriculates and undergraduates. There thus appears to be the further relaxation in favour of such a class of clerks, i.e., the matriculates and under-graduates.

6. The learned Counsel for the Petitioners did not dispute that all such undergraduate or matriculate clerk; so appointed as Excise/ Taxation Inspectors, are senior to the Petitioners. The contention, however is that no such classification/reservation could be made being impermissible under the law and violative of Articles 14 and 16 of the Constitution. The learned Counsel also added that this aspect should have been raised in defence by the Respondents in the earlier writ petition. Their failure to do so debars them from agitating the question now on the principles of constructive res-judicata. Dealing with second aspect of such submission, we find that although such a contention was raised in that writ petition, no decision was rendered on that issue since the petition was

allowed on other ground. The issue was left unheard and undecided. That may permit us to consider that aspect of the case now.

7. Coming to the validity of classification of reserving posts for graduate clerks alone, one has to bear in mind that minimum qualification prescribed for direct recruitment to the post of Excise/ Taxation Inspectors is graduation. The clerks in the department, if otherwise eligible, were not precluded from contesting for direct appointment as Excise/Taxation Inspectors. They were, however, given a further concession for being recruited as departmental candidates against reserve quota. Out of this reserve quota, 10 per cent posts have again been reserved for matriculates and undergraduates. Such a classification based on educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances. It is for a person challenging such a classification as unjust to set out facts to sustain the plea of discrimination. Not only this convincing evidence must also be produced to establish those facts to rebut the presumption that every factor which is relevant and material has been taken into account in formulating the classification. Such is the law laid down by five Judges Bench of the Supreme Court in *State of Jammu and Kashmir v. Triloki Nath Khosa* 1974 (1) SLR 536, where further observations are that classification on the basis of educational qualifications made at achieving administrative efficiency, does not rest on any fortuitous circumstance. In that case, certain persons appointed directly and by promotion, were integrated into one common class of Assistant Engineers. For the purpose of promotion to the cadre of Executive Engineers, they were classified on the basis of educational qualifications. The rule provided that graduates shall be eligible for such promotion to the exclusion of the diploma-holders. The Constitution Bench held that such a rule is not violative of Articles 14 and 16 of the Constitution. That classification was upheld. Two earlier decisions of the Supreme Court in *State of Mysore v. P. Narasingh Rao*. (1968) 15 SCR 407 , and *Ganga Ram and Others Vs. The Union of India (UOI) and Others* , recognising educational qualifications as a safe criteria for determining the validity of classification were mentioned with approval. Their Lordships also referred to yet another decision in *The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another* , where the rule requiring that Professor in Orthopaedics must have a post-graduate degree in the particular speciality, was upheld on the ground that the classification made on the basis of such requirement was not; without reference to the objective sought to be achieved and there can be no question of discrimination." In *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others* , which the learned Counsel for the Petitioners placed reliance, the relevant Andhra Pradesh rules were challenged as making unjust discrimination between graduate and non-graduate Supervisors in the matter of promotion as Assistant Engineers. The rule gave preferential treatment to the graduate Supervisors in providing that out of four vacancies for the posts of Assistant Engineers, three are reserved for promotion of graduate supervisors and only the remaining one vacancy is left to be filled by promotion of non-graduate

Supervisors. The question was whether such a preferential treatment can be justified on the basis of any reasonable classification, or that it was arbitrary and irrational. It was observed that the law as it stands today is clear that the burden is always on him who attacks the constitutionality of a legislation to show that the classification made by it is unreasonable and violative of Articles 14 and 16 of the Constitution. After so observing the Court proceeded to examine in that case if the burden had been discharged by the Petitioners/Appellants by succeeding in showing that the classification of Supervisors into graduates and non-graduates for the purpose of promotion as Assistant Engineers was unrelated to the object of the Andhra Pradesh rules or in other words, it was arbitrary and unreasonable. The Court examined the cases referred to by us above, namely, P. Narasingh Rao's case; Dr. (Mrs.) S.B. Kohli's case and Triloki Nath Khosa's (supra). The conclusion reached after considering all these cases is that the test of reasonable classification has to be applied in such a case on its peculiar facts and circumstances. The Court observed that it may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree-holders in engineering shall be eligible for promotion and not diploma or certificate holders. On the facts of that case, it was held that the result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota, is reserved for graduate Supervisors, non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable. His opportunity for promotion would be limited only to vacancies available to non-graduate Supervisors. It was under these circumstances that the Court held that such a classification would clearly amount to denial of equal opportunity to the non-graduate Supervisors. Even so, on the facts of that case, it was found that the two categories of Supervisors were never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them. It was so held because the pay scale of the Junior Engineers was always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Pradesh rules even after the appointed day. The common gradation list of Supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate Supervisors.

8. In the light of the decisions aforesaid, the picture that emerges is that such a classification based upon educational qualifications can well be justified and may not always be held to be offending against the equality clause enshrined in Article 14 of the Constitution. The decision always shall rest upon the facts and circumstances of a given case and the presumption of Constitutional validity being in favour of the enacted rules or regulations, it shall always be for a person questioning the Constitutional validity of such rules or regulations, to establish by

cogent evidence and proper material, that such rules or regulations are violative of the equality clause. From what we have stated above, it is clear that generally, it is the graduates alone who are entitled to be promoted/appointed as Excise/Taxation Inspectors from amongst the clerical cadre. The minimum qualifications prescribed is graduation. Those in the department are also entitled to compete for direct recruitment if they are graduates and also fulfil other qualifications. A concession, however, has been extended to those serving the department and presumably in view of some experience in the department, 10 per cent posts have also been reserved for Matriculates and Under-graduates. In our opinion, such a classification in the circumstances, cannot be held as discriminatory. We are of the opinion that the Petitioners have not been able to discharge the burden so resting on them to establish the unconstitutionality of the rules/instructions in question, by placing on the record sufficient data or proof. The second contention also must therefore be rejected.

9. No other point was pressed into service. The writ petition fails and is dismissed without any order as to costs.