

(1974) 02 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 1948, 1952, 2110, 2111, 2112, 2113, 2116, 2172, 2173, 2175, 2346, 2247, 2399, 2588 and 3109 of 1972

Daya Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-02-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : AIR 1974 P&H 279

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Judgement

1. This judgment will dispose of Civil Writs Nos. 1948 of 1972, 3109 of 1972, 2588 of 1972, 2116 of 1972, 1952 of 1972, 2247 of 1972, 2399 of 1972, 2346 of 1972, 2175 of 1972, 2173 of 1972, 2172 of 1972, 2111 of 1972, 2112 of 1972, 2113 of 1972 and 2110 of 1972. For facility of reference, the facts giving rise to Civil Writ No. 1948 of 1972, may briefly be stated as follows.

2. Originally, this petition was filed on behalf of five petitioners. On an objection being raised that a joint petition was not competent, it was treated as a petition on behalf of the petitioner No. 1, only. This petitioner, hereinafter referred to as petitioner, joined the Food and Supplies Department, Haryana State, in the year 1967 as Sub-Inspector, Food and Supplies, and was promoted as Inspector on 22nd May, 1971. It appears that the appointment of the petitioner was on ad hoc basis. In the year 1970, the Sub-ordinate Services Selection Board, Haryana State, invited applications on the prescribed forms from the candidates to be appointed as Sub-Inspectors. Second Class Matriculates were made eligible. Preference was to be given to those candidates who had previous experience with the Food and Supplies Department or the Food Corporation of India, gained after acquiring the basic qualifications. The petitioner applied for one of these posts. The original advertisement mentioned that 22 per cent vacancies were reserved for Scheduled Castes and Backward Classes and 30 per cent vacancies

were reserved for ex-Servicemen. In other words, 52 per cent vacancies stood reserved and only 48 per cent vacancies were thrown open to other candidates. A competitive examination was held on 24th October, 1971, in which the petitioner qualified and he was called for interview by the Subordinate Services Selection Board, Haryana, respondent No. 2 on 2nd May, 1972. It is alleged that the Selection Committee consisted of respondent No. 3 as Chairman, and respondents Nos. 4, 5, 6 and 7 as ordinary Members. As many as 400 candidates were present for the interview which was held more as an empty formality. The candidates entered through one door and were made to get out from the other. No question whatsoever was put to them. It is also alleged that the selections tentatively made at the time of the interview were subsequently reshuffled because of the recommendations which started pouring in. Some of the candidates who had not even qualified the written test were also called for interview and actually selected. In this petition, this selection is challenged as being arbitrary as also on the ground that more than 50 per cent vacancies had been reserved and only 48 per cent vacancies had been thrown open to other candidates.

3. The return on behalf of the Subordinate Services Selection Board, Haryana, has been filed by Shri Munshi Ram, its Chairman. It has been asserted that only those candidates who has passed the written test were called for interview. Each candidate who was called for interview was put question to judge his fitness for the post. Since the academic qualifications was only Matric Second Division Many question were not put to the candidates. Only 253 candidates were interviewed on the said date between 7.00 A.M. to 3.00 P.M. The Board had laid down specific criteria for allotting marks to the candidates and that criteria had been rigidly adhered to. There was no question of reshuffling of the result of the interview later on. The Board recommended a total number of 276 candidates out of which 33 were already working on ad hoc basis as Sub-Inspectors, Food and Supplies. It has also been stated that the reservation for Ex-Servicemen was reduced from 30 per cent to 28 per cent and in this manner, only 50 per cent vacancies were reserved.

4. A reference to the pleadings would show that the allegations made in the petition regarding arbitrary manner of selection have been denied by the chairman of the Board. It has also been denied that the result of the selection had been reshuffled because of the recommendations which started pouring in at the subsequent stage. Such disputed questions are normally not determined in petitions under Article 226 of the Constitution. The petitioner has nowhere alleged that either the Chairman of the Board or any of its ordinary Members was inimically disposed against him. The Board is a responsible body and is expected to act in proper discharge of its duties. All the candidates were allowed to take a qualifying test and thereafter individual merit was assessed by a properly constituted Selection Committee. Under these circumstances, it cannot be held that the selection made was arbitrary. The learned counsel for the petitioner submitted that the Board should have given a brief indication of the grounds

upon which the petitioner's claim had been rejected. I find no merit in this argument because at the time of making initial selection for appointment, the Board, while making the recommendations and the Government while accepting the same, exercises its normal executive functions. Unless there is anything to the contrary provided in the rules relating to a particular service, the appointing authority is not called upon to pass a speaking order while making the selection of one or more candidates. Besides, the educational qualification prescribed for this post was Matric Second Division, and for this matter, the Selection Committee, which was presided over by a retired member of the Indian Administrative Services was not expected to extensively interrogate the candidates about their merit. The manner in which the candidates are to be interviewed lies within the discretion of the Selection Committee. It is, of course, desirable that such a Committee should lay down some criteria and also decide to award marks for a particular qualification, but this procedure is meant for its own convenience and satisfaction. The Board as a responsible body would adopt such a procedure primarily for the reason that it will be difficult for it to judge the merit of a large number of candidates. I, however, doubt whether any candidate who has availed of the chance of being selected without even caring to know the procedure which was to be adopted at the time of interview can raise such an objection after being rejected by the Selection Committee. The marks sheets, in original, were produced before me. They appear to have been prepared in normal course of business. The first contention raised on behalf of the petitioner is, therefore, repelled.

5. The second ground urged on behalf of the petitioner raises a question of some importance. It has been submitted that in the advertisement itself 52 per cent posts were shown to have been reserved and this could not be done in view of the decision given by their Lordships of the Supreme Court in *T. Devadasan Vs. The Union of India (UOI) and Another*, . The plea raised on behalf of the respondents that at the time of the final selection the reservation was restricted to only 50 per cent is being opposed on the plea that the criteria for selection as given in the advertisement inviting the applications cannot be departed from at the time of the final selection. Reliance in this behalf is placed on a Single Bench decision of this Court in *Atam Parkash Mohan v. Kurukshetra University* 1970 SLR 16. In that case, four posts of Senior Clerks had fallen vacant and in the advertisement inviting applications for these four posts, it was not mentioned that the basic qualification would be relaxed. The petitioner No. 3, in that case, was a Matriculate and he made a grievance that if he had known that the University would relax the minimum educational qualifications, he would have also applied for the post. It is, therefore, obvious that a person who was eligible to have his name considered for appointment to the post of a Senior Clerk could not apply for the post because there was no mention in the advertisement inviting applications that the minimum qualifications could be relaxed. The University actually selected some persons after relaxing the minimum qualifications prescribed by the rules. It was, therefore, rightly held in that case

that the selection made was improper and violative of the rights of the petitioner No. 3 given to him under Article 16 of the Constitution. Reliance was also placed on *Kuldip Singh Gill v. State of Punjab* 1972 SLR 706 : 1972 LabIC 1189. In that case also the personal attainments which a candidate was expected to have and which were mentioned in the advertisement were altered and relaxed at the time of the final selection. On these facts, it was rightly held that if some relaxation was to be made in the qualifications mentioned in the advertisement then this fact should be advertised afresh. I fail to see how the proposition of law laid down in these two judgments can be applied to the facts and circumstances of the instant case. Here, the qualification on the basis of which the selection was made or the personal attainments of candidates were not disturbed. Originally, only 48 per cent posts were thrown open to the general candidates and when the legal infirmity in the reservation came to the notice of the Government, it corrected the error and made selection on the basis of the reservation of the posts to the extent of 50 per cent only. In other words, it is not a case of change of the criteria, but is a case of the change of percentage of reservation simpliciter.

6. It was then argued by the learned counsel for the petitioner that no reservation whatsoever could be made for the demobilised armed personnel. According to him, reservation could be made for Scheduled Castes and Backward Tribes only. Ex-Servicemen, it is submitted, may in some cases, be economically much better off and there was no justification in making a special provision for them. In this connection it may be observed that appointments to public services are made by the State Government in the exercise of its normal executive functions. In some cases, however, this power is regulated by service rules. The action of the Government whether taken in the exercise of its executive powers or taken pursuant to any statutory provision must ensure equality of opportunity to all the citizens. This mandate has been given to the Government under Article 14 of the Constitution. So far as the public services are concerned, a more specific guarantee on the same lines has been given to the citizens in the form of Article 16. Whereas Article 14 expresses a general rule regarding equality before law. Articles 15 and 16 enact particular applications of this general rule. These Articles have to be read together and if a matter is not specifically covered by Articles 15 and 16, it will have to be decided on the basis of the residuary provisions contained in Article 14 of the Constitution. The concept of equality before law does not involve the idea of absolute equality. It only means that among equals, the law should be equal and should be equally administered. If a subject is capable of a reasonable classification, it may be treated in a different manner by the Legislature provided, of course, the differentia has a rational relation with the object sought to be achieved by it. In Article 16, equality of opportunity in matters relating to employment has been reiterated. In these matters, discrimination on the grounds of religion, race and caste etc, is barred and provision for reservation of appointments or posts in favour of backward classes has been specifically made permissible. Such a reservation cannot be challenged on the ground that it is discriminatory. In *State of Punjab Vs. Hira Lal*

and Others, , while determining the scope of equality of opportunity clause appearing in Article 16(1), the Supreme Court observed as under:

"The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation does not by itself make the reservation bad. The length of the lap to be provided depends upon the gap to be covered..... It is true that every reservation under Article 16(4) does introduce an element of discrimination particularly when the question of promotion arises. It is an inevitable consequence of any reservation of posts that junior officers are allowed to take a march over their seniors. The circumstance is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution makers have thought fit in the interests of the society as a whole that the backward class of citizens of this country should be afforded certain protection."

In D.N. Chanchala Ors. Vs. The State of Mysore and Others, , the Court was concerned with the question of reservation of seats for the children of political sufferers and of members of defence services, in educational institutions. While justifying such reservation the Court observed as under:

"The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a disadvantage in giving education to their children since they had to live, while discharging their duties, in difficult places where normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in emancipation struggle became unsettled in life; in some cases economically ruined, and were, therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of "political sufferer" not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view, neither of the two contentions raised by counsel for the petitioner can be accepted, with the result that the writ petition fails and is dismissed."

When the reservation of seats for public employment for ex-members of the Defence Services is considered in the light of the observations made above, it becomes abundantly clear that such a reservation is not open to any legal attack. It is no doubt true that Article 16 does not, in terms, talk of any reservation in favour of the members of the Defence forces, but as already mentioned, if a subject is not expressly covered by words of Article 16, resort has to be made to the provisions of Article 14. It is a matter of common knowledge that members of the Armed Forces volunteer to take up hazardous profession and have to serve under more difficult circumstances. In some cases, they are made to retire even when they are enjoying the best of health. If I am not mistaken, an officer who is

unable to secure promotion beyond the rank of a Major has to retire at the age of 48 years even if he is quite healthy. On the other hand, persons who are leading a comparatively more sedentary life can enjoy the benefit of serving up to the age of 55 or 58 years. In order to encourage youngmen to join Armed Forces and to ensure that on account of their comparatively early retirement, they are not left without a job, the legislature or the authority competent to make the service rules can provide that a reasonable percentage of public posts should be reserved for demobilised members of the Armed Forces. This category of citizens forms a class by itself and can thus be accorded professional treatment. The considerations which impel the authorities to make this different approach are not only understandable, but also quite reasonable. Such a classification is permissible under Article 14 of the Constitution. This reservation also does not infringe the provisions of Article 16 inasmuch as 50 per cent vacancies are reserved for the general public. In my considered opinion, the reservation made in favour of the ex-members of the Armed Forces cannot be attacked either under Article 14 or under Article 16 of the Constitution. This contention raised on behalf of the petitioner also deserves to be repelled.

7. In *Satish Dutt Sharma v. State of Haryana* Civil Writ No. 2116 of 1972 (being disposed of by this judgment), it has been urged that originally 30 per cent vacancies were reserved for ex-members of the Armed Forces and this reservation could not be reduced to 28 per cent at the time of making the final selection. The petitioner, who is an ex-member of the Armed Forces submit that if this reservation had not been changed he would not have been unable to secure employment. This submission also does not merit any serious consideration. It is settled law that 50 per cent posts have to be thrown open to the general public. If the authorities committed an error of reserving 52 per cent vacancies, they could certainly rectify this error at a subsequent stage. Had they not done so, their action could have been challenged as being violative of Article 16 by any aggrieved person by filing a petition under Article 226. Instead of waiting for that stage, the Government has itself brought its decision in line with the Constitutional provisions. Where the decision of Government violates some provision of the Constitution; especially that of the fundamental rights, the same can always be rectified before it is too late. In *State of Punjab Vs. Jagdip Singh and Others*, , the Court was concerned with a situation in which some Tehsildars had been confirmed against non-existent posts. It was observed that any citizen could challenge the appointment of the respondents by claiming a writ of quo warranto and in that situation, it was open to the Government to deconfirm the respondent by passing an executive order. The ratio of that case is fully applicable to the facts and circumstances of this case.

8. In *Hem Raj Munjral v. The Director of Food and Supplies Haryana*, Civil Writ No. 1952 of 1972, and in *Rameshwar Dass Sharma v. State of Haryana*, Civil Writ No. 2247 of 1972 (both being disposed of by this judgment), the only point raised is that the petitioners were already working as Sub-Inspectors, Food and Supplies, having been appointed on temporary basis through the local

Employment Exchanges. Their services could not be terminated and these posts offered to those candidates who have been regularly selected through the agency of the Selection Board. In the return filed on behalf of the respondents, it has been stated that the appointments of the petitioners had been made on ad hoc basis pending availability of regularly selected candidates. The petitioners have not been able to show that they have any right to hold these posts and so no relief can be granted to them; especially when the selection made by the Selection Board has been held to be regular and proper.

9. As a result of the foregoing discussion, these petitions deserve to fail and I order accordingly. No order as to costs.

10. Petitions dismissed.