

(1977) 12 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 291 of 1972

Dwarka Dhish Bhargava and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-12-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Madhya Pradesh Veterinary (Gazetted) Recruitment Rules, 1966 — Rule 6, 8

Citation : AIR 1978 MP 119 : (1979) ILR (MP) 486 : (1978) JLJ 295 : (1978) 23 MPLJ 378

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;S.S. Sharma, J;M.L. Malik, J;K.K. Dube, J;C.P. Sen, J

Bench : Full Bench

Advocate : P.C. Pathak, for the Appellant; S.L. Garg, General and S.L. Saxena, Government Advocate (for No. 1), D.M. Dharmadhikari, (for No. 18), Fakhruddin, (for No. 14), Ravindra Kumar Verma, (for Nos. 4 and 8) and V.S. Dabir, (for Nos. 2 and 11), for the Respondent

Judgement

C.P. Sen, J.

The Division Bench has referred the question regarding the constitutional validity of Madhya Pradesh Veterinary (Gazetted) Recruitment Rules, 1966, to the larger Bench, as required under Article 228A of the Constitution of India.

The 4 petitioners and the respondents 2 to 20 were all recruited as Veterinary Assistant Surgeons (Class III non-gazetted posts) in the service of Agriculture and Veterinary Department of the State of Madhya Pradesh. In due course, the petitioners were confirmed in their posts. In this petition, the petitioners have challenged the selection of the respondents 2 to 11 as direct recruits to Class II Gazetted posts in the Veterinary Department in the year 1968-69 and also that of the respondents 12 to 20 as direct recruits in the same posts in the year 1970-71. The posts were duly advertised and selections were made through the Public Service Commission as per the Madhya Pradesh Veterinary (Gazetted)

Recruitment Rules, 1966, (hereinafter referred to as "the Recruitment Rules") framed under Article 309 of the Constitution, by the Governor of Madhya Pradesh. The petitioners have contended that the rules 6 and 8 of the Recruitment Rules are ultra vires and repugnant to Articles 14 and 16 of the Constitution because these 2 rules deny equality of opportunity in respect of promotions to Government servants similarly placed.

Rule 6 provides that the recruitment to the posts in Class II (Gazetted) Veterinary Service shall be (i) by direct recruitment and (ii) by promotion. Item No. 13 in Schedule II appended to this rule prescribes that 50 per cent of the posts will be filled up by direct recruitment and the remaining 50 per cent by promotion. Rule 8 lays down the conditions of eligibility of direct recruits. Column 5 of Schedule III appended to this rule before its amendment prescribed minimum age limit of 21 years and upper age limit of 30 years. Clause (c) of Sub-rule (i) of this rule provided that upper age limit of State Government employees shall be relaxable (i) for permanent employees up to 30 years and (ii) for temporary employees up to 35 years. In *R.C. Chaturvedi Vs. State of Madhya Pradesh*, Sub-clause (8) (i) (c) (i) was struck down by this Court on 3-12-1971 as repugnant to Article 16 of the Constitution as it discriminated permanent employees in relation to the temporary employees. Thereafter the Schedule No. III was amended prescribing upper age limit of 40 years as per Government notification dated 4-12-1971. In view of the extended upper age limit of 40 years, Sub-clauses (i) and (ii) of Clause (c) of Sub-rule (i) of Rule 8 have become redundant and meaningless.

Vires of Rule 6 is challenged on the ground that the reservation of 50 per cent of posts by direct recruitment is only a device to confer benefits on junior officers by deliberately ignoring the better claims of the more senior and experienced officers working in the same cadre. There was no point in making selection by direct recruitment when the source of selection is only, that is, the Government employees already working in the department, as there is no private practitioner in Madhya Pradesh. If at all there is to be selection to higher Class II posts, the same should be purely on the basis of merit cum seniority and on no other considerations, as provided in case of recruitment by promotion. Rule 8 is said to be ultra vires because it denies equality of opportunity to more senior and experienced officers working in the same cadre by laying down the age limit for eligibility for selection as direct recruit. When there is no age limit prescribed for selection by promotion, there should be none for selection by direct recruitment also.

Article 16(1) of the Constitution guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Matters relating to employment or appointment are wide enough to include the matter of promotion. This does not mean that the Government are not, like other employees, entitled to pick and choose from amongst a number of candidates offering themselves for employment under the

Government. It does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. It is open to the appointing authority to lay down such pre-requisite conditions for appointment as would be conducive to efficiency of or proper discipline amongst Government servants. The test or condition adopted by the Government will be violative of Article 16 of the Constitution, if there is no relevant connection between the test prescribed and the interest of public service. The burden of showing that a classification rests upon an arbitrary and not reasonable basis is upon the person who impeaches the test or condition as violation of guarantee of equal protection. A person who complains of violation of Article 16(1) must show that he satisfies all tests and conditions validly prescribed by the authority and was yet denied equal opportunity.

The equality of opportunity guaranteed by Article 16, however, means equality as between members of the same class of employees, and not equality between members of separate, independent classes-- Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, . Where recruitment to certain posts is from different sources, e. g. direct recruitment and promotion from lower posts, it would be for the Government to determine, having regard to the recruitments and needs of a particular post, what ratio as between the two sources would be adequate and equitable. (Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others,). The Supreme Court upheld the reservation of 50 per cent of posts for direct recruits and the remaining 50 per cent for promotees and negatived the contention that this system has resulted in discriminatory treatment to promotees with the consequence that promotees of much larger service are put in the seniority list below direct recruits with shorter service-- Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others, .

In S.G. Jaisinghani Vs. Union of India (UOI) and Others, , the Supreme Court has held as under (at p. 1431):--

"The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion, the concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification."

The Government was within its rights in laying down that class II Gazetted posts in the Veterinary Department would be filled up by direct recruitment and also by promotion. The Government was also justified in reserving 50 per cent of posts for direct recruits and the remaining 50 per cent for promotees in the interest of public service. Direct recruits are being taken in order to infuse new blood and spirit in the services. By getting direct recruits at an early ages, the Government gets longer service from them and their efficiency is improved. The sources of selections of direct recruits and promotees are--different, one from the open market, including those in the department fulfilling the conditions of eligibility and the other from amongst the employees already working in the department. The petitioners are, therefore, not right in comparing direct recruits with promotees. It is incorrect to say that the source of selection of the direct recruits is only from departmental candidates. It may be that in the selections of 1968-69 and 1970-71, no outsiders were selected, may be because none was found suitable or none fulfilled the conditions of eligibility. The assertion that no candidates are available in the open market in the State has not been substantiated. Even if private candidates were not available in the State, that does not mean that there are no candidates available outside the cadres of the M. P. State Government employees for filling up the posts of direct recruits, from open market. The selection of direct recruits is also thrown open to departmental candidates fulfilling the conditions of eligibility and they have no cause to complain. Those departmental or private candidates outside the upper age limit can make no grievance that they should also be considered for selection. There is no question of junior or senior in the selection of direct recruits, when the selection has to be on merit cum suitability. There has been no denial of equality of opportunity to candidates similarly placed either belonging to the services or coming from the open market.

It is, therefore, answered that the Rules 6 and 8 of the Madhya Pradesh Veterinary (Gazetted) Recruitment Rules, 1966, do not, in any way, infringe Articles 14 and 16 of the Constitution.