
(2016) 07 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal No (s) . 13483-13487/2015 With C.A. No. 13488-13493/2015. C.A. No. 13494-13498/2015. C.A. No. 13499/2015

Harpinder Pal Singh

APPELLANT

Vs

Rajiv Prashar

RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Constitution of India, 1950 — Article 133

Punjab Civil Services (Executive Branch) (Class I and II) Rules, 1976 — Rule 28

Citation : (2016) 8 Scale 133

Hon'ble Judges : Mr. J. Chelameswar and Mr. Abhay Manohar Sapre, JJ.

Bench : Division Bench

Advocate : Mr. P.P. Rao, Senior Advocate, Mr. Satinder S. Gulati, Mrs. Kamaldeep Gulati, Ms. Ananya Sarkar, Mr. Swarnanbo Chatterjee, Mr. Ashok Mathur, Mr. Ashok K. Mahajan, Mr. A.K. Vali, Mr. Tuhin, Mr. Bhaskar Vali, and Mr. R. N. Keshwani, Advocates, for the Appellant; Mr. V. Giri, Sr. Advocate Mr. Jayant Bhushan, Sr. Advocate, Mr. Shankra Madiyal, Advocate, Mr. Subranshu Padi, Advocate, Mr. Gaurav Agrawal, Advocate, Mr. Abhikalp Pratap Singh, Advocate, Mr. Prateek Rusia, Advocate, Mr. B. Adinarayana Rao, Sr. Advocate, Mr. Mahavir Singh, Sr. Advocate, Mr. Atma Narayan Ray, Sr. Advocate, Mr. Ajay Bansal, AAG, Mr. Jagjit Singh Chhabra, Advocate, Mr. Kuldeep Singh, Advocate, Mr. Gaurav Yadava, Advocate, Mr. P. N. Puri, Advocate, Mrs. Reeta Dewan Puri, Advocate, Mr. Rahul Gupta, Advocate, Mrs. Amita Gupta, Advocate, Mr. Yash Pal Dhillon, Advocate, Mr. Debasis Misra, Advocate, Ms. Kaveeta Wadia, Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

1. This batch of appeals arise out of a common judgment in 21 Letters Patent Appeals dated (LPA No.7 of 2007 etc.) dated 21.7.2009 of the High Court of Punjab & Haryana.

2. The basic facts are that the writ petition came to be filed before the High Court challenging the decision of State of Punjab to fill up 7 posts of Punjab Civil

Service (Executive Branch) (Class-I) under the Punjab Civil Service (Executive Branch) Rules, 1976 by a process otherwise than normally contemplated under the Rules. However, Rule 28 of the said Rules authorises the State Government to relax any of the provision of the Rules with respect to any class or category of persons for reasons to be recorded.

3. Exercising such power, the Council of Minister of State of Punjab by Proceedings dated 06/3/1993 and 21/2/1994 resolved to fill up 7 of the above mentioned posts by a process other than one required to be followed in the normal circumstances in terms of the above mentioned Rules.

4. The reason which prompted the above mentioned Cabinet decisions dated 06/03/1993 and 21/2/1994 are that seven (named) persons who were in the service of State of Punjab were killed because of the violence by certain extremist elements at that point of time. In view of such a situation, the State had given a commitment to the families of the deceased that some eligible member of the family of the deceased would be provided with employment in the Punjab Civil Service (Executive Branch) (Class-I). Honouring its commitment given earlier, the decisions dated 06/03/1993 and 21/2/1994 were taken. Consequently, all the seven appointees (respondents in the instant appeals) were appointed on various dates in the years 1993 and 1994.

5. Challenging the said decision of the Government of Punjab and consequent appointment orders of the respondents, writ petition came to be filed before the High Court which eventually culminated in the impugned judgment herein.

6. The matter was heard at some length. Apart from other submissions, the basic submission made by Mr. P.P. Rao, learned senior counsel appearing for the appellants was the judgment of this Court in Suraj Prakash Gupta and Others v. State of J&K and Others reported in 2000 (7) SCC 561 wherein a Bench of this Court declared the law as follows:

"31. The result of the discussion, therefore, is that the wholesale regularisation by order dated 2-1-1998 (for the Electrical Wing), by way of implied relaxation of the Recruitment Rule to the gazetted category is invalid. It is also bad as it has been done without following the quota rule and without consulting the Service Commission. Further, the power under rule 5 of the J&K (CCA) Rules, 1956 to relax the Rules cannot, in our opinion, be treated as wide enough to include a power to relax rules of recruitment."

7. On the other hand it is submitted on behalf of the respondents that some earlier decisions of this Court held to the contra, viz. Ashok Kumar Uppal v. State of J&K (1998) 4 SCC 179, Sandeep Kumar Sharma v. Arvind Kumar (1997) 10 SCC 298 and Narender Chanha v. Union of India (1986) 2 SCC 157 and one of them is a decision of the Larger Bench (three Judge Bench) in the case of J.C. Yadav v. State of Haryana (1990) 2 SCC 189.

8. However, those pronouncements of the earlier Larger Bench were also

considered by the Division Bench in Suraj Prakash Gupta's case (supra).

9. In fact subsequent to the above mentioned decision, in another decision of this Court in Arun Kumar v. Union of India, reported in (2007) 5 SCC 580, took a different view of the matter, more in context of some special treatment granted in favour of the members of the victims of extremist violence in Punjab. This Court opined that appointments such as one made in the above mentioned case are not compassionate appointments but "exceptional appointment" and legal.

10. We are constrained to record that the earlier decision of this Court in Suraj Prakash Gupta's case does not appear to have been brought to the notice of the Bench which decided Arun Kumar's case (supra).

11. Prima facie, we are of the opinion that an absolute embargo on the authority of the State to grant relaxation under of any one of the conditions of the rules of recruitment appears to be inconsistent with the constitutional authority of State. The legality of the exercise of such a power in a given case is a different matter altogether. However, in view of the above mentioned divergence of opinion on the subject, we deem it appropriate that the matter be authoritatively considered by a Bench of appropriate strength. We are also obliged to observe that the appointments in question pertain to the years 1993 and 1994 approximately a quarter century ago. In the circumstances, we are of the opinion that it is desirable that these matters be resolved at an early date.

12. The Registry is directed to place these matters before Hon"ble the Chief Justice of India for appropriate orders in this regard.