

(1999) 05 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19634 of 1998

Jagdev Singh

APPELLANT

Vs

Director Local Bodies, Punjab and others

RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 05 P&H CK 0034

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. I.D. Singla, for the Appellant; Mr. Hemant Kumar, for the Respondent

Judgement

Jawahar Lal Gupta, J.—On July 7, 1998 the Municipal Council, Qadian, advertised a post of Clerk. The applications had to be submitted by the candidates by July 9, 1998. The candidates had to be interviewed on July 10, 1998. It was further provided that the candidates must fulfil the qualifications and conditions as laid down in the instructions issued by the Punjab State Government. According to the petitioner the instructions with regard to the educational qualifications etc. had been circulated by the Directorate of Local Government, Punjab, to the various Municipal Councils and Corporations vide letter dated October 29, 1996. In respect of age etc. the instructions have been issued by the Punjab Government vide letter dated May 22, 1996. It was provided that the upper age limit shall be 35 years in the technical and non-technical posts. On this basis the petitioner contends that respondent No. 4 who was more than 40 years of age by the last date for submission of applications was not eligible for appointment to the post of Clerk. It has been further alleged that she was not only considered selected as she is the wife of one of the Municipal Councillor Mr. Sore Nath. Persons who were otherwise eligible and were better qualified were rejected. Accordingly, the petitioner prays that the selection and appointment of respondent No. 4 quashed.

2. Separate written statements have been filed on behalf of the Municipal Council and the 4th respondent. In the written statement filed on behalf of respondent Nos. 2 and 3, it has been inter-alia averred that respondent No. 4 was "born on 25.11.1957 and the age in terms of Punjab Government instructions is 40 Years and therefore, she was overaged at the time of interview by 8 months. The unanimous resolution of the Municipal Council to seek relaxation in age was approved by the Government". A copy of the resolution passed by the Municipal Council has been produced as Annexure R2/1 with the written statement. It has been further averred that this resolution was approved by the Directorate of Local Bodies vide letter dated September 18, 1998. It has been also averred that respondent No. 4 belongs to the category of Backward classes. The fact that her husband is a Municipal Councillor has not been disputed. However, it has been averred that he was not "present when the Municipal Council unanimously passed a resolution recommending the relaxation in age". The respondents maintain that relaxation having been granted, the appointment was legal and valid. She had actually joined on September 25, 1998. Therefore, the writ petition should be dismissed. On almost same lines is the reply filed by respondent No. 4.

3. Learned counsel for the parties have been heard.

4. On behalf of the petitioner it has been contended that respondent No. 4 was not eligible as she was beyond 40 years of age as required under the instructions issued by the State Government. On behalf of the respondents it has been submitted that being a member of the Backward Classes, the requirement of age had been relaxed and thus respondent No. 4 had rightly been appointed.

5. Admittedly the post had been advertised. It had been stipulated that the qualifications etc. shall be as laid down by the Government in its instructions. It is also the admitted position that according to the instructions issued by the State Government the upper age limit for appointment to any post in the State is 35 years. In case of members of Scheduled Castes, Backward Classes and Scheduled Tribes a provision for relaxation upto 5 years has been made. Thus, the candidates from these categories who more 40 years or less on the last date for submission of applications could be considered. It is also the admitted position that the 4th respondent was born on November 25, 1957. Thus, on July 9, 1998 she was more than 40 years of age. In fact, it has been admitted in the written statement that she was over-age by 8 months and a few (sic) has been placed on record to show that the age limit could be relaxed beyond 40 years. Even in the case of a person belonging to the category of Backward Classes etc, the relaxation is permissible only from 35 years to 40 years. In the absence of a specific power to relax the upper age limit beyond 40 years, it cannot be said that the action of the respondents was legal and valid.

6. There is another aspect of the matter. It is known that there is lot of unemployment in the country. For every job there are hundreds of candidates. In the present case, there was no indication in the advertisement that the age limit

can be relaxed. In the absence of such a stipulation it is likely that a number of candidates who could have applied may have resisted from doing so on account of the fact that there was no provision for relaxation. If the respondents intended to consider candidates who did not fulfil the requirement of age etc. as laid down in the advertisement, they should have given an indication in the advertisement. This would have enabled other persons also to compete. The likelihood of a more suitable candidate offering the candidature cannot be ruled out. By not making such a stipulation in the advertisement and yet granting relaxation, the respondents have acted in violation of the provisions of Articles 14 and 16 of the Constitution.

7. Mr. Singla, learned counsel for the petitioner, has vehemently contended that in fact the selection should also be quashed on the ground that undue favour had been done to the 4th respondent as her husband is a Municipal Councillor. In view of our finding on the issue of eligibility, we do not consider it necessary to go into this aspect of the matter.

8. In view of the above, we set aside the impugned selection and appointment. The respondents shall be at liberty to make a fresh selection in accordance with law. The writ petition is, accordingly, disposed of. No costs.

9. Petition disposed of.