
(1974) 07 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1524 of 1969

J.P. Mathur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-07-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 226, 309

Citation : (1974) WLN 694

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kan Sing, J.—This is a writ petition by one Shri J.P. Mathur under Article 226 of the Constitution seeking a writ, direction or order against respondents Nos 1 to 3 restraining them from confirming respondents Nos. 4 an 15 namely, Lissu Ram and Phool Chand resnectively, on the post of Lover Division Clerks. The petitioner has sought other incidental reliefs as well.

2. The petitioner entered Government service as a Lower Division Clerk in the Officer of the Senior Settlement Officer under the Ministry of Rehabilitation, Government of India The post in this Department was temporary. The petitioner was thereafter appioned on an Upper Division Clerk with effect from 28.4.54. He was subsequently appointed by promotion as a Junior Accountant with effect from 22-2-56. He got further promotion as Junior Field Inspector with effect from 1-5-57. The petitioner was then as a Junior Account. He worked as Senior Accountant with effect from 16-11-63 The petitioner was declared to be quasi permanent in that Department with effect from 1-7-56, in terms of rule (b) of Rule 2 read with Sub-rule (ii) of Rule 3 of the Central Civil Service (Temporary Service) Rules, 1949, hereinafter to be referred as "the 1949 Rules". A seniority list of the non-gazetted staff was issued on dated 20-7-62 According to the petitioner, his name appears at serial number 5 amongst Senior Accountants and at No. 10 amongst Upper Division Clerks, at No 5 Junior Field Inspectors and at

No. 20 amongst Lower Division Clerks. Respondent Lissu Ram, who was a member of the scheduled caste, came to be appointed as a Lower Division Clerk on 11-3-64. His name appeared at No. 71 in the seniority list of Lower Division Clerks Phool Chand, respondent No. 5, came to be appointed as Lower Division Clerks on 4-3-64 Thus, according to the petitioner, he had put in a much longer service than the respondents Nos 4 and 5 and was much senior to them. Since the Department was temporary, the petitioner could not be confirmed for long as any permanent vacancy was not available. To releve the hand (sic) of all the temporary employees of the Governments, the President made 50 percent of the posts other than class IV posts in such non-permanent departments as had existed for not less than 10 years and is were in existence for a period of 5 years or more and were required indefinitely The petitioner proceeds to say mat according to the orders of the President, 14 posts of the Lower Division Clerks in the Rehabilitation Department were made permanent. According to the seniority list of Lower Division Clerks 14 other persons who were senior to the petitioner came to be confirmed as Lower Division Calrks. The petitioner maintains that certain persons in the seniority list whose names appear at Nos. 6, 8 and 9 cannot be confirmed as Lower Division Clerks in the Rehabilitation Department, because they came from the ex Custodian Office of he Government of Rajasthan. Thus, according to the petitioner, there were three permanenors posts of Lower Division Clerks against which two persons senior to the petitioner and the petitioner being the third could be confirmed. The petitioner's grievance is that Lissu Ram and Phoolchand, respondents Nos. 4 and 5, respectively" are being considered for confirmation as Lower Division Clerks, even though they were much junior to the petitioner. The petitioner refers to an Office Memorandum of the Government of India in the Ministry of Home Affairs dated 12-9-68 and contends that this Office Memorandum is standing in the view of the petitioner's confirmation as the respondents Nos. 4 and 5 being the members of the Schedule castes would get weighrage over him The case of the petitioner in nut-shell is that the Office Memorandum of the Government of India in the Ministry of Home Affairs is contrary to rules and is calculated to override the claim of the petitioner who had been in quas-permanent service of the Govt. since long after his remaining temporary for a number of years. The Office memorandum, according to the petitioner, is hit by the provisions of Articles 14 and 16 of the Constitution.

3. The respondents have not chosen to file any written statement, but Shri Purohit, learned Additional Government Advocate, who appears for the respondents Nos. 1 to 3, opposes the writ petition.

4. The facts have to be taken as averred by the petitioner in his writ petition in the absence of any written statement questioning their correctness. 1 have, therefore, to proceed on the footing that the petitioner was first appointed as a Lower Division Clerk on a temporary basis and having put in service for a number of years was made quasi-permanent Lower Division Clerk in terms of Rules 2 and 3 of the 1949 Rules The 1949 Rules were replaced by the Central Civil Service

(Temporary Service) Rules, 1965, hereinafter to be referred as "the 1965 Rules". The term "quasi-permanent service" is defined both in the 1949 Rules as well as in the 1966 Rules to mean temporary service commencing from the date on which a declaration made under Rule 3 takes effect and consists of periods of duty and leave (other than extraordinary leave) after that date. The term "specified post" means the particular post, or the particular grade of posts within a cadre in respect of which a Government servant is declared to be quasi permanent under Rule 3. The term "temporary service" means the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India. There is no change in the two sets of rules concerning the above definitions. Rule 3 provides that a Government servant shall be deemed to be in quasi-permanent service, (1) if he has been in continuous temporary service for more than three years; and (2) if the appointing authority being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Govt. of India, has made a declaration to the effect. Rule 4 lays down that a declaration under Rule 3 shall specify the particular post or the particular grade of posts within a period in respect of which it is made, and the date from which it shall take effect. The petitioner had not produced a copy of the declaration about his quasi permanent character, but learned Counsel has furnished me a copy of an order today which I reproduce hereunder:

No. 8(65) Admn/RSCR/58/19800

Government of India,

Ministry of Rehabilitation

Office of the Regional Settlement Commissioner, Rajasthan,

Fateh Tiba, aipur.

Dated the 7th Oct. '58.

DECLARATION UNDER RULES 3 AND 4 OF THE CENTRAL

CIVIL SERVICES (TEMPORARY SERVICES)

RULES, 1949

...

In pursuance of Rules 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1919, I, Dr. Tara Chand, REGIONAL SETTLEMENT COMMISSIONER, RAJASTHAN, being satisfied as to the suitability of Shri Jagdish Prasad Mathur, in respect of age, qualifications, work and character hereby declare, that the said Shri Jagdish Prasad Mathur is a fit person to be appointed in a quasipermanent capacity to the post of Lower Division Clerk with effect from 1st July, 1956.

Sd/-

(TARA CHAND)

REGIONAL SETTLEMENT COMMISSIONER,

RAJASTHAN, JAIPUR,

This declaration is in conformity with Rules 3 and 4 of the, 1949 rules. It specifies that in respect of the petitioner the appointing authority has been satisfied as to the suitability and that the petitioner was a fit person to be appointed in a quasi permanent capacity. Further this order specifies that he is being made quasi permanent in respect of the post of a Lower Division Clerk with effect from 1-7-56 Rule 5 relates to the termination of temporary service. His services are liable to be terminated at any time by a notice in writing. Rule 7 is about the termination of quasi-permanent service.

6. The rules already referred to were identical In the two sets of rules, but there is some difference regarding Rule 7 and 1 reproduce the rule as it was under the 1949 Rules or as it is under the 1965 Rules.

1949 Rules 1965 Rules Rule 7. (1) Subject to Rule 7 Termination of the provisions of this quasi-permanent service.-(1) rule, a government The services of a Government servant in respect of servant in quasi-permanent whom a declaration service" shall be liable to has been issued under termination Rule 3, shall be eligible for a (i) in the same circumstances permanent appointment and in the same manner as a on the occurrence of Government servant in a vacancy in the permanent service, or specified posts Which may be reserved for (ii) when the appointing being filled from among authority concerned has persons in quasi certified that a reduction permanent service, in has occurred in the number accordance with such of posts available for instructions as may be Government servants not in issued by the Governor- permanent service General in this behalf from time to time. Provided that the services of Govt. servant in quasi- Explanation -No such permanent service shall not declaration shall confer be liable to to termination upon any person a right under Clause (ii) so long as to claim a permanent any post of the same grade appointment to any post and under the same appointing authority as the specified (2) Every appointing post held by a Government authority shall, from time servant not in permanent or to time, after consultation quasi-permanent service: with the appropriate Departmental Promotions Provided further that as Committee, prepare a list, among Government servants in in order of precedence, of quasi-permanent service whose persons in quasipermanent specified posts are of the service who are eligible same grade and under the same for a permanent appointment. appointing authority In preparing such a list, termination of service the appointing authority consequent on reduction of shall consider both the posts shall ordinarily take seniority and the Merit place in order of juniority of the Government in the list referred to in servants concerned. All Rule 8: permanent appointments which are reserved Under Provided further that when Sub-rule (1) under the the services of a quasi- control of any such permanent Government

servant appointing authority are terminated under clause shall be made in (ii), he shall be given three months' notice and if, in any case, such notice is not given, then with the sanction of the Government may order that of the authority competent a permanent appointment to sum equivalent to his pay plus any grade of post may be made purely in order of the notice, or, as the case may be, for the period by which the notice actually given to him falls short of three months, shall be paid to him at the same rates at which he was drawing them immediately before the termination of his services, and, if he is entitled to any gratuity, such gratuity shall not be paid for the period in respect of which he receives a sum in lieu of notice.

(2) Nothing in this rule shall affect any special instructions issued by Government regarding the manner and the order in which temporary Government servant belonging to any Scheduled caste or Scheduled tribe may be discharged.

Rule 8 is about the making of permanent appointments of Government servants in quasi-permanent service and since the matter regarding the claim for confirmation has arisen after the coming into force of the 1965 Rules I may read Rule 8 of these Rules:

Rule 8. Permanent appointment of Government servant in quasipermanent service:

(1) Subject to the provisions of this rule a Government servant in respect of whom the declaration has been made under Rule 3, shall be eligible for permanent appointment on the occurrence of a vacancy in the specified post which may be reserved for being filled from among Government servants in quasi-permanent service, in accordance with such instructions as may be issued by the President in this behalf from time to time.

Explanation--No such declaration shall confer upon any Government servant in quasi permanent service a right to claim a permanent appointment to any post.

(2) Every appointing authority shall after consultation with the appropriate Departmental Promotions Committee prepare from time to time a list, in order of precedence of Government servants in quasi-permanent service who are eligible for permanent appointment and in preparing such list, the appointing authority shall consider both the seniority and the merit of the Government servants concerned.

(3) All permanent appointments to posts which are reserved under Sub-rule (1) under the control of any appointing authority shall be made in accordance with such list:

Provided that the Government may order that permanent appointment to any grade or post may be made, purely in order of seniority.

6. Now I may read the memorandum of the Government of India in the Ministry of Home Affairs, Ex, 2. which is the subject matter of challenge:

Copy of Office Memorandum No. 10/28/68 Est (SGT), dated the 12th September, 1968. from Government of India, Ministry of Home Affairs, New Delhi addressed to all Ministries Departments of the Government of India and all Union (sic) etc:

Subject : Reservations for Scheduled Castes and Scheduled Tribes in services-- Confirmation of temporary employees.

As the Ministry of Finance etc are aware, in posts/services filled by direct recruitment, reservation is required to be made for Scheduled Castes and Schedule Tribes both at time of initial appointment on a temporary basis as well as at the time of confirmation. In posts filled by promotion, however, there is no reservation at the stage of confirmation vide para 3(4) of this Ministry O.M. No. 1/12/67 -- Est (C) dated 11.1.68. Ministry of Finance etc are requested to ensure that reservation made for Schedule Cases and Schedule Tribes while making confirmations against posts/services filled by direct recruitment.

(2) Since according to the general principles of seniority, as laid down in this Ministry's O.M. No 9/11/55-RPS dated 22.12.59. all permanent officers of each grade are to be ranked senior to persons who are officiating, in that grade, it was clarified in O.M. No. 9/ 45/6 --Estt (D) datea 20.4.61 (Copy enclosed) that after confirmation the Shedule Castes/Schedule Tripes officers shall rank senior to temporary/efficiating officers of the grade and amongst the permanent officers of that grade, their seniority will follow the order of their confirmation The instructions in the aforesaid O.M. dated 20.4.61 are again brought to the notice of the Ministries etc. for guidance and strict observance.

(3) Ministry of Finance etc are requested to bring the above instructions to the notice of all concerned.

7. A perusal of the rules discloses that a quasi-permanent service is nothing but a temporary service, commencing from the date of the declaration under Rule 3 with certain immunities or privileges superadded, that is, a person in quasi-permanent service is liable to termination in the same circumstances and in the same manner as a Government servant in permanent service or when the appointing authority has certified that a reduction has occurred in

the number of posts available for the Government servant not in permanent service There are yet other terminal benefits awardable to Govt. servants in quasi-permanent service. The question is whether a person in quasi permanent service can get precedence in the matter of confirmation over persons belonging to the Scheduled castes who were not in quasi permanent service, Rule 8, to my mind, lays down that a Government servant in respect of whom the declaration has been made under Rule 3 shall be eligible for permanent appointment on the occurrence of vacancy in the specified post which may be reserved for being filled from among Government servants in quasi permanent service in

accordance with such instructions as may be issued by the President in this behalf from time to time Now" if there is a reservation in favour of persons in quasi-permanent service for being made permanent against some vacancies in permanent posts the person in quasi-permanent service will undoubtedly get precedence over persons who are not in quasi-permanent service This will be so even if the persons not in quasi-permanent service are members of the Scheduled Castes, but where there is no such reservation made for person in quasi-permanent service then I am afraid they would not be entitled to get precedence over a person belonging to the Scheduled Caste in temporary service The office Memorandum Ex.2 clearly provides that both at the time of initial entry into the service as a direct recruit or at the time of confirmation there has to be a favour of the member of the scheduled castes. Such a reservation did not exist at the stage of confirmation on posts to be filled by promotion Since the question of confirmation relates to the cadre of Lower Division Clerks, the petitioner cannot take precedence over a member of the Scheduled Caste. Learned Counsel for the petitioner contends that Ex. 2 is not a rule made by the President under Article 309 of the Constitution and, therefore, it can not override the 1949 Rules or the 1965 Rules for that matter which enable a quasi-permanent employee to have his confirmation on the occurrence of a permanent vacancy I have no quarrel with the proposition that any administrative order of the Government can not go against the tenor of any Rules under Article 309 of the Constitution or the provisions of any other law, but where rules made under Article 309 are silent on a particular point then there could be an executive order or instruction to supplement the statutory rules under Article 309 of the Constitution In the present case I am unable to find that office Memorandum Ex. 2 goes against any of the provisions of the 1965 Rules.

8. As I have observed above, if there were any reservation in favour of persons in quasi-permanent service for the time being to be appointed on occurrence of permanent vacancies then that would be a different matter. Learned Counsel submits that the office Memorandum Ex. 2 is hit by Articles 14 or 16 of the Constitution in that the petitioner who had been in Government service since 1964 and who was made quasi permanent is put at a disadvantage in comparison to respondents Nos. 4 and 5 who were temporary appointed in the department, one of them in March, 1964. and the other in March 1966 It does appear that the petitioner is hard hit to some extent Persons who were immediately senior to him had got their confirmation and when his turn is coming the members of the Scheduled Caste who were employed much later are likely to intervene between those already confirmed and the petitioner even though there is a difference of almost 10 years regarding their length of service under the Government.

9. Article 16(4) of the Constitution lays down that nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the service under the State Sub-

clauses 24 and 25 of Article 366 define Scheduled Caste and Scheduled Tribes. The "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Caste for the purpose of this Constitution. Under Article 341 the President may, after consultation with the Governor, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. There is no manner of doubt that Scheduled Castes are backward classes. The term "Backward class" occurring in clause 4 of Article 16 of the constitution will clearly govern Scheduled Castes. That being so, if the members of the Scheduled Castes have been given weightage in the matter of initial appointment, when such appointment is by direct recruitment or for that matter while confirming persons who are temporary at the time of entry into service, such a treatment cannot be characterized as discriminatory in terms of Article 19 or 14 of the Constitution for that matter. I am, therefore, unable to hold that the Memorandum of the Government of India Ex. 8, is bad either on account of its being in contravention of the rules of 1965 or 1949, or being in any manner violative of Articles 14 or 16 of the Constitution.

10. The writ petition has no force & is accordingly hereby dismissed. The parties are left to bear their own costs.