

(2005) 07 DEL CK 0107

In the Delhi High Court

Case No : CM 5780 of 2003, W.P (C) 3376 of 2003 and 11024-35 of 2005

Lakshmi Chand and Others

APPELLANT

Vs

Ministry of Human Resource Development and Another

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

National Commission for Women (Salaries, Allowances and other terms and conditions of service of Group C and Group D Officers) Rules, 1997 — Rule 4, 5, 6, 8

National Commission for Women Act, 1990 — Section 17(2), 3, 5, 5(1)

Citation : (2005) 07 DEL CK 0107

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Surat Singh, for the Appellant; Barkha Babbar and Sameer Aggarwal, for the Respondent

Judgement

S. Ravindra Bhat, J.—Issue Rule. With consent of parties, the matter was heard finally.

2. The National Commission for Women Act was enacted in the year 1990. It enabled the setting up of a Commission (known as "The National Commission for Women", hereafter called "The Commission") by virtue of Section 3. Section 5, which is relevant for purposes of these proceedings reads as follows:

"5. Officers and other employees of the Commission--

(1) The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed."

3. The Commission engaged the petitioners as Peons in Group-D posts on casual

and temporary basis on various dates between 1992-93. They were granted temporary status in accordance with a scheme known as Casual Laborers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 (hereafter called "the Scheme"), formulated by the Central Government, respondent No. 1. Para 4 of that Scheme outlined the conditions under which temporary status could be granted; Para 5 detailed the entitlements of persons conferred with temporary status; Para 8 of the Scheme provided for the procedures for filling up of Group-D posts. Para 8 reads as follows:

"8. Procedure for filling up of Group "D" posts--Two out of every three vacancies in Group "D" cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group "D" staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for the post, regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."

4. The petitioners had approached this Court earlier under Article 226 claiming regularization on the ground that they were working for a considerable length of time. This Court, by its order dated 7th May, 2002, disposed of that petition holding that no entitlement or enforceable right had been made out and that the only direction that could be made was to require the Union of India to take appropriate action for filling up seven sanctioned posts of Peons. The Court had also noticed the order passed in certain other proceedings in relation to the recruitments to the Commission, by a Division Bench of this Court.

5. In these proceedings, the petitioners impugn a letter/requisition by the second respondent Commission made to the Union of India, on 25th April, 2003. The Commission indicated its intention to fill up 7 posts of Peon by transfer on deputation, and sought appropriate action on the part of the Government of India.

6. Petitioners aver and contend that the respondents are bound by the Scheme which, inter alia, provides as per Para 8 that employees conferred with temporary status ought to be considered for permanent absorption. It is also averred and contended that the ratio and the method of filling up of vacancies has been provided by Para 8 of the Scheme. The petitioners submit that in view of this, it is not open to the Commission to fill up the existing 7 vacancies by transfer on deputation basis from amongst personnel of the Central Government.

7. Learned Counsel for the petitioners also submits that the previous order passed by this Court on 7th May, 2002 required filling up of vacancies in a

regular manner and not by deputation from amongst personnel of the Central Government. He submits that the order of the Division Bench was passed in somewhat different circumstances.

8. In addition, he also submits that the Commission itself had occasion to regularize the services of a Driver, who had been initially recruited on casual basis. Learned Counsel has drawn my attention to an order dated 24th June, 2003 which indicates that one Driver, who had been employed by the Commission, was in fact regularized by it in the year 1995. It is Therefore contended that the Commission has the power and cannot take the position that the vacancies in question have to be filled only by deputation.

9. The second respondent/Commission has averred and placed reliance on Section 5 of the Act to say that the responsibility of recruitment and provision of personnel is exclusively that of the Central Government. The Commission has also relied on Rules framed in exercise of its power u/s 17(2) of the Act in the year 1997. The said Rules are called as The National Commission for Women (Salaries, Allowances and other terms and conditions of service of Group "C" and Group "D" Officers) Rules, 1997, (hereafter called "the Rules"). Rule 4 of the Rules provides as follows:

"4. Appointments--(1) The posts of Personal Assistant, Assistants, Stenographer Grade "D" and Lower Division Clerk shall be filled by the method of transfer on deputation from officials working in the Central Secretariat and possessing the requisite qualifications and experience as mentioned in the schedule appended to these rules.

(2) The posts of Staff Car Driver, Senior Peon and Peon shall be filled by the method of transfer on deputation from amongst officials of the corresponding grades in the Central Government for an initial period of two years from the date of commencement of these rules and thereafter, they shall be filled from the cadre of the Department of Women and Child Development failing which from other Ministries/Departments of the Central Government."

10. It is contended on behalf of the Commission that the only mode of recruitment or method of filling up of vacancies to various posts within the Commission is by transfer on deputation from amongst officers and employees of like categories working in various departments of the Central Government. That being the position, it is contended the relief sought cannot be granted.

11. Learned Counsel for the respondent submits that undoubtedly there is a need for filling up vacancies and also need for supporting staff. However, the fact remains that the scheme of the Act as well as the Rules envisaged recruitment only by transfer on deputation from amongst personnel of the Central Government. Hence the relief, as claimed is unavailable to the petitioners. It is also contended that the petitioners' reliance on the instance of a Driver having been regularized by the respondent No. 2 Commission cannot be supported in law. It is a well settled proposition that Article 14 of the Constitution cannot be

invoked in order to draw a parallel and seek enforcement of something which is not permissible in law.

12. Ms. Barkha Babbar, learned Counsel for the Central Government stated that the first respondent (Central Government) does not wish to file a counter affidavit and would leave it to the Commission to defend these proceedings.

13. The provisions of the Act, particularly, Section 5 are categorical; the Commission, although set up as an independent body and charged with a particular mandate by parliamentary enactment, is nevertheless required to draw its employees from amongst officers and employees of the Central Government. Section 5 charges the Central Government with the duty of providing such officers and employees as may be necessary for the efficient performance of functions of the Commission. In line with this provision, the Commission, apparently in consultation with the Central Government framed the Rules in the year 1997. These contemplate appointments by way of transfer on deputation, from among the staff of the Central Government. In addition to Rule 4, Rule 5 provides the period of deputation and Rule 6 provides for conditions of service, namely, salaries, allowances, etc. The schedule to the Rules, which indicates the various posts, sanctions by Item No. 7, seven posts of peons in Grade "D". The method of recruitment indicated in relation to these posts is by transfer on deputation. The requisite qualifications too have been prescribed in the Second Schedule to the 1997 Rules.

14. In view of the above position, the question which arises is whether the petitioners can claim that the impugned letter arbitrary or illegal. The terms of the letter dated 25th April, 2003 show that the Commission intended to fill up seven posts by transfer on deputation basis. Its intention apparently is to follow the Regulations. The petitioners have placed reliance on the scheme formulated by the DOPT in 1993 particularly, Para 8 to contend that they have a right to be considered in accordance with a quota of 662/3 for regular appointment having regard to the fact that they have worked for more than 5 years. Ordinarily, the petitioners contention would have been merited, in the absence of the Act or the 1997 Rules. The position, however in view of the Act and the Rules is that the Commission as well as the Government are bound to comply with its provisions and recruitment has to be exclusively in accordance with its provisions. The Scheme of 1993 is merely an executive instruction; it cannot override or supplant express position of law. Hence, the grievance made out by the petitioners is without any substance.

15. As far as the complaint of the petitioners about the discrimination on the ground that the Commission had regularized the services of a Driver on an earlier occasion in 1995 is concerned, the Supreme Court in *Style (Dress Land) v. U.T. Chandigarh*, AIR 1999 SC 3618 and *Chandigarh Administration and another Vs. Jagjit Singh and another*, has held that Article 14 does not enable a litigant to claim parity on the ground of an action which is not supportable in law. In other words, something which cannot be justified in law or is contrary to law cannot be

cited as a precedent for enforcement of Article 14. Hence this contention is also without any merit.

16. In view of the above conclusions, relief sought cannot be granted. Having said that, one cannot be unmindful of the fact that the petitioners have worked for the National Commission for the last 11-12 years. The Commission was apparently not provided with the requisite manpower or personnel in accordance with Section 5. Hence, it engaged their services in 1992-93. They were also granted temporary status in accordance with the scheme formulated by the Central Government which was duly informed as is apparent from the order dated 19th May, 1994. The existing records disclose that the Central Government did not take any action to fill the posts of Peon for these 12 odd years. Now the Commission has sought to fill them up by way of the impugned requisition. It would be worthwhile to notice that Rule 8 of the Rules empowers the Central Government to relax its provisions. The said Rule reads as follows:

"8. Power to relax--Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

17. In view of the peculiar facts of this case and also the circumstance that the petitioners have been working for the last 12 years, being engaged at a time when the 1997 Rules were not in force, it would be in the fitness of things that the Central Government, before proceeding with recruitment (by way of deputation in terms of the impugned letter), considers all the circumstances and passes an appropriate order as to whether or not the power of relaxation under Rule 8 ought to be exercised. This exercise shall be carried out as expeditiously as possible and in any case not later than 8 weeks from today.

18. The petition is disposed of in the above terms.