
(1973) 02 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 705 of 1972

M.S. Mahadeokar

APPELLANT

Vs

The Chief Commissioner Union Territory, Chandigarh and
others

RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1973) 02 P&H CK 0027

Hon'ble Judges : Pritam Singh Pattar, J

Bench : Single Bench

Advocate : Kuldip Singh with Mr. R.S. Mongia, for the Appellant; R.L. Aggarwal, for Respondent Nos. 1 to 3 and Mr. S.K. Pipat, for the Respondent

Final Decision : Allowed

Judgement

Pritam Singh Pattar, J.—By this judgment the following two civil writs will be decided as common questions of law and fact are involved in the same:

1. C.W. No. 705 of 1972.

M. S. Mahadeokar v. The Chief Commissioner Union Territory, Chandigarh and others.

2. C.W. No. 826 of 1972.

Gian Chand Dhiman v. The Union Territory Chandigarh and others.

The petitioner M. S. Mahadeokar was selected through the Punjab Public Service Commission, Patiala, for the post of General Foreman in the Government Press in the erstwhile State of Punjab and joined that post on 21st April 1964. He was reverted to the Post of Section Holder on 6th December, 1967, by the Union Territory Administration, Chandigarh, but was again promoted as General Foreman by order dated 20th January, 1969, of the Controller Printing and Stationery, Chandigarh. The post of General Foreman in the Government Press,

Union Territory Chandigarh is a Class ITT post and the next promotion to class IT post is governed by the Punjab Printing and Stationery Department Service (State Service Class I and II) Rules, 1962 (hereinafter called the Rules). The qualifications for Class IT service are given in rule 4 of those rules. The post of Assistant Controller Printing and Stationery, is a Class II post and according to rule 6 (1) (c) of the Rules recruitment for the post of Assistant Controller is to be made by promotion from amongst the General Foreman serving in the Department, or by direct recruitment, or by transfer of officers in the service of the Government of India or State Government. The above mentioned rules were framed by the Governor of Punjab under Article 309, of the Constitution of India, and after the re-organisation of the State of Punjab they are applicable to the Union Territory Administration, Chandigarh.

2. M.S. Mahadeokar petitioner possessed all the qualifications prescribed in rule 4 of those rules for promotion as Assistant Controller. There were two other General Foreman working in this Department of the Union Territory Administration and they are Amir Chand respondent No. 4 and Santosh Kumar. Amir Chand is senior to the petitioner M.S. Mahadeokar while Santosh Kumar is junior to him. Amir Chand respondent No. 4 did not fulfil the qualifications under the service rules and consequently he was not eligible for the post of Assistant Controller. However, by order dated 9th February, 1972, Amir Chand respondent was promoted by the Chief Commissioner, Union Territory Chandigarh, to the post of Assistant Controller by relaxing the provisions of rule 4 of the aforesaid rules. This relaxation was alleged to have been made under rule 15 of those rules. M.S. Mahadeokar filed this writ petition under Articles 226 and 227 of the Constitution of India for issuance of a writ of Quo-warranto declaring that Amir Chand respondent No. 4, is not entitled to hold the post of Assistant Controller Printing and Stationery Department, Chandigarh Administration, and that his appointment as such should be quashed and that the Chief Commissioner Chandigarh Administration, respondent No. 1, the Union Territory Administration, respondent No. 2, and the Controller of Printing and Stationery, Department Government Press, respondent No. 3, should be directed to remove Amir Chand, respondent No. 4, from that post. It was alleged that respondents 1 to 3 had no right to relax the qualifications prescribed under rule 4 of the Rules and to promote Amir Chand who was ineligible for promotion, that according to the scheme of the Rules relaxation under rule 15 could only be made regarding the rules in Part 111 which contained conditions of service. But the provisions in rule 4 prescribing qualifications could not be relaxed and the order of promotion of respondents was illegal and invalid.

3. To the same effect are the allegations made by Gian Chand Dhiman petitioner in Civil Writ No. 826 of 1972. Gian Chand Dhiman was previously working as a Litho Rotary Machineman in the Printing and Stationery Department. The Government created the posts of overseer Off-Set in the printing press in the scale of Rs. 300 20-500, by order dated 4th November, 1984, and this scale was later on revised and raised to Rs. 350 15 380/20-500/20-600, and he was

appointed on this post on 15th April, 1966. In the general seniority list Gian Chand Dhiwan petitioner was junior to Amir Chand but since he was holding a post carrying higher scale of pay than the General Foreman, therefore he was eligible for being considered for the post of Assistant Controller, Printing and Stationery, but his name was not considered.

4. The respondents contested these writ petitions. It was alleged that the Government could relax the Rules and the promotion of Amir Chand respondent as Assistant Controller Printing and Stationery was valid and legal. They averred that both the petitioners were not eligible for the post and were also junior to Amir Chand respondent No. 4.

5. The Governor of Punjab under the proviso to Article 309, of the Constitution of India, framed rules regulating the recruitment and conditions of service of persons to be appointed in the Printing and Stationery, Department of the Punjab Government and these rules were called the Punjab Printing and Stationery Department service (State Service Class I and II) Rules, 1862. These are 16 rules in all and are divided into three parts. Part I pertains to General Rules, which are rules 1 and 2 wherein definitions are only given, Part II comprises of rules 3 to 7 regarding recruitment to the service Part III contain rules relating to conditions of service and are comprised of rules 7 to 14. Rule 15, gives powers to the Government of relaxation of certain rules. According to rule 6 (1) (c) the post of Assistant Controller in the Printing and Stationery Department could be filled by promotion from among the General Foreman serving in the Department. It is admitted that there are three General Foreman working in the Printing and Stationery Department of the Union Territory and they are Amir Chand respondent No. 4, M S Mahadeokar petitioner and Santosh Kumar. Amir Chand is the senior most General Foreman. Santosh Kumar is senior to M.S. Mahadeokar petitioner. Gian Chand petitioner was previously working as Rotary Machineman and later on he was selected as overseer Off-set in this Department but he was not a General Foreman. No person can be appointed to Class II service in the Printing and Stationery Department service unless he possessed the qualifications laid down in rule 4 (1) of these rules. Amir Chand respondent No. 4 was admittedly not qualified to be promoted to Class II service as he did not possess the requisite qualifications prescribed in rule 4 (1) of the Rules. Respondents Nos. 1 and 2 acting under rule 15 of the Rules relaxed the qualifications prescribed in rule 4 (1) and promoted Amir Chand as Assistant Controller of Printing and Stationery which is a Class II post. The only point for determination in these writ petitions is whether the Government could validly and legally relax these qualifications and could promote respondent No. 4 to Class II service.

Rule 15 of the Rules reads as under:

When the Government are satisfied that the operation of any of these rules regulating the conditions of service of the members of the service causes undue hardship in any particular case. Government may by order dispense with or relax

the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

These rules apply to the Union Territory Administration Chandigarh, by virtue of the provisions of sections 88 and 89 of the Punjab Re-organisation Act, 1966. Rule 15 empowers the Government to dispense with or relax the requirement of any of the rules regulating the conditions of service of the members of the service if it caused undue hardship in any particular case. The word "member of the service" means employees who are already working as Class II officers and not a person who is holding Class III post. Under rule 15 of the Rules, the Government could only relax the rules regulating the conditions of service of the members of the service and the rules, containing the conditions of service are rules 7 to 14. These rules deal with the number and character of the posts, probation of members of service, pay of members of service, their seniority and liability to service, leave pension and other matters besides discipline and penalties and appeals. Therefore according to the powers conferred on the Government under rule 15, the Government could dispense with or relax the requirements contained in rules 7 to 14 in part III of the Rules, which regulate the conditions of service of Class II officers. Rule 15 does not give any jurisdiction to the Government to dispense with or relax the requirements or conditions contained in rules 3 to 6, which are comprised in part II-recruitment to the service, of these rules. Under rule 15 relaxation could only be made in favour of a person who is already a member of the Class II service, and no relaxation could be given to a person who is not a member of the service and therefore relaxation could not be made in rules 3 to 6 of part II of the Rules for the purpose of facilitating his recruitment to the service.

6. In *Lehna Singh v. Punjab State* 1970 SLR 844 the facts were that one Amar Kant was originally recruited as Rural Publicity Supervisor on April 11, 1957, in the scale of Rs. 250-400 which post was kept outside the scope of the rules for the non-gazetted posts in the Department. No rules for the posts of Rural Publicity Supervisors were framed and therefore the Government had the right to make appointments on these posts without infringing any rules. While serving as Rural publicity Supervisor, he was appointed as District public Relations officer, Sangrur, on January 29, 1962, temporarily for a period not exceeding six months. It appears that a reference was made to the Punjab Public service Commission for according approval to his appointment as District Public Relations Officer. The Punjab Public Service Commission accorded its approval on the condition that the necessary relaxation in the relevant rules, be made. To fulfil that condition the notification dated October, 10, 1968, was issued in relaxation of rule 9 (h) (i) of the Punjab Public Relations Department (Gazetted) Service Rules, 1958. It was admitted that as Rural publicity Supervisor he could not be considered for promotion as public Relations Officer under rule 9 (h) (i) of those rules. The rule with regard to relaxation was rule 15 in the Gazetted Service 1958 Rules, which read as follows:

15. Powers to relax rules: Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order dispense with or relax the conditions as it may consider necessary for dealing with the case in a just and equitable manner.

On these facts it was observed in para 10 of the aforesaid ruling, by Hon''ble B.R. Tuli J. as under:

As I read this rule, it can be applied only to the members of the service who are governed by these rules and in whose cases the operation of any rule causes undue hardship but this power of relaxation cannot be exercised in favour of a new entrant, to the service as it cannot be said that any rule causes undue hardship to him. Secondly, no order has been produced before me to prove that the Government passed any order to the effect that it was satisfied that the operation of rule 9 (b) (i) caused undue hardship to Amar Kant and it was, therefore, necessary to relax the requirements of that rule and to what extent and subject to what conditions. The appointment and promotion of Amar Kant to the post of public Relations Officer, to begin with, was not in accordance with the rules and could not be regularised by relaxing one of the rules relating to recruitment. Even the approval of the public Service Commission did not make the invalid appointment valid. It can be said to be well settled by now that where rules of service exist, the Government has to make the appointments to that Service in accordance with those rules and not contrary to those rules. Where no rules exist, the Government has the right to make the appointments by executive decisions or instructions.

These observations fully apply to this case.

7. In the instant case Amir Chand was not eligible for promotion to the post of Assistant Controller, according to the qualifications prescribed in rule 4 of the Rules. He was promoted by relaxing the rules under rule 15 of the Rules, reproduced above. This rule only gives power to respondents 1 to 3 to relax the rules which are contained in part III conditions of service, which are rules 7 to 14 and not the rules contained in part II of those Rules which are rules 3 to 6. Consequently the relaxation made by respondents 1 to 3 if any, is illegal and invalid and the promotion of Amir Chand respondent No. 4, as Assistant Controller, is liable to be quashed.

8. The learned counsel for the respondents relied on Supreme Court decision in Mohammed Bhakar v. Y. Krishna Reddy 1970 SLR 763 wherein it was held as under--

Any rule which effects the promotion of a person relates to his conditions of service and it appears to us therefore that unless there be the approval of the Central Government in terms of the proviso to sub-section (7) of section 115, a rule which lays down the passing of certain departmental examinations as condition or promotion to a person who was an allottee to the new State of Mysore would be in violation of sub-section (7) of section 115 of the States Re

organisation Act, 1956.

9. In *D.P. Gaid v. The State of J. & K.* 1972 L & I Cases 130 it was held by the Jammu and Kashmir High Court that the conditions and terms of service of a Government servant can be changed unilaterally by the Government even during the course of service. These rulings have obviously no application to the facts of this case and are distinguishable.

10. In the instant case the main point for consideration is whether the Government had the right to relax the rules and to promote Amir Chard respondent No. 4, to the post of Assistant Controller, who was otherwise ineligible for that post. The question is whether the relaxation of the rules is valid or not and this was not the point involved in the aforesaid authorities which are distinguishable.

11. It may be pointed out that the Punjab Government by an amendment made in the year 1971, cancelled the aforesaid rule 15 of the Punjab Printing and Stationery Department Service (State Service Class I and II) Rules, 1962, and has substituted it with the following rules-

15. Where the Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of person.

This new rule framed by the Punjab Government empowers it to relax any of the rules contained in part II and III of these rules mentioned above. The existing rule 5 which applies to the Union Territory Chandigarh does not empower respondents 2 and 1 to relax the qualifications laid down in rule 4(1) of the rules. It says that no person shall be appointed to the service unless he possessed those qualifications. These qualifications cannot be relaxed by the Government under the existing rule 15. Therefore the promotion of Amir Chand respondent 4 as Assistant Controller Printing and Stationery, made by respondents 1 and 2 by relaxing the qualifications laid down in rule 4 is invalid and illegal and must be quashed.

12. The counsel for the respondents contended that a writ of Quo-Warranto cannot be issued if the defect can be remedied by the authority who committed the mistake by amending the rules with retrospective effect. This contention is hypothetical and is rejected. In this writ petition the action of the respondents 1 to 3 promoting respondent No. 4 by relaxation of rules is being challenged and the Court cannot refuse to give relief to the petitioner simply on the ground that respondents 1 to 3 might in future amend rule 15 and validate the promotion of respondent 4. In case of the Union Territory the amendment has to be made by the appropriate authority which is the President of India and he may or not agree to the proposed amendment, if any, desired by respondents 1 and 2. This contention is, therefore, devoid of force and is rejected.

13. The power of the High Court to issue certain writs under Article 226 of the

Constitution of India is discretionary and it is extraordinary jurisdiction. In proceedings for a writ of Quo-Warranto the applicant does not seek to enforce any right of his as such, nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from office. The legality of an appointment to high office can be challenged by any citizen. The test to be applied in such a case is whether there has been usurpation of an office of a public nature and an office substantive in character, that is, an office independent in title vide *Nitya Nand Kul Bhushan Lal Vs. Khalil Ahmed Ali Ahmad and Others*, and *Tirlok Chander Sharma v. the State of Punjab* (1935) 67 PLR 452. In the instant case the petitioners prayed in the writ petitions that promotion of Amir Chand respondent 4 as Assistant Controller, Printing and Stationery, Union Territory, Chandigarh, is against the rules, illegal and invalid as he is not qualified to be promoted to that post. Therefore a writ of Quo Warranto, as prayed for must be issued in this case.

14. For the reasons given above both the writ petitions are allowed and it is held that promotion of Amir Chand respondent 4, as Assistant Controller Printing and Stationery Department Chandigarh, is illegal and is quashed. It is further directed that Amir Chand respondent is not entitled to hold the post of Assistant Controller Printing and Stationery Department, Chandigarh Administration, and respondents 1 to 3 are directed to remove him from that post and to fill up that post in accordance with the rules. Under the circumstances there will be no order as to costs.