
(2010) 01 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 12275 of 2000

Neelam Rani

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 15(4)
Punjab State Education Class III (School Cadre) Service Rules, 1978 — Rule 22A, 22A(2)

Citation : (2011) 1 ILR (P&H) 204

Hon'ble Judges : Jora Singh, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—This order shall dispose of a group of writ petitions bearing Nos. 11928, 12275, 12276, 12277, 12278. 15867 and 16106 of 2000 wherein the creation of separate cadre for male masters, lecturers and headmasters under "The Punjab State Education Class III (School Cadre) Service Rules, 1978" (for short "the Rules") is challenged being violative of Article 16 of the Constitution of India. For facility of reference, the facts are being taken from CWP No. 12275 of 2000.

2. An advertisement inviting application for the post of Lecturers in various subjects was issued on 18th October, 1996. The name of the petitioner, a female candidate, appears at serial No. 24 having obtained 67.69 marks. There are two categories of lecturers-General Male and General Female. The Departmental Selection Committee initially recommended the names of female general candidates obtaining marks up to 66.20% including that of the petitioner. The petitioner was appointed and is working on the post by virtue of an interim order passed by this court.

3. A writ petition was filed by one Ravinder Kumar challenging the appointment of the petitioner as well as other female lecturers on the ground that the

appointment of female lecturers is contrary to clause 7 of the advertisement which stipulates preparation of separate merit list for categories of male and female lecturers and that all the posts are to be equally divided among male and female candidates. The petitioners were not impleaded as respondents. An order was passed on 4th February, 1999 on the basis of statement of counsel for the State that there are mistakes in the selection of candidates and the department undertakes to review the entire selection. The order reads as :-

The petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to appoint him as Lecturer in Biology.

In the written statement filed on behalf of respondent No. 1 and 2, it has been averred that some mistakes have been committed in the selection of candidates and the department is undertaking an exercise to review the entire selection and action to nullify illegal appointment will be taken after giving notice to the affected persons.

Shri Khosla also stated that the exercise for review of the selection will be finalised within three months.

In view of the averments made in the reply and the statement made by the learned Deputy Advocate General, the writ petition is disposed of with the observation that if the petitioner comes in the merit list as a result of review exercise, then an order appointing him shall be issued by the competent authority.

4. The petitioner alleges that the said order is not binding on the petitioner as she was not party to the aforesaid writ petition. The petitioner has alleged that categorization of posts of teachers into male and female categories is hit by Article 16(2) of the Constitution of India and that the petitioner cannot be discriminated being higher in merit than the males in the selection list, if prepared separately. It is alleged that classification can only be made if there is any nexus in categorization of the posts. There can be reservation as in police force, army but the job of the educating classes + 1 and +2 can be undertaken by a women effectively. Reference was made to the decision of the Supreme Court in case reported as Miss C.B. Muthama versus Union of India and Others. AIR 1978 S.C. 1868 The petitioner has thus sought quashing of the Rules providing separate cadre for male and female candidates; clause 7 of the advertisement; the show cause notice and the order terminating her services.

5. In the written statement, it is pointed out that the Departmental Selection Committee advertised 50 posts of Lecturers in Biology but only 21 posts were available. 70 candidates belonging to different categories were recommended by the Departmental Selection Committee. Only 18 female general category's candidates were offered appointment. It is averred that the selection and appointment of the petitioner was not in conformity with the settled law that posts cannot be advertised in excess of the available posts at the time of advertisement. In respect to challenge to ratio of 50 : 50 between male and

female candidates, reliance was placed upon interim order passed in CWP No. 15867 of 2000 on 21st November, 2000 wherein bifurcation of the cadre of teachers in male and female categories was noticed and was negated in view of the order passed in CWP No. 5266 of 1998 decided on 30th March, 2000. It is also pleaded that 21 posts of Lecturers in Biology were available at the time of advertisement and such posts were required to be filled in as per following details :-

1. General Male :

5 General Female :

(6th being higher in merit than the male)

2. S. C. Male :

3 S. C. Female :

3. B. C. Male :

B. C. Female :

1 (being higher in merit than the male)

4. Handicapped Male :

Not available

Handicapped Female : 1

5 Ex-serviceman Male: 1

Ex-serviceman Female : 1.

6. It is also pointed out that had 21 posts have been filled upon as per ratio stated above, the petitioner would not have come within the zone of consideration, therefore, the offer of appointment has been withdrawn after serving show cause notice upon the petitioner. It may be noticed that 5th candidate in the general male list has obtained 59.63 marks as against 67.69 marks obtained by the petitioner.

7. Before we refer to the contentions raised, certain provisions and the Rules need to be extracted.

The Punjab State Education Class III (School Cadre) Service Rules, 1978

3. The service shall have two branches, namely. Men Branch and Women Branch and shall comprise the posts shown in Appendix "A" of these rules :

Provided that nothing in these rules shall affect the inherent right of Government to add or to reduce the number of such posts or to create new posts with different designation and scales of pay whether permanently or temporarily.

11. The seniority in each cadre of Service shall be determined on the basis of

continuous length of service on a post in that cadre of the service:

Provided that-

XX XX XX XX XX XX

APPENDIX "A" (SEE Rule 3)

Sr.

Designation of Post

Grade

No.

of Posts

No.

Men

Women

Total

Permanent

Temporary

- Total

Permanent

Temporary

(i)

(ii)

(iii)

(iv)

(v)

(vi)

1

Headmaster (15%)

-

73

73

-

-

-

-

2

Headmistress (15%)

-

-

-

-

18

-

18

3

Headmaster

-

605

100

505

-

-

-

4

Headmistress

-

-

-

-

328

56

272

5

Lecturer (Men)

-

917

-

917

-

-

-

6

Lecturer (Women)

-

-

-

-

577

-

577

7

Master or Block Education Officer

-

10542

5592

4950

-

-

-

8

Mistress or Block Education Officer

-

-

-

-

5425

2120

3305

9

J.S.T. Mistress

-

-

-

-

139

139

-

The Constitution of India

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.--(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth of any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) and (5) xx xx xx xx

16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) to (5) xx xx xx xx

8. A perusal of the Appendix to the Rules would show that the cadre of Lecturers consist of 917 men and 577 women posts, whereas that of Masters consist of 10542 for men and 5425 for women posts, Similar is the situation in respect of cadre of Headmaster and Headmistress.

9. Learned counsel for the respondents have raised a preliminary objection that the vires of the Rules have been upheld by this Court, therefore, the issue need not be re-examined. Reference is made to Single Bench judgment of this Court reported as Rameshwar Parshad and Others versus State of Haryana and Others 1996 (4) RSJ 594 and Division Bench decisions of this Court in CWP No. 5266 of 1998 titled Ranuka Daaiya and others versus State of Haryana and Others, decided on 30th March, 2000 and CWP No. 8116 of 1999 titled Mandeepwant Kaur versus State of Punjab and Others, decided on 24th September, 2002.

10. Learned counsel for the petitioners have vehemently argued that in terms of Article 15(3) of the Constitution of India, special provisions can be made for women and children but there cannot be any cadre for men alone. There is justification for creating a separate cadre for female Lecturers as the object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. But restricting woman to teach boy students in a Boys School is said to be unintelligible, without any rationale and nexus with the objective to be achieved. It is, thus, contended that separate cadre of School Masters, Headmaster or Lectures (Male) is violative of Article 16(2) of the Constitution of India as there cannot be any affirmative reservation for male candidates. All such posts are required to be filled up on the basis of merit irrespective of any classification on the basis of religion, race, caste and sex etc.

11. Learned counsel for the petitioners have also argued that none of the judgments referred to by learned counsel for the respondents, the question that there cannot be any reservation for male candidates has been raised and considered. It is argued that in respect of the posts falling to the category of men. women are also eligible and are required to be considered to avoid the vice of discrimination prohibited under clause (2) of Article 16 of the Constitution of India. It is also argued that though Full Bench of this Court in case reported as Dr. M.C. Sharma, Lecturer Vs. The Punjab University, Chandigarh and others, have taken a view that the post of Principal in a girls college cannot be reserved for a female but such decision of the full Bench of this Court has been reversed by the Supreme Court in Alla China Apparao and Others Vs. State of Andhra Pradesh, . Therefore, there cannot be exclusive cadre for men.

12. The following questions require our consideration in view of rival contentions

of the parties :-

1. Whether separate cadre for men in the service i.e. Punjab State Education Class III (School Cadre) Service Rules, 1978, is discriminatory and violates Article 16(2) of the Constitution of India ?

2. Whether such cadre will include women as well to avoid vice of discrimination prohibited under Article 16 of the Constitution of India?

13. One of the first cases which considered the scope of Articles 15 and 16 of the Constitution in *Dattatraya Motiram More versus State of Bombay* AIR 1953 Bombay 311. In the aforesaid case, seats were reserved for women in respect of an election to municipality. Such challenge was negated. It was held that discrimination in favour of women is permissible. It was held to the following effect :-

.....It must always be borne in mind that the discrimination which is not permissible under Art. 15(1) is a discrimination which is only on one of the grounds mentioned in Art. 15(1). If there is a discrimination in favour of a particular sex, that discrimination would be permissible provided it is not only on the ground of sex, or in other words, the classification on the ground of sex is permissible provided that classification is the result of other considerations besides the fact that the persons belonging to that class are of a particular sex, and there is force in the Advocate General's argument that if Government have discriminated in favour of women in reserving seats for them, it is not only on the ground that they are women, but there are various other considerations which have come into play.....The proper way to construe Article 15(3), in our opinion, is that whereas under Article 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Article 15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Article 15(1). Therefore, as a result of the joint operation of Article 15(1) and Article 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women. In this particular case, even if in making special provision for women by giving them reserved seats the State has discriminated against men, by reason of Art. 15(3) the Constitution has permitted the State to do so even though the provision may result in discrimination only on the ground of sex. Therefore, in our opinion, the legislation we are considering does not offend against Art. 15(1) by reason of Art. 15(3).

14. Later. Gujarat High Court in *B.R. Acharya versus State of Gujarat* 1988 Lab. I.C. 1465 considered the reservation of posts in the institutions where destitute women, unmarried mothers etc. are kept. It was held to the following effect :-

.....Having regard to the nature of duties to be performed, it is open to the State Government to decide that the institutions which are exclusively meant for women should be headed by only women or lady officers. The Government cannot be compelled to appoint male officers to head such institutions, if it docs

not consider it advisable to do so. If a special provision is made for women, the petitioners cannot make grievance that they have been discriminated against. Incidentally it may be pointed out that Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of the said article however, provides "nothing in this article shall prevent the State from making any special provision for women and children". I, therefore, do not find any substance in the petitioner's contention that they should be considered to be eligible for promotion to the post of lady Superintendent.

15. The Full Bench of this Court examined the scope of Article 15 and 16 in *Shamsher Singh Hukam Singh versus The Punjab State and Others* AIR 1970 Pb. & My. 372. After considering the judgment of Bombay High Court in *Dattatraya's* case (*supra*), it was held that Constitution is an organic whole. It has to be read as a whole. It does not mean one thing at one time and another subsequently. After holding so, it proceeded to observe as under :-

12.....Similarly, in *Moss versus Elphick* (1910) I KB 465 at page 468. it was laid down that where there are two sections dealing with the same subject-matter, one section being unqualified and the other containing a qualification, effect must be given to the section containing the qualification. When in clause (3) of Article 15. which covers the entire field