
(1985) 09 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.A. No. 450 of 1984

Paramanand Saxena

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 21-09-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39A

Citation : (1986) MPLJ 622

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; R.P. Mittal for State, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.

For a single and singular reason, arguments in this case, though heard at short length, are found impressive. The message of E.P. Royappa Vs. State of Tamil Nadu and Another, , better said in G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, , has startling and sterling relevance in the instant case, though countervailing facts are equally grave and serious. It is this Court's duty, nevertheless, to strike a balance between equities and render equities equal and meaningful, making service Jurisprudence conformable to the mandate of Articles 14, 16 and 39A of the Constitution.

The petitioner's grievance is very short, though he has spread his net wide. By this Court order, moving in only a short compass, I would like to take care of his grievance as far it is permissible to do in facts and circumstances of the case, keeping in view other equitable considerations which weigh in favour of the respondents. The petitioner is an Officer in the Office of the Accountant General, Madhya Pradesh, Gwalior and he stakes his claim to promotion to a different cadre - in the cadre of Indian Audit and Accounts Service, Class I. His case was

considered and indeed, by the Departmental Promotion Committee under the of the Union Public Service Commission, on 14-6-1984, but he lost his chance. The consideration, according to the petitioner, is vitiated.

The instant lis has an interesting backdrop, which is not fully pictured in the minutes of the Committee, placed today by Mr. Mittal for my consideration. These minutes were called at petitioner's request and he had also the opportunity to satisfy himself as to how his case was considered by the Committee albeit only for the years 1982 and 1983 and not for 1980 and 1981. Mr. Mittal has stated few facts, not disputed either, but important yet. In 1981, a matter had come up in the Kerala High Court, wherein another petitioner had agitated a similar grievance. Until December, 1983, during the currency of the stay order passed by the Kerala High Court, nothing happened and promotional prospect of all candidates remained suspended. There was a petition by another petitioner similarly agitating his grievance, which was heard by the Punjab and Haryana High Court. Annexure P/1 to the petition is the judgment rendered therein on 20-12-1983 (See, 1984 SLJ 437 Rajinder Gandhi vs. Union of India). The Union of India, was the main respondent in that case and it was required by the Court, allowing the petition to carry out certain directions. At para 6 of the judgment, to which my attention is drawn, the operative part of the order is to be found. The Court referred and relied on the decision in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, in making the direction. All cases of which consideration had been stalled were required to be taken up albeit on the basis of the rules and instructions existing prior to the enforcement of the new rules - The Indian Audit and Accounts Service (Recruitment) Rules, 1983. The vacancies had to be filled up within a period of six months after completing the process of selection and appointment.

Before the merits of the petitioner's grievance are needed and examined, first respondent's objection needs careful disposal. Shri Mittal, appearing for the Union of India, earnestly submitted that the D.P.C. was burdened obviously by backdrop hurdles, which were genuine and petitioner's grievance of violation of the principles of natural justice should be considered in that context. Shri Mittal also placed reliance on case law to buttress his submission. However, the decisions cited do not pose any hurdle in my way in giving the limited relief, which I have considered the petitioner to be entitled. Yet, these must be referred as great respect must be attached to what their Lordships of Supreme Court have said. Let me first take a note of R. Abdulla. (AIR 1959 SC 866) It was a case under Motor Vehicles Act and is concerned with grant of permit under the said Act. and is concerned with grant of permit under the said Act, Certain Executive Orders were passed by the Government u/s 40C of the Act, which the Court held, "were not required to be published, because the direction was binding only on the appropriate authority and it had no force of law". Indeed, the direction did not create or extinguish any right and obligation of any party. The decision in State of Assam vs. B.K.D. (AIR 1973 Assam 1252) did arise in service Jurisprudence itself. However, the point decided therein was entirely different. It

was merely held that the Executive instruction, issued by the Government raising the age of retirement of its servants from 55 to 58 years was not enforceable, it was not a Rule made under Article 309 and it did confer any legal right in the petitioner. From the State of Assam also came the case of Premadhar (AIR 1970 SC 1314) dealing again with the same question of retirement and, in my opinion, therefore, has little relevance to the instant lis.

I proceed now to examine briefly petitioner's short, but salutary grievance, The Departmental Committee, following the judicial directive, handed down by the Punjab and Haryana High Court, considered cases of candidates who were eligible for promotion in several years in 1980, 1981, 1982 and 1983. In so far as the petitioner, Shri P.N. Saksena, is concerned, his name does figure in the "Select List" prepared by the department for D.P.C.'s consideration, for the years 1982 and 1983, but he was considered, "not yet fit". However, in the proceeding years, he drew a total blank. Why? The petitioner convincingly answers himself, though he poses the question to the main respondent. He questions, why proper steps were not taken for dealing with the cases of eligible candidates for those two years? He answers his name did not come for consideration before the D.P.C. because it was not included in the "Select List" and this happened as proper procedure was not followed. He had drawn my attention to Annexure P/2, which appears to be a communication dated 24-12-1981 of the Ministry of Home Affairs (Department of personel and A.R.) detailing and enumerating "principles for promotion to selection posts" and there is no doubt that the claim staked by the petitioner was to a selection post. Indeed, the applicability of the "principles" to the instant case, upheld by Punjab and Haryana High Court in a similar case, is not challenged. The petitioner has also drawn my attention to Annexure III, which is a "proforma" to be used by the Department for referring proposals for promotions, to the Union Public Service Commission. Indeed paragraph 3 of Annexure P/II, which is captioned "Zone of consideration for promotion to posts filled by selection", is the sheet anchor of petitioner's plea. Officers to be considered for promotion should be three times the number of vacancies and that was said to be the "zone of consideration", but it also appears clear, reading conjointly Annexure P/II and P/III, as to who are the officers to be considered. The list has to be drawn up according to relative seniority and it is the core-intent of the "principles." Indeed, significantly, vocal concern is expressed against upsetting the relative seniority position if the list is not properly prepared to earmark the zone of consideration accordingly. This is found in para 3 itself while Col. 7 Annexure III also lay a stress on the zone of consideration being marked out explicitly on the basis of a "Seniority List."

In the instant case, it is not denied that when the petitioner's case, as also of others came up for consideration before the D.P.C. there was a common seniority and gradation list prepared under 1983 Rules and the "Select List" placed before the D.P.C. was made on that basis. However, what is denied and is contested vehemently is the validity of the said Select List. It is submitted forcefully that the said list could not, and should not, have been taken into consideration

because it was not a list prepared in accordance with law. Why should mere ipse dixit of the Department prevail? The Rule of Law and principles of natural justice must prevail. Where was the opportunity for the petitioner to contest the validity of the Combined Seniority and Gradation List? Merely because the judicial directive had to be carried out and the process completed within six months, should his right be defeated? Indeed, petitioner questions and indeed rightly, where is the clear mandate for the Union of India in the judicial directive to violate the principles of natural justice and not to publish the Combined Seniority List before the "Select List" prepared on the basis thereof was placed for the consideration of the D.P.C.? These are valid questions and the respondents had no answer to these questions. The only answer was. the judicial directive had to be carried out. But in the file produced, there appears material to show that enlargement of time for compliance therewith was sought and also allowed. On 30-5-1984 Court gave two months" extension.

I have no doubt that the decision of the Punjab and Haryana High Court did not relieve the Union of India of its duty to act according to law, which would imply its duty to act in accordance with the constitutional mandate and the principles of natural justice. Some person's name might have come up in the Combined Seniority List in the wrong order, which could have happened inadvertently or designedly. But, if the list had been published, and the petitioner had knowledge thereof, he would have an opportunity to voice his grievance and press for correction of the list. This opportunity was denied to him, by which a very valuable right of the petitioner was nipped in the bud. It cannot be said, therefore, that he had "equal opportunity" with other contenders for the post in the matter of consideration of his case inasmuch persons who got promotions in the year 1980 and 1981 could very well be his juniors in the true state of things and could not have, therefore fallen within the "Zone of Consideration" to the exclusion of the petitioner whose case being totally eclipsed by them, his name did not at all figure in the select list for these two years. It must be noted in this context that the "1981 Principles" on the basis of which petitioner's case was to be considered, did not envisage a Combined Seniority List. Even 1983 Rules contemplated only a "Common Eligibility List", not its source, in that it does not speak of any "Combined Seniority List", as is borne out by Schedule III of the said Rules. A departure from the established practice postulated ex hypothesi. principles of natural justice to be observed and possible grievance pre-empted by publishing the "Combined Seniority List" before taking any action on its footing. Persons likely to be affected by the departure from the established practice, cannot be denied an opportunity to be heard on their grievances.

Equality verily is a dynamic concept with many aspects and dimensions, according to Royappa (supra) and this basic principle, according to their Lordships attracts, both Articles 14 and 16. Equality is anti-ethitic to arbitrariness and in the matter of public employment, it becomes the duty of the State to act reasonably in all matters concerning such employment to exclude possibility of any arbitrary action, which may follow from any course. Any violation of the

principles of natural justice prima facie would give rise to grievances of an arbitrary action, by exercise of discretion indeed, absence of statutory mandate notwithstanding, must also answer the test of reasonable to eschew the vice of arbitrariness, This follows from what their Lordships held in the celebrated decision in Maneka Gandhi (AIR 1978 SC 597); and also in Ajay Hasia (AIR 1981 SC 487), wherein exclusive oral interview test in matter of admission to colleges or public employment was rejected, being potentially arbitrary. Mr. D.K. Katare has, however, placed implicit reliance on Dyal (Supra), wherein the question of seniority was a crucial issue. At para 16 of the report is to be found the judicial dictum which forcefully supports petitioner's grievance that unless there is any Seniority List Published, it cannot claim the legal status which it may prefer to claim. Provisional seniority list was not finalised for 12 years and no reply was given to the petitioner's representations. The Court took the view that such an action being constitutionally incompatible, the petitioner cannot be denied relief on the scope of laches. Indeed, in para 15, the Court categorically held that the seniority list drawn up on invalid basis and the approval of selection made thereon by the Public Service Commission, could be best treated by quashing it.

Now, the question of relief. Evidently, the petitioner can have no grievance in so far as his case for the years 1982 and 1983 are concerned as he was duly considered and found unfit for promotion. He has definitely a valid grievance in so far as his case for the years 1980 and 1981 is concerned as his case was not sent up for consideration, for which the Union of India must shoulder the blame, for reasons earlier alluded. Mr. Katare, at this stage of dictation, stands up and protests that he does have a grievance as respects 1982 and 1983 also, but I have to balance equities and I would not like to open Pandora's box to upset promotions made prima facie on valid grounds in those years, after taking into consideration the petitioner's case. He vehemently contested the "assessment" and submitted that his grievance for these years should also be tested legally, but I do not feel disposed to do so for reason alluded. He relies on Dayal's case itself, but, in my opinion, the decision does not help in so far as this contention is concerned. Facts and circumstances of the case itself are on permanent consideration when granting relief in a particular writ application. Those persons who got promotion prima facie validly in 1982 and 1983 are not before me. Their rights cannot be upset on flimsy considerations on any fanciful grievance that may be found eventually baseless. I have made it very clear in the Key-Note paragraph, while dictating this judgment in the presence of the parties after hearing them, that this is a peculiar case where equities have to be balanced evenly and carefully and a relief commensurate only with the facts and circumstances of the case has to be granted.

For the foregoing reasons, I hold the petitioner to be entitled to the limited relief of consideration of his case for promotion for the years 1980 and 1981, for which he is required to make a representation, which shall be disposed of by the authorities within a period of four months. No costs.

Outstanding amount of security be refunded to the petitioner.