
(2015) 10 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : LPA Nos. 1309, 1357 and 1374 of 2014

Phull Kumar Gaur and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : (2015) 10 P&H CK 0066

Hon'ble Judges : Hemant Gupta, J; Hari Pal Verma, J

Bench : Division Bench

Advocate : Palika Monga, DAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J—This order shall dispose of aforesaid three letters patent appeals directed against a common order passed by the learned Single Judge of this Court on 27.05.2014, whereby writ petitions filed by the petitioner-appellants, challenging the impugned order dated 10.02.2012, whereby they were removed from the post of Environmental Engineer, were dismissed.

2. The facts in brief are that Haryana Public Service Commission -respondent No. 3 (for short "the Commission") issued an advertisement on 16.09.2004 inviting applications for four posts of Environmental Engineer in response to the requisition sent by the Haryana State Pollution Control Board -respondent No. 2 (for short "the Board"). The said advertisement specified the age limit for appointment to be 20 to 40 years as on 14.10.2004 i.e. the closing date. On 20.10.2004, a communication (Annexure P-3) was sent by the Board to the Secretary, Haryana Public Service Commission to the effect that Service Regulations of the Board have been published on 05.10.2004. The Regulations published contemplated the age for direct recruitment should not be less than 17 years or more than 40 years of age on or before the first day of the month next preceding the last date of submission of application to the Commission. However, in case of candidates possessing the requisite qualifications, who are already in

the service of Government/Board/Corporation, the upper age limit shall be such as prescribed by the Government from time to time. The said communication reads as under:

"Kindly refer to category No. 8 and 9, vide which the advertisement of the above said posts relating to this Board, has been published in the Newspapers dated 16.09.2004.

In this connection, I have been directed to state that in the Column of Age, it has been mentioned that age should be 20-40 years as on 14.10.2004, whereas as per Service Regulations of the Board published vide notification No. 154/CA6/1974/S. 12/2004 dated 05th October, 2004 (copy enclosed), the age should be as under:--

Age: 5. No person shall be appointed to any post in the service by direct recruitment, who is less than 17 years or more than 40 years of age on or before the first day of the month next preceding the last date of submission of application to the Commission/Chairman: Provided that:

(a) In case of a person belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Ex-Serviceman, Physically Handicapped, the upper age limit shall be such as prescribed by the Government from time to time; and

(b) In case of candidates possessing the requisite qualifications, who are already in the service of Government/Board/Corporation, the upper age limit shall be such as prescribed by the Government from time to time.

In view of above Notified Service Regulations of the Haryana State Pollution Control Board, I have been directed to request you to issue for corrigendum to avoid any legal implication."

3. However, a Corrigendum (Annexure P-4) was issued on 26.10.2004 providing 5 years relaxation for employees of Government/Board/Corporations though there was no such condition in the letter from the Board and without any reference to any circular of the Government. The request to issue Corrigendum was in view of the fact that when the requisition was sent, the Service Regulations were not published. The same were published on 05.10.2004 after the advertisement was issued on 16.09.2004. The Corrigendum was, in fact, intended to be that the appointment is to be made under the Service Regulations of the Board notified on 05.10.2004.

4. The appellants applied for the post of Environmental Engineer though they were more than 40 years of age, but less than 45 years of age. Pursuant to their selection, appointment letters were issued to be appellants. Subsequently, the appellants were served with charge-sheets under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 levelling allegations of illegal gratification in seeking their appointments and also the fact that they were not eligible for appointment being over age. Thereafter, on the basis of the enquiry report dated 14.07.2009, the order dated 10.02.2012 has been passed by the

Board removing the appellants from service. It is the said order, which has been challenged by the appellants in the writ petitions.

5. The stand in the written statement filed on behalf of respondent Nos. 1 & 2 is that the Haryana Public Service Commission issued the Corrigendum at their own level without the approval of the Board or the Government. In an affidavit dated 30.07.2013 filed on behalf of the Special Secretary to Government of Haryana, Environment Department, Haryana, it has been pointed out to the following effect:

"1. That the Hon"ble Court was pleased to pass order dated 11th July, 2013 directing the respondent to confirm whether the matter regarding relaxation of upper age limit was ever taken up by the Government after coming into force of the Haryana State Pollution Control Board Service Regulations, 2004.

2. That in pursuance of above said orders of this Hon"ble Court a clarification was sought from office of the Chief Secretary to Government of Haryana, Office of the Chief Secretary vide UO No. 3/01/2013-4 GS-III dated 25.07.2013 has informed that there are no instructions regarding relaxation in the upper age limit for the candidates in services of Government/Boards/Corporations belonging to General Categories for appointment from one department to another department. (Annexure -R1).

3. That relaxation has not been granted by the Haryana State Pollution Control Board after the Haryana State Pollution Control Board Service Regulations, 2004 came in force."

6. The short question for examination is, whether the Haryana Public Service Commission could issue a Corrigendum to grant relaxation of age of 5 years without any communication in this respect by the Haryana State Pollution Control Board or any other general Rule or direction of the Government of Haryana.

7. The undisputed facts are that an advertisement was issued inviting applications from the candidates, who are not more than 40 years. A Corrigendum was issued soon after the Statutory Rules were published contemplating age limit for appointment as Environmental Engineers between 17 to 40 years. The age relaxation was permissible provided it is prescribed by the Government from time to time. As per the written statement as well as affidavit dated 30.07.2013, the State Government has not issued any relaxation in age.

8. The appellants were admittedly more than 40 years of age, when they submitted their applications for appointment and, thus, not eligible for appointment in terms of the Statutory Rules. Once the State Government has framed Statutory Rules in exercise of the powers conferred under proviso to Article 309 of the Constitution, such Rules being legislative cannot be challenged except on account of violation of any other Statute or the Constitution. The Hon"ble Supreme Court in J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, AIR 1990 SC 535 : (1989) JT 426 Supp : (1990) 1 LLJ 526 : (1989)

2 SCALE 1405 : (1990) 1 SCC 288(1) : (1990) 1 SCC 288 : (1990) 1 UJ 424 , held that it is not for the Court to consider the relevance of qualifications prescribed for various posts. The Court is not to decide or direct what should be the qualifications to be prescribed for the post in question. In V.K. Sood Vs. Secretary, Civil Aviation and others, AIR 1993 SC 2285 : (1993) 3 JT 520 : (1993) LabIC 1251 : (1993) 2 LLJ 544 : (1993) 2 SCALE 921 : (1993) 3 SCC 9 Supp : (1993) 3 SLJ 12 , the Hon"ble Supreme Court held that Article 16 does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. The Government is competent to lay-out qualifications for the post in question which need not be technical but also can be of general qualification relating to the suitability of the candidate for service as such.

9. A Division Bench of this Court in a judgment reported as Shivani Gupta and others Vs. State of Haryana and others, (2013) 1 SCT 545 , held that the Rules framed under the proviso to Article 309 of the Constitution are equivalent to a statute. The Bench referring to judgment of Hon"ble Supreme Court in B.S. Vadera Vs. Union of India (UOI) and Others, AIR 1969 SC 118 : (1968) 17 FLR 411 : (1970) 1 LLJ 499 : (1968) 3 SCR 575 and B.S. Yadav and Others Vs. State of Haryana and Others, AIR 1981 SC 561 : (1981) 1 LLJ 280 : (1981) 1 SCR 1024 : (1981) 2 SLJ 67 , held as under:

"30.It is clear from the above that the rules framed under proviso to Article 309 are not only having statutory character, such rules are given the character of legislation itself. Once this position is CWP No. 19126 of 2015 & CWP No. 19909 of 2015 7 accepted, the plea that the introduction of the aforesaid Note is mala fide, cannot be entertained, as a statute cannot be questioned on the ground of mala fides."

10. Since the Statutory Rules prescribed a particular condition of eligibility, no appointment could be made in violation of such Rules. There is no relaxation prescribed by the Government, which possibly authorize the Haryana Public Service Commission to relax the age by way of a Corrigendum.

11. In view of the above, we find that the appellants were ineligible for appointment in response to the advertisement dated 16.09.2004 in terms of the Statutory Rules.

12. Learned counsel for the appellants relied upon a Division Bench judgment of this Court in Sarabjeet Kaur Dhaliwal v. Punjab Agricultural University, Ludhiana 2003 (4) SCT 132, wherein it was held that a candidate, who has been appointed by disclosing complete facts, her service cannot be terminated. In the said case, as per the conditions of eligibility, the candidate was required to have qualification of B.A. with 2nd class. The petitioner improved her qualification having obtained grade of graduation level from the University of California,

Riverside USA. A Committee was constituted to examine the eligibility of the petitioner, who opined that B.A. degree of the petitioner has no relevance, as she had improved upon this degree with first division and, thus, recommended that the petitioner may be called for interview. In these circumstances, it was held that the services of the petitioner cannot be terminated on the ground that she did not possess qualification of B.A. with 2nd class.

13. We do not find that such judgment provides any assistance to the argument raised. The appellants do not fulfill the eligibility conditions as per the Statutory Rules. Once the eligibility conditions are not fulfilled, mere fact that the appellants were appointed will not confer any right in them to continue on the appointed post. The eligibility conditions could not be waived off. The employer could not act against the Statutory Rules framed. Therefore, the Board cannot be estopped to take action against the appellants as the appellants were not eligible at the time of appointment.

14. In view of the above, we do not find any illegality or irregularity in the order passed by the learned Single Judge, which may warrant any interference by this Court. Consequently, all the appeals are dismissed.