
(1973) 07 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 1010 of 1971

R.P. Singh and Others

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 30-07-1973

Acts Referred:

Citation : (1974) ILR Delhi 172

Hon'ble Judges : S.N. Shankar, J;Narain Andley, J

Bench : Division Bench

Advocate : M.B. Lal, Amarjit Singh, S.S. Chadha, P.N. Sethi, R. Dayal and R.L. Tandon, for the Appellant;

Judgement

S.N. Shankar, J.

(1) Delhi Administration decided to take over the Higher Secondary Schools and The Middle Schools that were being run by the Municipal Corporation of Delhi. On April 20, 1970, the Additional Secretary (Education) Delhi Administration, Therefore, sent a letter to the Commissioner, Municipal Corporation, enclosing ,amongst others, terms and conditions regarding absorption of employees of these schools in the Delhi Administration. At its Special meeting held on May 12, 1970 the Corporation by resolution No. 127 accepted those terms and conditions and agreed to the transfer of The schools along with staff and accessories etc. to Delhi Administration with effect from June 1, 1970 or soon thereafter .On May 27, 1970 the Lt. Governor, Delhi, by notification No. F. 26(60)/70-Edn. notified for general information, with the prior sanction of the President of India, that he had decided to take over The Middle (Classes VI-VIII) and Higher Secondary (Classes VI-XI) schools from Municipal Corporation of Delhi with ei ect from Ju y 1, 1970. On July 22, 1970 the Director of Education, Delhi Administration, issued an oHIce order intimating the appointment of The staff as shown i"i the statement enclosed therewith on ad-hoc basis from July 1, 1970 in the grades indicated against their names as per terms and conditions for absorption referred to earlier .This order states that The staff so appointed had

given their unequivocal and written acceptance for absorption in The service of the Administration. As a result of this absorption on terms and conditions adopted by the Delhi Administration, The petitioners who are all members of the old staff of the Administration contented that they have wrongly been equated with The teachers of the Corporation schools and that an invidious quota System has been introduced in the matter of their promotions by The terms revised by The Administration which is violative of Article 16 of the Constitution. They have, Therefore, prayed that The conditions of service for absorption mentioned in Annexure "F" to The petition be quashed and it may be declared that staff of The Corporation schools and the staff of The schools run by the Administration, previous to the absorption, constituted two separate and distinct cadres and the quota System introduced by the Conditions is violative of Article 16 of the Constitution. Some other reliefs have also been prayed for in the petition but it is unnecessary to notice them because they have not been pressed at The time of arguments.

(2) Delhi Administration and The Directorate of Education, respondents 1 and 2, in their counter in opposition to The petition, have controverted the allegations made by the petitioners. While admitting the factual statement as far as the taking over of the Corporation schools and the staff by the Administration is concerned they have maintained that the employees of the Municipal Corporation absorbed in the service have been placed in an altogether separate cadre separate from the old employees of The Administration but their posts have rightly been equated with the posts in the Administration service on the reasonable basis of their respective pay-scales and that there is no violation of Article 16 of the Constitution in the matter of promotion as alleged by the petitioners.

(3) The other respondents 3 to 6 have filed a separate counter-affidavit. They have urged that the petition deserves dismissal for nonjoinder of necessary parties, and for want of particulars in as much as The petitioners have not shown how they are aggrieved persons in the sense as to whether any right of promotion had accrued to them which has actually been adversely affected by The impugned terms and conditions. The other allegations in the petition have also been denied.

(4) On the petition as framed, Shri Mohan Behari Lai. appearing for the petitioners, has rightly not canvassed the individual claims of the petitioners to promotion, nor has he urged that any personal prejudice had been caused to them. has raised the following two contentions:

1. Since the source of recruitment, the qualifications and conditions of the two services (namely, the Administration Service and the Corporation Service) were different, members of one service could not be absorbed into the other and they had to be treated as separate units.
2. Some of the conditions of service adopted by the Administration adversely affected the members of the Administration service and as such they are violative of Article 16 of the Constitution.

First Contention :

(5) In support of this contention the learned counsel argued that the qualifications required for appointment of the staff in the Corporation schools were lower than the minimum qualifications of eligibility for appointments to the schools run by the Administration. The conditions for recruitment in the two services, he urged, were also different. The two services for these reasons, amongst others, he contended, could not be integrated and had to be treated as separate cadres. Several instances of disparity in the two services as depicted in the petition were cited, all of which however, are not admitted to be correct by the respondents. We think it is unnecessary to go into respective contentions regarding the individual characteristics of the two services because we find that the impugned terms and conditions for absorption do recognise the two services as separate classes and proceed on the basis that the Service at the stage of its initial constitution consisted of these two cadres.

(6) Terms and conditions for the taking over and absorption of Municipal schools and staff were framed by the Administration by an executive order copy of which has been filed by the petitioners as Annexure "F" to the writ petition. These terms, amongst others, provide for the taking over of the buildings, libraries, furniture, equipment, staff quarters and the staff of the Corporation schools. Clause dealing with the staff which is relevant in the context of the contention raised is clause (F) of the terms. It reads as under :- F. "STAFF. Consequent upon the declaration by the Corporation of the closure of Higher Secondary Schools (Classes VI-XI) and Middle Schools (Classes VI-VIII), all the employees of the Corporation who are to be absorbed by the Delhi Administration, shall have to signify their unequivocal and written acceptance of the terms and conditions of service for absorption as outlined in the enclosed Annexure."

(7) Relevant portion of the terms in the enclosed Annexure referred to in this clause reads as under :

" CONSEQUENT upon the closure by the Delhi Municipal Corporation of the Higher Secondary Schools (Classes VI-XI) and Middle Schools (Classes VI-VIII), the Lt. Governor is pleased to make the following rules regulating the conditions of service of the Supervisory Staff Teaching Staff and other employees to be absorbed by the Delhi Administration from the Delhi Municipal Corporation. These shall apply to such employees who have given their consent for absorption in the service of the Delhi Administration.

I. Special Cadre :

(8) "All the employees of the Delhi Municipal Corporation to be absorbed in the service of the Delhi Administration will be placed in altogether a separate cadre to be called the "Special Cadre", subject to the terms and conditions of service as applicable to other Government employees of the same categories. The employees of the Education Department, Delhi Administration other than those in the Special Cadre will be called the Administration Cadre."

(9) It would ,Therefore, be seen that the Administration while taking over the Corporation schools maintained the distinction between the employees of the Corporation who were being taken over and the other existing employees of the service. The former were placed in the "Special Cadre" and the latter in the Administration Cadre".

(10) The Education Service of the Administration thus after absorption at its initial stage consisted of two cadres. To efficiently run this service it was necessary for the Administration to provide a parity between the posts of the two cadres on a reasonable basis. Several principles have from time to time been adopted for this purpose. One of the known principles is that of pay-scales of the posts in the two cadres. The Administration adopted this principle and equated the posts of the two cadres on this basis. There is nothing wrong or illegal in that and no law or authority was pointed out to us to show that the Administration could not do so. Reference to the impugned terms and conditions shows that service conditions of the two cadres are kept separate and distinct. According to clause (5) of the terms and conditions, the seniority of any employee in the Special Cadre, as fixed in the Delhi Municipal Corporation before his absorption in the Delhi Administration, was laid down to remain the same and was not to be disturbed. In cases where no seniority list in respect of the members of this cadre was in existence it was provided that such a list will be drawn up, but in accordance with the rules for the determination of seniority in force in the Delhi Municipal Corporation immediately before the absorption. Likewise .according to clause (6), employees of the Special Cadre who were confirmed prior to their absorption were to be deemed to have been confirmed for purposes of absorption. Clause (7) provided that because the age limit for retirement of the officers, teachers and other employees in the Municipal Corporation was 60 years the same age limit will be retained after absorption in respect of their cadre, though this clause was subject to approval being accorded by the Government of India. The two cadres thus were kept by The conditions as two separate and distinct entities. The posts in the respective cadres were equated for purposes of bringing them in relation to one another. This equation did not amolint to merger of The two cadres. A very similar situation obtained in the case of State of Punjab Vs. Joginder Singh, decided by the Supreme Court. In this case, by an executive order dated September 27, 1957. the schools run by Municipal Boards and District Boards in Ambala and Jullundur divisions in The Punjab were taken over by the Educational Department of the Punjab Government with effect from October 1, 1957. The teachers employed in those schools were also taken over and they became State employees. The order stated that teachers taken over by the State would be given the same grades of pay and other allowances as were given to their counterparts in Government employment. On February 13, 1971, the Government of Punjab then promulgated the Punjab Educational Service (Provincialised Cadre) Class 111 Rules and gave them retrospective effect -from October 1. 1957. One effect of the rules was that the provincialised teachers were treated as falling under a cadre separate and distinct from the teachers in The

State cadre. The service conditions of the two cadres were not the same. The Supreme Court in the majority judgment, in these facts, said :

By the order dated September 27, 1957 which came into effect from October 1, 1957 teachers in the erstwhile Board schools became employees of Government and were given the same scales and grades of pay as were applicable to their counterparts in the State Cadre, but except this equality of grade and pay there was nothing more that was contemplated on -provided for by that order, There was no integration of the two cadres either expressly or by necessary implication.

(11) The mere equation of the posts, Therefore, in this case, did not amount to a merger of the two cadres, It may be pointed out here that the petitioners have rightly not challenged the right of the Administration to take over the Corporation employees in the Administration service because to deny such a right to the Administration would amount to the imposition of a restraint on it as to the manner in which it would conduct its affairs and run its service, for which there is no warrant in the Constitution. The Administration was thus perfectly within its right to decide that the Corporation employees would be absorbed in its Education service. This decision did not contravene Article 16 of the Constitution by reason of the provision of two separate cadres in the terms and conditions for absorption, In Joginder Singh's case (supra) the Supreme Court approved the absorption of the staff of the schools of local bodies by the Government on the same principle. namely. the keeping of separate cadres for the provincialised staff and the staff of the erstwhile Government schools.

(12) Reference was made by Shri Mohan Behari Lai to All India Station Masters" and Assistant Station Masters" Association, Delhi and Others Vs. General Manager, Central Railway and Others, and it was urged that introduction of concept of equality between separate and independent classes of employees is not warranted. This proposition of law in the abstract is correct but has application to the present case because as we have shown above the Corporation employees and the Administration employees have not been placed at par by the impugned terms and conditions. The case cited related to Road-side Station Masters and Guards The Court found that they had been recruited separately, trained separately and had separate avenues of promotion. Discussion on page 387 of the report shows that the question under examination was whether these two categories could be said to belong to the same class of employees or not. In this context, it was observed in para 11 :

IN deciding the question whether the Road-side Station Masters and Guards belong to one and the same class of employees or not. we must not be misled by the words "groups" or "classes of posts" used in the above rules. The crux of the question is the nature of the differentiation between Roadside Station Masters and Guards in recruitment, prospects and promotion---.... As on the admitted facts the Road-side Station Masters and Guards are, as already stated. recruited separately and trained separately and have separate avenues of promotion-, the conclusion is irresistible that they form two distinct and separate classes as

between whom there is no scope for predicated equality or inequality of opportunity in matters of promotion.

(13) These observations are of no assistance to the learned council. The impugned terms and conditions did not integrate the two classes of the employees but retained them distinct entities. The first contention, Therefore, has to be rejected. Second Contention:

(14) This appears to be the real grievance of the petitioners because the terms and conditions provide that the promotion from the Administration Cadre and the Special Cadre shall be to a common cadre and it can be said that at this stage the two cadres have been merged or integrated.

(15) Relief prayed for in Prayer clause (a) of the petition in this regard was that terms and conditions for the absorption mentioned in Annexure "F" to the petition be quashed as a whole but at the time of arguments, Shri Mohan Behari Lai stated that this relief was confined only to sub-clause (d) of clause 4 and clause 11 of the terms and conditions.

(16) To clearly understand the import of sub-clause (d) of clause 4 the whole clause has to be read. It is in the following terms :

4. "Number of Posts in the Special Cadre : Special cadre for the absorbed employees from the Delhi Municipal Corporation shall be a diminishing one. The number of posts in various categories of the Special Cadre shall be regulated in the following manner:- (a) The required number of posts will be created for the employee from the Delhi Municipal Corporation to be absorbed by the Delhi Administration. (b) Any additional post subsequently created for any school or class so taken over from the Delhi Municipal Corporation shall be borne on the Administration Cadre in its appropriate category and shall not constitute a part of the Special Cadre. (c) Any post in the Special Cadre falling vacant in any school or class taken over from the Delhi Municipal Corporation, as a result of normal incidence of promotion, retirement, death, dismissal or any other cause, may either be abolished or filled up from the Special Cadre or Delhi Administration Cadre, as per rules of promotion. (d) A member of the Special Cadre which appointed to a higher post either by promotion or by direct recruitment shall cease to be borne on the Special Cadre, and shall become a member of the Administration Cadre, his seniority in the Administration being determined according to the normal rules on the matter.

(17) Clause 11 provides that promotion quota for the promotion to the post of Deputy Director of Education from the posts of the Administration Cadre and the Special Cadre will be fixed separately for the Special Cadre and the Administration Cadre in proportion to the number of A.D.E./E.O./A.E.O./Science Consultants in the respective Cadres as calculated on the last academic session.

(18) The provision in sub-clause (d) of clause 4 that the members of the Special Cadre when appointed to a higher post shall cease to be borne on the Special

Cadre and shall become members of the Administration Cadre is perfectly in consonance with the scheme of the terms and conditions which specifically provide that the Special Cadre created out of necessity for taking over the Municipal schools was to be a diminishing one, to vanish in course of time by normal incidences of service, namely, promotion, retirement, death, dismissal etc. Subclause (a) clearly states that the Administration proposed to create only that number of posts which were required for the absorption of the employees of the Delhi Municipal Corporation, Sub-clause (b) then lays down that any additional post subsequently created for the schools taken over was to be a post of the Administration Cadre and not a post of the Special Cadre. The Administration thus envisaged, while taking over the Municipal employees, that the Special Cadre constituted by them will eventually vanish and there shall remain only one cadre. In a service with this set up, we see no reason to take any Just exception to the clause providing that the posts in promotion shall be the posts of that cadre alone which was to survive provided the provision made in respect of promotion did not violate Article 16 of the Constitution.

(19) This takes us direct to clause (II) of the terms and conditions which provides the manner in which the promotion from the two cadres shall be made and prescribes that this shall be on the basis of a quota system. The real question for decision, Therefore, is whether the introduced corporation of quota system by clause (II) in the matter of promotion of employees of the two separate cadres violated Article 16. It may be repeated that for the decision of this question no individual claims have been canvassed and the contention raised has to be decided purely on principle.

(20) As we have seen, the terms and conditions for absorption rightly provide for two separate cadres because the two classes of employees constituting these cadres were separate and distinct from each other. That being the position, the concept of equality could not be extended to them at the stage of promotion. The Administration, Therefore, devised a scheme of promotion on the basis of a reasonable classification and decided that the promotion shall be on the basis of a quota system to be fixed in proportion to the number of members in the respective cadres. We find nothing wrong or illegal in this. It was not argued that this principle was not based on a valid classification, nor was it urged that it had no relation to the object the Administration sought to achieve after absorption. No ground for challenge under Article 16 is thus made out. In *S. G. Jaisinghani v. Union of India and others* AIR 1967 SC 3427 the Supreme Court held that though Article 16 provided that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office, but it did not prevent a reasonable classification of employees for the purpose of appointment or promotion." The concept of equality in the matter of promotion, the Court said, could be predicated only when the promotees were drawn from the same source. If the preferential treatment of one source in relation to the other was based on differences between the two sources and the said differences had a reasonable

relation to the nature of the office or offices to which recruitment was made. such recruitment could legitimately be sustained on the basis of a valid classification. Again in *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, it was held on the same basis that there was no violation of principles of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of which consisted of direct recruits and the other half of promotees and that the rotational system by itself could not be said to deny equality of opportunity in the Government service. In *Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others*, the same principle was approved by the Court when it was observed that when recruitment of certain posts was from different sources, what ratio would be adequate and equitable would depend on the circumstances of each case and requirements and needs of a particular post. The term, Therefore, that the promotion from the two cadres shall be on the basis of a quota system to be fixed in proportion to the strength of the respective cadres does not suffer from any infirmity and is not violative of Article 16 of the Constitution.

(21) It was urged on behalf of the petitioners that the Administration should have provided separate channels of promotion for each cadre. We see no merit in this contention. The Special Cadre had been created by the Administration out of necessity to absorb employees of the Corporation. No law or authority has been cited before us to show that it was obligatory for the Administration to perpetuate this cadre. It is relevant in this connection to notice that according to clause 4, (b) of which there is no challenge, any additional post created for a school or class taken over by the Corporation, which could normally be a Special Cadre post, it was provided that the post would be of Administration cadre in its appropriate category. This being the set up envisaged by the Corporation, the grievance that a special channel of promotion should have been provided to perpetuate the Special Cadre is not justified when the condition for promotion already provided in the terms is not violative of Article 16.

(22) At the stage of reply to the arguments of the learned counsel for the respondents, Shri "Mohan Behari Lai tried to urge that the Government of India in September, 1970 revised the pay-scales of Head Masters and Post Graduate teachers of the Corporation schools retrospectively with effect from May 27, 1970 and this very substantially increased the number of members in the Special Cadre thereby adversely changing the ratio of quota for promotion of the members of the Administration Cadre. The action of the Administration in inducing those employees in the Special Cadre, it was urged, should be struck down. There is no such prayer in the writ petition, nor complete facts for this relief have been pleaded by the petitioners. Respondents had no chance to place their defense to this charge in answer to the petition as framed. We, Therefore, do not consider it proper to permit this question to be raised in these proceedings. In the result, this petition fails and is dismissed with costs.