
(2010) 07 SHI CK 0217
In the High Court Of Himachal Pradesh
Case No : CWP No. 2742 of 2008

Sh. Laiq Ram Verma and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 24-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Punjab Reorganisation Act, 1966 — Section 82(6)

Citation : (2010) 07 SHI CK 0217

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The Petitioners, who are working on various posts, are Senior Assistants and have challenged the Recruitment and Promotion Rules Annexure P4, notified on 1st November, 2008 regulating recruitment to the post of Tehsil Welfare Officer, to which post the Petitioners submit that they are entitled to be considered irrespective of the amendment made in these Rules. The Petitioners have also challenged the Constitutionality of these Rules prescribing educational qualifications of eligibility. Submission of the Petitioners is that by this amendment, they have been deprived of their right to be considered and promoted to the post of Tehsil Welfare Officers. According to the pleadings the other avenue of promotion for them is that to Superintendent Grade-II.

2. The Petitioners' case as pleaded is that in the Rules which were in force in the year 1992, titled Himachal Pradesh Social & Women's Welfare Department, Tehsil Welfare Officer (Class-III-Non-Gazetted) Recruitment & Promotion Rules, 1992, there were 62 posts in this category. It was a non-selection post. Essential qualification for direct recruits was graduation from a recognized University, but in case of promotees this qualification was not required. By amending these rules and providing for essential qualifications of eligibility, the right of the Petitioner has been obliterated. The Petitioners pleaded that according to the Recruitment & Promotion Rules Annexure P-7 notified in 1992 and Annexure P-2 notified on 4th July, 2002, educational qualification were not required and prescription of such

qualification by Annexure P-4 notified on 1st November, 2008 is nothing but a ploy to deliberately exclude the Petitioners. The second submission made on behalf of the Petitioners is that the vacancies to Tehsil Welfare Officer which existed before the date when Annexure P-4 was notified have to be filled up by resort to the unamended Rules and not by reference to Annexure P-4. According to the Petitioner, the cadre strength of the Tehsil Welfare Officers is 69 and all these posts are required to be filled up from amongst Senior Assistants.

3. The State resisted the Writ Petition primarily on the ground that initially in the year 1992 according to the Recruitment & Promotion Rules, 75 per cent of posts of Tehsil Welfare Officers was to be filled up from direct recruitment and 25 percent by promotion from the category of Clerks. By the amendment made in the year 2008, direct recruitment was reduced to 50 percent and 30 percent by promotion from amongst Senior Assistants having five years regular service and 20 percent from amongst Supervisors having eight years regular service in terms of Clause 11 of the Rules Annexure P-4. Subsequently, the other categories, namely, Supervisors were also impleaded in this petition as Respondents and they have also submitted their reply.

4. Before considering the rival contentions of the parties, the Rules as amended from time to time may be noticed. They are tabulated here under for reference:-

Post

No. of posts

Method of recruitment

Percentage

Education qualification on whether necessary

Himachal

Tehsil

9

By promotion,

Pradesh

Welfare

failing which by

-

-

Welfare

Officers

direct recruitment

Department

(Class-III)

(Class-III)

Non

(Ministerial

Selection

and Non-

Ministerial)

Service rules,

1976.

Himachal Pradesh Social & Women's Welfare Department, Tehsil Welfare Officers (Class-III-Non-Gazetted) Recruitment & Promotion Rules, 1992, applicable w.e.f. 28.2.1992 Annexure P-1/ P1/T

Tehsil Welfare Officer Class-III (Non-Gazetted) Non Selection

62

75% by direct recruitment and 25% by promotion, failing which by direct recruitment. "By promotion from amongst the Clerks having five years regular service or regular combined with continuous adhoc (rendered upto 31.3.1991) service in the grade as such."

75% by direct 25% by promotion

Graduate from recognized University for direct recruits no qualification n for promotees.

Himachal

Tehsil

68

75% by direct

75% by

Pradesh Social

Welfare

recruitment and

direct

& Women's Welfare Department, Tehsil Welfare Officers (Class-III-Non-Gazetted) Recruitment & Promotion (1st amendment) Rules, 2002 applicable w.e.f. 4th June, 2002 Annexure P-2

Officer Class-III (Non-Gazetted) Non Selection

25% by promotion amongst Senior Assistants having six years regular service or regular combined with continuous adhoc (rendered) upto 31.3.98, service in the grade.

recruitment 25% by promotion From Sr. Assistants.

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Himachal Pradesh Social Justice & Empowerment Department, Tehsil Welfare Officers, Class-II (Non-Gazetted), Recruitment & Promotion rules, 2008 Annexure P-4

Tehsil Welfare Officer Class-II (Non-Gazetted) Selection Post.

69

50% by direct recruitment 30% by promotion from amongst Senior Assistants having five years regular service, 20% from amongst Supervisors having 8 years regular service or regular combined with continuous adhoc service rendered if any in the grade.

50% direct 30% Sr. Assistants. 20% Supervisors

Graduate from a recognized University applicable both to direct recruits and promotees

5. It would thus be apparent that Senior Assistants become eligible for consideration only in the year, 2002 and before that it was from amongst other categories i.e. Male Social Workers and Clerks. It would also be apparent that the quota of direct recruitment has been reduced in the Rules of 2008.

6. Coming to the first submission made on behalf of the learned Counsel appearing for the Petitioner that the prescription of educational qualification violates Article 14 of the Constitution of India, as there is no reasonable nexus between the duties to be performed by these officers and the educational qualifications prescribed. Learned Counsel submits that this qualification was not prescribed in the un-amended Rules and there was no need to change it in the year 2008 vide Annexure P-4. The consequence, according to the learned Counsel, is that the Petitioners' right for consideration for the post of Tehsil Welfare Officers and selection which was a mere certainty has been completely effaced. There is no avenue for promotion available to the Petitioners.

7. The contention that the Petitioners' rights are totally taken away, cannot be accepted. It is the pleading of the Petitioners that they are also entitled to be considered and promoted to Superintendent Grade-II. There is nothing in

Annexure P-4, which restricts or obliterates this channel of promotion.

8. Learned Counsel appearing for the Petitioners places reliance on the judgment of Supreme Court in T.R. Kapur and Others Vs. State of Haryana and Others, to urge that the right of promotion of a particular category of employees cannot be taken away by amendment in the Rules. This submission cannot be accepted as the judgment deals with the provisions of the Punjab Reorganization Act and the Supreme Court was in particular interpreting the provisions of Section 82(6) of the Punjab Reorganization Act, 1966, which provides:-

6. Sub-section (6) of S. 82, Punjab Reorganisation Act, 1966, provides:

82(6). Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or sub s. (2) shall not be vested to his disadvantage except with the previous approval of the Central Government.

9. The provision itself placed fetters on the right of the State to alter the conditions of services of the employees, who were allocated over under the Act.

10. In *Mangej Singh and Others Vs. Union of India (UOI) and Others*, the Court holds that prescription of qualification is outside the purview of judicial review. To similar effect is the judgment in *J. Ranga Swamy Vs. Government of Andhra Pradesh and Others*, In that case, the Supreme Court was considering the qualification prescribed for the posts of Scientists. The principle which emerges from these judgments is that unless the prescription of educational qualification is arbitrary and has no nexus, such condition can be struck down. It is not for the Court to exercise its powers of judicial review to prescribe or proscribe educational qualifications. One other decision in *V.K. Sood Vs. Secretary, Civil Aviation and others*, may be considered. The Supreme Court while adjudicating on the challenge to qualifications, held:

5. In the *The General Manager, Southern Railway Vs. Rangachari*, another Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or 16(2) 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. In *State of Mysore and Another Vs. P. Narasing Rao*, this Court held that the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such

qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for such service as such. The same was the view in another Constitution Bench decision reported in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, *In State of Orissa and Another Vs. N.N. Swamy and Others*, in paragraph 18, this Court held that the eligibility must not be confused with the suitability of the candidate for appointment.

6. Thus it would be clear that, in the exercise of the rule making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the Appellant would be tested by the Union Public Service Commission.

11. On the question of prescription of qualification, the Court further holds:

7. ...It is for the expert body and this Court does not have the assistance of experts. Moreover it is for the rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. It is open to the President or the authorised person to undertake such exercise and that necessary tests should be conducted by U.P.S.C. before giving the certificates to them. This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature.

12. Coming to the second aspect of the case, learned Counsel appearing for the Petitioner submits that the power to amend the rules has been exercised mala fide. Adverting to this submission, all that I need say is that mere amendment in the rules would not per se constitute mala fides. This is an allegation easily made, than established on record. It is well settled that mala fide is one of the grounds to declare an order void, set aside any law, order, Rule or Regulation, provided that such mala fides are pleaded, proved and established on record. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, . The Court holds:-

91. ...The only question before us is whether the action taken by the Respondents includes any component of mala fides; whether hostility and *malus animus* against the Petitioner were the operational cause of the transfer of the Petitioner from the post of Chief Secretary.

92. Secondly, we must also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

13. To similar effect is the judgment in Swaran Lata Vs. Union of India and Others, holding that burden to establish mala fide lies very heavily on the person who alleges it. Lastly in Abraham Kuruvila v. S.C.T. Institute of Medical Sciences & Technology and Ors. (2005) 9 SCC 49, the Court held:

6. It is now a well-settled principle of law that bias, which would mean and imply "spite or ill will"; must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is a state of mind and it shows predisposition. Thus, general statements would not meet the requirements of law. Certain correspondence/orders which might have been passed against the Petitioner as far back as in 1994 and 1998 would not meet the requirement of law to prove bias. Not only existence of a factual bias has to be proved, but it must also be shown that the same has resulted in miscarriage of justice. A finding of fact has been arrived at by the High Court that the Petitioner had not been able to show any predisposition on the part of the Respondents concerned so as to affect his chances of promotion to the post of Associate Professor. The Division Bench has in our opinion assigned sufficient and cogent reasons for not agreeing with the submissions of the Petitioner herein. It also took notice of the letter of the Director dated 27-7-1996 which stands explained in the judgment of the High Court. The said letter has rightly been held to be not a communication proving bias.

14. Turning to the facts of the present case, on the question of malafides, the pleading of the Petitioners in the writ petition is that 36 posts of Tehsil Welfare Officers were lying vacant before the issuance of Annexure P-4 which are required to be filled up from amongst the category of the Petitioners without insistence of education qualifications. By prescribing such qualification these posts are now sought to be filled up from amongst other persons which directly proves the malafides. This submission cannot be accepted. Merely prescription of educational qualification is insufficient. The fact that the posts are required to be filled in amongst the Tehsil Welfare Officers is also not correct as would be considered later on. The Petitioners also plead in the supplementary affidavit that the purport of this submission is that one Senior Assistant can influence the amendment in the Rules. If this argument is accepted and taken to its extreme conclusion, it would indicate that the Government works at the mercy of few interested Clerks and that per se establishes malafides. This submission, therefore, requires to be rejected, more especially in view of the supplementary affidavit filed by the State showing in detail the number of posts occupied on the day when the amendment in the Rules were promulgated. As the amendments in the Rules from time to time would indicate that these posts were to be filled in from amongst Male Social Workers, Clerks, Senior Assistants and Supervisors, Senior Assistants became eligible for the first time in 2002 and Supervisors for the first time in the year 2008 when Annexure P-4 was issued. There has also been a reduction in the quota of direct recruits. This fluctuation has itself caused confusion in the number of posts which are available to each of the category. Obviously, after 1st November, 2008, what was required is not the number of

posts, but the eligibility criteria is also to be considered.

15. With the amendment of the Rules in the year 2008, the quota of Senior Assistants came down. In other words they were only entitled to 30% of the posts or 21 posts in all. These are to be filled in as per the affidavit, which shows that on 31.10.2008, 42 posts have been filled in and are being manned by Clerks, Male Social Workers and direct recruits. Learned Counsel appearing for the Petitioner places reliance on decisions in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, *State of Rajasthan Vs. R. Dayal and Others*, and *Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others*, to urge that the vacancies which exist prior to the amendment of the rules are required to be filled up by resort to the un-amended rules. There is no dispute to proposition of law. It is this fluctuation in the quota which has caused the problem. The Petitioners cannot lay claim to those of the posts of the direct recruits which have been reduced in the cadre and would keep fluctuating and recruitment would be governed in accordance with Rules. The details in the affidavit clearly shows that on 1.11.2008 only one post was available for Senior Assistant against 25% quota previously carved out for them in the Rules of 2002. The Petitioners cannot lay claim to the posts filled in by direct recruitment which quota has been reduced or to insist that the posts filled in prior to the amendment be filled in only from their category. They obviously could not be thrown out when their quota ceased to exist and another class was created. After that post falling vacant by virtue of the retirement or otherwise of the incumbent, it would be filled in by the Rules applicable as on the date when the vacancy occurs.

16. Before parting with this writ petition, I must place on record my strong displeasure in the manner in which the State has proceeded to fill up the vacancies, during the pendency of the writ petition. When notice was issued on application for interim relief, resort could not be taken to the technicality of law that no stay order was issued. Whenever such an action is taken in haste it cannot but create suspicion that the State has some motive in proceeding with the action. Otherwise a simple application to the Court seeking its permission is the only known method of proceeding in a case which is subjudice before it. No impression should be left with the Court that promotions have been made with an ulterior motive. I direct that the Government initiate appropriate proceedings against those of the officers who were responsible for these acts. This writ petition is accordingly disposed of. The claim of the Petitioners is rejected. The writ petition is disposed of in terms of the directions issued above. All interim orders are vacated. All miscellaneous applications are disposed of.