
(2012) 06 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1646 of 1988

Shanti Swarup Gupta and Anrs.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Constitution of India, 1950 — Article 138(1), 138(2), 139, 14, 148(3)
Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 — Rule 3(2), 4(2), 5

Citation : (2012) 06 DEL CK 0066

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : S.S. Gupta, for the Appellant; J.P. Sengh with Ms. Zubeda Begum, Ms. Sana Ansari, Sumeet Batra and Ms. Ankita Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri Acting Chief Justice

1. All the petitioners, 37 in number, were the employees of Rajya Sabha Secretariat. They are aggrieved by the determination of their seniority qua private respondents in this writ petition, viz., respondent Nos.6 to 91 as well as consequential promotion given to those respondents prior to the petitioners. The petition was filed at the time when they were still working in the Rajya Sabha, though during the pendency of the petition, all have retired. It is stated in the petition that under Article 98(2) of the Constitution of India, the Parliament is yet to enact a legislation concerning the recruitment and the conditions of service of persons appointed in Rajya Sabha Secretariat. It is pointed out that till 1957, the Legislative Assembly Department (Conditions of Service) Rules, 1929, were applicable to the employees of the Rajya Sabha Secretariat. Thereafter, the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 were framed in the purported exercise of powers under Article 98 (e) of the Constitution of India. Purporting to be under these Rules, in the years 1958 and

1969, two orders were issued, viz., Rajya Sabha Secretariat (Method of Recruitment & Qualifications for Appointment) Orders 1958 and 1969 respectively. In 1974, purporting to Secretariat (Method of Recruitment & Qualifications for Appointment) Order, 1974 was issued. According to the petitioner, by the 1974 Order, drastic changes being detrimental to the interests of several of the employees, were introduced. New posts were added to the cadre. Posts earlier borne on the cadre were redesignated and sub-classified by introduction of new nomenclatures. Further, a drastic change was introduced excluding the Rajya Sabha Secretariat employees from being promoted to the category of Table Assistants, Legislative Assistants, Legislative Committee Assistants, Conference and Protocol Assistants, etc. by providing for 100% direct recruitment. Earlier, Assistants were eligible for promotion to the post of Section Officer (now designated as Executive Officer/Legislative Committee Officer, etc.). According to 1957 Rules, in the category of Assistants, the following posts were borne:

Gazetted: First Personal Assistant to Chairman.

Non Gazetted: Assistants, Information Assistant, Printing Assistants, Second Personal Assistant to Chairman, Personal Assistant to Secretary.

2. Under the 1974 Order, a new categorization of posts by calling one type as Legislative Service and the other as Administrative Service was adopted. Those Assistants working in the Legislative side were artificially treated separately by calling them by the following names and treating them as a newly introduced category:

Table Assistants, Lobby Assistants, Legislative Assistants, Questions Assistants, Legislative Committee Assistants, Notice Assistants, Conference Assistants, Protocol Assistants.

In the Executive/Administrative side, a new category was introduced, viz., Executive Assistants. This was treated as a higher category to which Assistants are to be promoted. But the posts were the same, being commonly, held by Assistants and Executive Assistants, they being interchanged.

3. In 1980, the Legislative Service and the Executive and Administrative Services were again unified into one service to be known as the Legislative, and Executive and Administrative Service. Since 1958 and till date, the changes in the recruitment and conditions of service of the employees have been made frequently and continuously for about 40 times. These changes are questioned as ultra vires Article 98 of the Constitution of India and in any event ultra vires the 1957 Rules. Rule 4(2) of the 1957 Rules under which the 1974 Order was purportedly issued reads as under:

4. METHOD OF RECRUITMENT. - (2)

The Chairman may, from time to time, by general or special order

(a) specify the method or methods by which recruitment to a post or class of posts shall be made,

(b) in case of recruitment by more than one such method, determine the proportion of vacancies to be filled by each method, and

(c) in case of direct recruitment, specify the manner in which such recruitment shall be made.

4. It is argued that as its plain reading suggests, Rule 4(2) does not enable introduction or creation of new posts. Further, Article 98 of Constitution of India does not contemplate the Rule making power being further delegated to any other authority. Rule 3(2) and 4(2) of 1957 Rules are void being ultra vires of Article 98 of the Constitution of India.

5. It is specifically stated that as the Legislative Assembly Department (Conditions of Service) Rules, 1929 have not till date repealed by the competent authority, i.e., Parliament, they are still enforced and are applicable to the employees of the Rajya Sabha Secretariat. Hence, the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 and all subsequent orders/circulars are ultra vires of Article 98(2) of Constitution, void, bad in law, inoperative and ineffective. Repealing process for Rules, 1929 was not adopted by the President of India in accordance with law before framing the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 and as such Rules 1957 are bad in law, redundant and unconstitutional.

6. It is also argued that the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 and subsequent amendments thereto and also the orders and circulars [Rajya Sabha Secretariat (Method of Recruitment and Qualifications for Appointment) Orders, 1958, 1969, 1974, 1980 and 1984 onwards] till date issued by the respondent Nos. 2 and 3, have not been laid on the Table of both Houses of Parliament for approval and consideration of Parliament and have not been passed by Parliament so far. Hence, they are inoperative, ineffective, ultra vires of Article 98(2) and bad in law, and in consequences of all these executive orders and circulars since 1958 till date issued by the respondent Nos. 2 and 3 under the powers conferred upon him by the President of India under sub-Rule (2) of Rule 4 and Rule 5 of the Rajya Sabha Secretariat (Recruitment and Condition of Service) Rules, 1957 are infructuous, inoperative, ineffective, bad in law, void, ultra vires of 98(2) of Constitution and unconstitutional.

7. Other submission is that all the executive orders, circular issued by the respondent Nos. 2 and 3, i.e., Rajya Sabha Secretariat (Method of Recruitment and Qualification for Appointment) Orders 1958, 1969, 1974, 1980 and 1984 onwards have not been notified in Gazette of India and they are unconstitutional, illegal, inoperative and void. All the executive order, Circular issued by the respondent Nos.2 and 3, i.e., Rajya Sabha Secretariat (Method of Recruitment and Qualification for Appointment) Orders 1958, 1969, 1974, 1980 and 1984 and onwards have not been laid on the Table of both Houses of Parliament for

approval and consideration by the Parliament. Hence, they are void, illegal, invalid, inoperative, ineffective, unconstitutional and bad in law.

8. It is argued that the basic structure of Rajya Sabha Secretariat cannot be bifurcated by issuing the executive order, i.e., Rajya Sabha Secretariat (Method of Recruitment and Qualifications for Appointment) Order 1974, by respondent No.2, except by Parliament under Article 98 of Constitution of India. The action of the respondent Nos.2 and 3 is invalid, illegal, void, ultra vires of Articles 98(2) of Constitution and unconstitutional. Here, the respondent No.2 has bifurcated it into different parts vide his order of 1974 while he has no jurisdiction in regard to exercise the Constitutional Legislative Powers and in counter affidavit it has not been denied.

9. Some case law is cited in support of the aforesaid submission by the petitioner No.1 who appeared in person and argued the matter. He also filed the written submissions to the aforesaid effect.

10. At the time of arguments, learned counsel for the respondent pointed out that the matter is squarely covered by the Division Bench judgment of this Court in Bhagvan Singh Guleria Vs. UOI & Ors. [442 DRJ 2011 (124 (DB))]. In that case, the validity of these very Rules was questioned on identical grounds. But the challenge was repelled by the Court.

11. After going through the said judgment, we find that the contention of the respondent was correct and the issues raised in the said case were identical and the vires of these very Rules were challenged on same grounds as raised in the instant petition, the main contention being that the Rules and questions are violative of Article 98 of the Constitution. The only submission of the petitioner was that the aforesaid judgment does not lay down the correct law and for this reason, they wanted to argue the matter afresh and filed the written submission. This Bench is bound by the dicta laid down in the aforesaid judgment by the Co-ordinate Bench. When the validity of these very Rules permitting Speaker/Chairman to issue order fixing/regulating eligibility norms, terms of service, pay scale, etc. has been held that the same is not violative to Article 98 of the Constitution. The issue does not remain res integra any longer. We would, thus, only like to quote few passages from the said judgment to show how it covers the case of the petitioner on all force, which are as under:

7. There is no doubt and it is not questioned that the two Rules have been made by the President in consultation with the Speaker and the Chairman respectively. Thus the aforesaid Rules have been framed as per Article 98(3) of the Constitution. Parliament, it is admitted, has not enacted any law. In these circumstances Article 98(3) applies and the power to make Rules under the said provision is available and has been enforced.

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9. The argument, though attractive, has to be rejected for a number of reasons.

The question whether a particular legislation suffers from excessive delegation has to be decided by having regard to the subject-matter, the scheme, the provisions of statute including the preamble and the facts and circumstances in the background of which the statute was enacted (see *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, and *Kishan Prakash Sharma and Others etc. Vs. Union of India and Others*,). The aforesaid ratio and principles will equally apply while interpreting Article 98(3). It is also well settled that in considering vires of a subordinated legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and the other which would make it invalid, the courts must adopt that construction that makes it valid and in some cases legislation can be read down to avoid the delegated legislation being declared ultra vires [see *St. John Teacher Training Institute (supra)*].

10. Legislative delegation in framing rules and regulations saves time and is intended to give flexibility to deal with variations. It permits and ensures that the Executive or the authority can utilize its experience and adopt and modify rules and regulations as per needs and requirements. Needs of the modern day Secretariat attached to the legislature are varied and complex. Delegation ensures that Chairman or the Speaker exercise necessary control and supervision of the said secretariat. It may not be possible to foresee every administrative difficulty that may arise after the rules have come into operation. The Chairman, Rajya Sabha (i.e. the Vice President of India) and the Speaker of the Lok Sabha are constitutional authorities and heads of the two houses. The Chairman and the Speaker of the Parliament are posts of responsibility, prestige and honour. They rank No. 2 and No. 6 respectively in the order of precedence. They are also the Heads of the two Secretariats and are directly concerned with the working of their respective two Secretariats. For effective and proper working of the Secretariats, they have to be given the right and power to decide and regulate the recruitment and conditions of service of the secretarial service. This can require changes and amendments from time to time depending upon the needs and requirements at a particular time. It is for this reason that the two Rules framed under Article 98(3) of the Constitution give sufficient right and authority to the Speaker and the Chairman to decide about the creation and number of posts in the Secretariat, qualifications, eligibility norms, method of recruitment, pay scales etc. of the secretarial services. This ensures that the Speaker and the Chairman have sufficient latitude and flexibility in the management and affairs of the two Secretariats.

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16... Mr Chatterjee contends that no delegation whatsoever was possible under Article 312 and that the Constitution required that Parliament should itself frame the entire law relating to the regulation of recruitment and the conditions of service of all-India services. We have, therefore, to see whether there is anything in the words of Article 312 which takes away the usual power of delegation,

which ordinarily resides in the legislature. Stress in this connection has been laid on the words "Parliament may by law provide" appearing in Article 312. It is urged that these words should be read to mean that there is no scope for delegation in a law made under Article 312. Our attention in this connection was drawn to words used in Article 245, which are "Parliament may make laws". It is said that the words used in Article 312 are in a special form, which import that Parliament must provide by law for regulation of recruitment and the conditions of service and cannot delegate any part of it to other authorities. Reference was also made to the words used in Article 138(1), (namely Parliament may by law confer); Article 138(2), (namely, Parliament may by law provide); Article 139, (namely, Parliament may by law confer); and Article 148(3), (namely, as may be determined by Parliament by law). In contrast to these Articles, our attention was drawn to the words of Article 173(c), (namely, by or under any law made by Parliament), and Article 293(2), (namely, by or under any law made by Parliament). It is urged that when the Constitution uses the words "may by law confer" or "may by law provide", no delegation whatsoever is possible. We are of opinion that these words do not necessarily exclude delegation and it will have to be seen in each case how far the intention of the Constitution was that the entire provision should be made by law without recourse to any rules framed under the power of delegation. Let us, therefore, examine Article 312 from this angle, and see if the intention of the Constitution was that regulation of recruitment and conditions of service to an all-India service should only be by law and there should be no delegation of any power to frame rules. Regulation of recruitment and conditions of service requires numerous and varied rules, which may have to be changed from time to time as the exigencies of public service require. This could not be unknown to the Constitution makers and it is not possible to hold that the intention of the Constitution was that these numerous and varied rules should be framed by Parliament itself and that any amendment of these rules which may be required to meet the difficulties of day-to-day administration should also be made by Parliament only with all the attending delay which passing of legislation entails. We are, therefore, of opinion that in the circumstances of Article 312 it could not have been the intention of the Constitution that the numerous and varied provisions that have to be made in order to regulate the recruitment and the conditions of service of all-India services should all be enacted as statute law and nothing should be delegated to the executive authorities. In the circumstances we are of opinion that the words used in Article 312 in the context in which they have been used do not exclude the delegation of power to frame rules for regulation of recruitment and the conditions of service of all-India services. We cannot read Article 312 as laying down a mandate prohibiting Parliament from delegating authority to the Central Government to frame rules for the recruitment and the conditions of service of all-India services. We, therefore, reject this contention.

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22. It is, therefore, apparent that the Chairman/Speaker under Article 98(3) and

the Speaker of the State legislature under Article 187(3) have been exercising powers including prescribing the terms and conditions of employment/posts etc. in the secretariat of the legislature. The said situation has continued and power has been repeatedly exercised since 1950 when the Constitution was adopted. In various judicial pronouncements exercise of power by the Speaker has been upheld and accepted.

23. In view of the aforesaid reasoning, the first two contentions of the Petitioners have to be rejected. It is held that the Rules have been validly made under Article 98(3) of the Constitution and the Rules or the order issued do not fall foul and are not ultra vires on account of excessive delegation.

12. Not only this, the Division Bench thereafter went into the factual allegations in the writ petition preferred by those petitioners who were also working as Assistants Sr. Assistants in Lok Sabha Secretariat and did not find any merit therein.

The reasons for amending the service condition were found to be justified and upheld as is clear from the following:

42. Right to amend and change service conditions have been examined above. The Respondents 2 and 5 have clarified that on the basis of recommendations of the Fourth Pay Commission, a Pay Committee was set up to recommend pay scales of officers for staff of the Lok Sabha and Rajya Sabha Secretariats. The Pay Committee recommended pay scale of 1400-2600 for the grade of Assistant and 1640-2900 for the grade of Senior Assistant who were earlier known Lobby Assistant, Legislative Assistant etc. These pay scales became effective from 1st January, 1986. Subsequently, the Ministry of Personnel, PG & Pension issued OM dated 2nd January, 1990-CS-IV dated 31st July, 1990 revising the scale of Assistant and Stenographers grade of the Central Secretariat Services from 1400-2600 to 1600-2900 with effect from 1st January, 1986. This revised scale was made applicable to Assistants, Hindi Assistants and stenographers in the Lok Sabha Secretariat vide order No. 808/91 dated 29th October, 1991. It is stated in the counter affidavit which was filed on or about August, 1993 that the pay scale of Senior Assistants which was 1640-2900 had not been revised and was still under consideration of the Secretariat. We may notice here that the post of Senior Assistant is a promotional post from the grade of Assistant and recruitment to this post is also through direct recruitment. It has also been clarified by Respondents Nos. 2 to 3 that some of the private Respondents were inducted/appointed as Senior Assistant by the method of direct recruitment having participated in the examination and the selection process. The Petitioners therefore cannot claim that they were senior to these persons who were appointed and selected through direct recruitment. There is no discrimination or violation of Article 14.

The petitioners herein are identically situated as the petitioners in the case of Bhagvan Singh Guleria (*supra*). For the reasons stated in that judgment, we

reject each and every contention raised by the petitioners in this writ petition. As a result, this writ petition is dismissed. Parties are left to bear their own costs.