
(1971) 02 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4009 of 1970

Shri Baljit Singh Bali and others	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 15-02-1971

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1971) 02 P&H CK 0033

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Abnaska Singh with Mr. J.L. Gupta, for the Appellant; M.R. Sharma, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—The petitioners are employees of the Public Relations Department of the Punjab Government petitioner 1 being an Article Writer, petitioner 2 a Copy Writer, and petitioners 3 and 4 Assistants. respondents 3 to 30 were employed in the Same Department as Field Publicity Assistants on temporary basis. By a notification dated November 18, 1970, the Punjab Government converted the posts of Field Publicity Assistants/Information Assistants into those of Assistant Public Relations Officers in the pay-scale of Rs. 200-15-13-380/20-500 with effect from the date of the issue of the notification and by an office order of the same date appointed respondent 3 to 30 as Assistant Public Relations Officers in that scale. The petitioners have challenged both these notifications in this petition. Written statement has been filed by respondent 2 to which replication has also been filed.

2. Respondents 8, 11, 13 and 27 and one Rajbir Singh were promoted as Public Relations Officers in 1968 and 1969 from the posts of Field Publicity Assistants that they were then holding. These appointments were challenged by Lehna Singh and Ors. in two writ petitions (C.W. No. 2260 of 1968 and C.W., No. 1959 of 1969), which were decided by me on August 25, 1970, and the promotions of

these respondents and Rajbir Singh were quashed. A Letters Patent Appeal against that judgment is pending in this Court, but the Motion Bench refused to grant stay of the operation of my order, with the result that by notification dated November 11, 1970, the said respondents were reverted to their original posts of Field Publicity Assistants with effect from the dates of their promotion to the rank of Public Relations Officers. The posts of Field Publicity Assistants were excad exposts and were not included in the Schedule to the Public Relations Department (Class III Non Gazetted) Service Rules, 1958 (hereinafter referred to as the 1958 Rules). These posts were temporary in nature and the Government took a decision to encoder these posts in the service of the Public Relations Department governed by the said Rules and to give effect to that decision the nomenclature of the posts was changed from the Field Publicity Assistant/ Information Assistants to that of the Assistant Public Relations Officers and having changed the nomenclature the Government appointed respondents 3 to 30 to those posts. The petitioners' grievance is that both the notifications and the office order issued by the State Government on November 18, 1970, are without jurisdiction and affect their right of promotion to the posts of Assistant Public Relations Officers under the Rules which are statutory having been framed by the Governor of Punjab in exercise of powers vested in him by the proviso to Article 309 of the Constitution of India. Their learned counsel has attacked these notifications on various grounds.

3. The first ground is that in the notification converting the posts of Field Publicity Assistants/Information Assistants into those of Assistant Public Relations Officers it has not been stated under which authority this notification has been issued, and that the number of posts so converted is not stated in the notification. In the return (para 13) the position taken is-

The cadre of Field Publicity Assistants was created as a result of reorganization of the department in 1965. These posts were, however, kept out of the purview of the Public Service Commission because of the fact that persons with rural background and possessing art of public speaking were not available in routine selection. Subsequently, on 17th May, 1937, the Government decided to convert the posts of Field Publicity Assistants/Information Assistants into those of Assistant Public Relations Officers. It was further decided that the screening of the then incumbents of the aforesaid posts should be done by a committee to be presided by the Chairman of the Punjab Public Service Commission. The said Committee interviewed respondents Nos. 3 to 30 and examined their service records also but withheld the result for want of certain procedural amendments in the relevant departmental service rules governing the non gazetted personnel. These rules were notified in November, 1938, and thereafter the result of the aforesaid screening by the Committee was received. It was on the basis of the report of this Committee received from the Chairman, Public Service Commission, that the posts of Field Publicity Assistants/Information Assistants were converted into those of Assistant Public Relations Officers and the incumbents thereof, who were found suitable by the Commission, were appointed

as Assistant Public Relations Officers. The two impugned orders are, therefore, only bona fide implementation of the decision of the Government which was taken as far back as 17th May, 1967. By the conversion of these posts there has been only a change of nomenclature without any change or modification in the pay scales or duties attached to these posts. No fresh recruitment or promotion has been made.

From this statement it is clear that the authority for the issuance of the notification converting the posts of Field Publicity Assistants/Information Assistants into those of Assistant Public Relations Officers is the decision of the Government taken on May 17, 1967, and not any provision in any statutory rules. In these circumstances it has to be determined whether the Government had any authority to convert the posts of Field Publicity Assistants/Information Assistants into those of Assistant Public Relations Officers, particularly when the Field Publicity Assistants/Information Assistants were not part of the Service of the Department under the 1958 Rules, while the Assistant Public Relations Officers formed part of that Service and the method of recruitment of Assistant Public Relations Officers and their qualifications were prescribed in the statutory rules. After giving a very careful consideration to the arguments advanced by the Learned Counsel, I have come to the conclusion that the State Government had no such authority. The proper method was to amend the Rules which could be done by the Governor in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India, under which power the Rules had been framed in 1958 and were amended by notification dated November 19, 1968. When the amendment was made the number of Assistant Public Relations Officers was increased from 1 to 29 and a change was made in Rule 9(d) of the original rules framed in 1958 with regard to recruitment of Assistant Public Relations Officers. Under Clause (d) of Rule 9 of the 1958 Rules an Assistant Public Relations Officer could be appointed.

(i) By selection from among the Assistants provided they have three years experience; or

(ii) by transfer or deputation of a person already in the service of the Government of a State or of the Union; or

(iii) by direct appointment.

By the 1968 amendment, Clause (d) of Rule 9 provided as under:

"Recruitment in the case of Assistant Public Relations Officer shall be made-

(i) by direct appointment: or

(ii) by transfer or deputation of a person already in the service of the Government of the State or of Government of India, possessing the necessary qualifications prescribed for direct appointment; or 60%

(iii) by promotion from amongst copy Writers and Article Writers; or

(iv) by selection from amongst those Assistants and Heard Assistants of the Public Relations Department, Punjab, who have at least 8 years of service as Assistant, are Graduates, and are less than 40 years of age; or

(v) by selection from amongst those Field Publicity Assistants who are Matriculates and are below 50 years of age. 40%

4. In Rule 8 of the 1958 Rules, the qualification for the post of Assistant Public Relations Officer was prescribed as "a Degree of a recognised University with experience of Government service" for direct recruits. In the 1968 amendment, this qualification was substituted by the following:

(a) A Bachelor's degree in Science or Arts, preference will be given to those with additional qualifications in Sociology, social work and journalism.

(b) An experience of three years in (i) a Publicity Organisation, or (ii) in a recognised organisation connected with social work, or (iii) in the Public Relations Department as a Publicity Supervisor or Field Publicity Assistant or Information Assistant or as an Article Writer, or (iv) in a Newspaper office connected with editing or news or writing of features etc.

5. From the amended Rules 8 and 9(d), it is apparent that the Field Publicity Assistants, who are Matriculates and below 50 years of age, are eligible for recruitment to the post of Assistant Public Relations Officer which clearly means that a Field Publicity Assistant is lower in rank than an Assistant Public Relations Officer. It was, this not open to the State Government to amend this rule by Executive decision so as to make the post of Field Publicity Assistant equal to that of the Assistant Public Relations Officer. It is well settled that where statutory rules of Service exist, action has to be taken in accordance therewith, and it is only where the rules are silent that the Executive Government can issue directions provided they do not come into conflict with the statutory rules. Reference in this connection may be made to B.N. Nagarajan and Others Vs. State of Mysore and Others, The State of Haryana v. Shamsher Jang Shukla 1968 S.L.R. 162, Lehra Singh and Ors. v. Punjab State and Ors. 1970 S.L.R. 844 and S. Joginder Singh Grewal v. The State of Punjab and Ors. 1970 S.L.R. 892,

6. The effect of the notification issued by the State Government is that 28 Field Publicity Assistants have en-bloc been recruited as Assistant Public Relations Officers whereas they were entitled to 40 per cent, posts along with other categories mentioned in Clauses (iii) and (iv) of Rule 9(d) as amended in 1968. Along with the Field Publicity Assistants the other categories like Copy Writers Article Writers and Assistants were eligible for promotion or selection and these three categories were not considered when respondents 3 to 30 were appointed as Assistant Public Relations Officers. The 40 per cent, of the posts of Assistant Public Relations Officers are meant for all these three categories and not for one of them. The petitioners, who fall in the other three categories, were, therefore, ignored completely at the time respondents 3 to 30 were appointed as Assistant public Relations Officers which violated their fundamental right of being

considered for promotion under Article 16 of the Constitution. If the decision to encadre the Field Publicity Assistant into the Service as Assistant Public Relations Officers had been taken on May 17, 1967, it should have been reflected in the amendments to the 1968 Rules made by the notification dated November 19, 1968. Clearly the intention has not been so expressed. The amendment of Rules 8 and 9(d) clearly shows that the Field Publicity Assistants were inferior in rank to the Assistant Public Relations Officers and were eligible for selection to that post. The said Rules did not consider the two posts as inter-changeable or equivalent and if this object of making those two posts equivalent was to be achieved, it had to be done by amending the Rules by the Governor and this object could not be achieved by an Executive notification of the State Government issued in exercise of powers under Article 162 of the Constitution because it went counter to the Service Rules which had been framed by the Governor in exercise of his powers under the proviso to Article 309 of the Constitution and which were, therefore, statutory rules. The impugned notification dated November 18, 1970, is, therefore, ultra vires the statutory rules and has to be struck down. The office order appointing respondents 3 to 30 as Assistant Public Relations Officers was made in pursuance of that notification and that order also falls with it. In case it is desired by the Government to appoint Field Publicity Assistants as Assistant Public Relations Officers, the method provided in Rule 9(d) should be followed.

7. The learned Senior Deputy Advocate General has vehemently argued that under Rule 9(d), as amended the Government had the right to appoint Assistant Public Relations Officers from amongst the Field Publicity Assistants to the extent of 40 per cent and by direct appointment, or by transfer or deputation of the persons already in the service of the Government to the extent of 60 per cent so that when the Government decided to recruit respondents 3 to 30 as Assistant Public Relations Officers it should be considered that 40 per cent of them were recruited under Clause (v) of Rule 9(d) and 60 per cent under Clause (ii) of Rule 9(d) and, therefore, the appointments of respondents 3 to 30 should not be struck down. The argument on the face of it is attractive but is without any merit. Respondents 3 to 30 were appointed as Assistant Public Relations Officers only under Clause (v) of Rule 9(d) and not under any other clause of that rule, and, in my opinion, that power could not be exercised under any other clause because the specific mention of Field Publicity Assistants in Clause (v) excludes Field Publicity Assistants being considered under any other clause of Rule 9(d). For field Publicity Assistants specific mention having been made in Clause (v) of Rule 9(d) and quota having been fixed, they could not monopolise all the appointments by claiming them under any other clause. The en-bloc appointment of respondents 3 to 30 as Assistant Public Relations Officers has undoubtedly violated the fundamental right of the petitioners to be considered for those posts, when they are qualified for appointment as Assistant Public Relations Officers under Rule 9(d), which has been guaranteed to them under Article 16 of the Constitution of India.

8. For the reasons given above, this petition is accepted with, costs and the notification dated November 18, 1970, and the office order passed on the same date appointing respondents 3 to 30 as Assistant Public Relations Officers are hereby quashed. The costs will be paid by respondent 1 to the petitioners. Counsel's fee Rs. 300/-.