
(1991) 07 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2440 of 1989

S.K. Gulati

APPELLANT

Vs

Punjab State Tubewell Corpn. Ltd. and Another

RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1992) 2 LLJ 173

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : J.S. Khehar, for the Appellant; H.S. Gill, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—There are six posts in the rank of Superintending Engineer in the Punjab State Tubewell Corporation, (hereinafter referred to as "the Corporation"). All the six posts have been filled up by taking officers on deputation from the State Government. The petitioner claims that under the Bye-laws of the Corporation, he was eligible and yet his name was arbitrarily ignored. The petitioner complains that 100 per cent diversion of posts to the source of deputations is violative of Articles 14 and 16 of the Constitution. Is it so?

2. A few facts deserve to be noticed. The petitioner was selected and appointed as an Assistant Engineer in the Corporation in September, 1972. On March 21, 1980 the petitioner was given the current duty charge of the post of Divisional Engineer. He passed the departmental professional examination in June, 1980 and the revenue examination in the year 1981. With effect from January 7, 1982, the petitioner was promoted to the post of Divisional Engineer. He passed the departmental professional examination in the year 1981. With effect from January 7, 1982, the petitioner was promoted to the post of Divisional Engineer on regular basis. Later on, the Board of Directors in its meeting held on September 26, 1986 decided that "the officers concerned be deemed to have been promoted in the regular scale of the Divisional Engineer w.e.f. the

respective dates from which they were posted against the posts of Divisional Engineers. Accordingly, the petitioner was deemed to have been appointed as a Divisional Engineer w.e.f. March 21, 1980. A copy of the office order is at Annexure P.3 with the writ petition.

3. The Corporation has framed service bye-laws called "The Punjab State Tubewell Corporation Employees Service Bye-laws, 1977" (hereinafter referred to as the "Bye-laws"). In these bye-laws, service has been defined to mean the Punjab State Tubewell Corporation Employees' Service. It comprises of the posts shown in Appendix "A". Bye-law 8 prescribes the method of appointment and reads as under:-

"Bye-law 8 : Method of Appointment

Appointment to the service shall be made in the following manner :-

(i) by direct appointment;

(ii) by promotion;

(iii) by transfer/deputation of an employee of the Govt., the Central Govt. or State/Central Undertaking and other statutory bodies;

(iv) by absorption into service of the employees taken on deputation."

Bye-law 9 inter alia provides that a candidate must fulfil the qualifications and experience mentioned in Appendix "B" for appointment to different posts in the service. In this Appendix, the relevant entry for appointment to the post of Superintending Engineer is as under:-

Sl. No

Designation of the post

Scale of Pay

Qualification for direct recruitment

Experience for direct recruitment

Minimum Experience for promotion/transfer deputation

1.

Superintending Engineer

1600-50-1800-100-2000

No direct recruitment

7 yrs service as XEN/D.E. & must possess degree in Engineering or equivalent qualification

4. A perusal of the above provisions would show that no direct recruitment can

be made to the post of Superintending Engineer. This post can only be filled up by promotion or by transfer/deputation. Further it is also evident that a candidate must possess a Degree in Engineering or an equivalent qualification along with an experience of seven years as XEN/D.E. Admittedly, the petitioner fulfilled these qualifications.

5. There are six posts in the cadre of Superintending Engineer in the Corporation. All the six posts were filled by taking officers on deputation from the Department of Irrigation in the State of Punjab, In January, 1988, one of these six posts fell vacant. It is averred that even though the petitioner was wholly eligible and qualified for promotion to the said post, yet his claim was not considered and respondent No. 2 was appointed by way of deputation, A copy of this order has been appended as Annexure P.9 with the writ petition.

6. The practice of filling up technical posts in the Corporation was considered by the Committee on Public Undertakings constituted by the State. It had inter alia reported as under:-

"The Committee does not consider this practice to be healthy for more than one reasons. In the first place, it costs the public undertaking more as they have to pay deputation allowance. Secondly, the deputationists cannot have that much loyalty and sense of commitment to the undertakings and their objectives as regular employees can have..... It seems that many posts have been filled by the deputationists not because it was necessary but because of extraneous considerations.....The Committee feels that the system of deputation has led to a good deal of favouritism, nepotism and malpractices etc. and, therefore, recommends that the system of having persons on deputation in public undertakings should be abolished."

7. In pursuance to this recommendation of the Committee, the matter was considered by the Board of Directors of the Corporation in its meeting held on March 20, 1982. It was inter alia decided that the technical posts "might continue to be manned by officers/officials on deputation till such time suitable employees of the Corporation became available."

8. The petitioner claims that in spite of this decision which was taken in the year 1982, the Corporation continued to take officers on deputation without considering the claims of suitable and eligible employees, who are available for promotion. Having submitted a number of representations without any fruitful results, the petitioner has approached this Court through the present writ petition.

9. A written statement has been filed on behalf of the Corporation. However, no written statement has been filed by respondent No. 2, In the written statement, it has been inter alia averred that the Corporation is wholly owned and funded by the State Government. Under Article 133 of the Memorandum and Articles of Association, the State Government has directed the Corporation " to so modify the bye-laws/policy of promotion and recruitment so as to have parity/near

parity with comparable posts under the Punjab Government." It has further directed that the Punjab State Tubewell Corporation shall broadly follow the criteria applicable to the promotion in the Irrigation Department in terms of length of experience and other qualifications. It has averred that the Board of Directors took a decision in their meeting held on January 20, 1989 that "in view of the fact that the Corporation is not a permanent entity and if the Punjab Government decides to wind up the Corporation, the regular staff working in the Corporation will have to be adjusted in the Irrigation Department/Departments of Punjab Government and parity/near parity with regard to the qualification and length of service prevailing in the Irrigation Department from the time for promotion from Junior Engineer onwards, may be kept in view while filling up the posts at different levels from Sub-Divisional Officer and above in the Corporation." It is further pointed out that out of the five Superintending Engineers, who were on deputation with the Corporation, two belonging to general category had been appointed as Executive Engineers in the year 1972, while others belonging to the category of Scheduled Castes had been appointed as such in the year 1978. The petitioner who was promoted as Divisional Engineer on regular basis w.e.f., the year 1980, was far junior to them and his promotion was likely to create an extremely anomalous situation. Rest of the averments have also been broadly controverted.

10. The petitioner has filed CM. No. 2787 --bringing on record certain additional facts. It has been inter alia pointed out that the plea raised on behalf of the Corporation was wholly fallacious. Specific mention has been made regarding one Mr.P.S. Bhatti, who was promoted to the post of Assistant Research Officer w.e.f. May 31, 1981. He was further promoted to the post of Research Officer on April 10, 1991. It has been averred that this promotion was allowed in spite of the fact that in the Irrigation Branch of the Public Works Department, persons working as Assistant Research Officers since 1971 were being promoted to the posts of Research Officers in 1991. It has been further pointed out that this fact was brought to the notice of the Corporation by the Chief Engineer vide his communication dated March 26, 1991. Copies of the relevant orders have also been produced to the record.

11. I have heard Mr. J.S. Khehar for the petitioner and Mr. H.S. Gill for the respondent-Corporation. In a nut-shell, it has been argued on behalf of the petitioner that the action of the Corporation in filling up all the posts in the cadre of Superintending Engineer by way of deputation and ignoring the claims of eligible officers for promotion is arbitrary and violative of Articles 14 and 16 of the Constitution. It has also been argued that under the bye-laws of the Corporation, different methods of appointment had been prescribed and it was wholly unfair to confine all appointments to only one source to the exclusion of all others. Mr. Gill on the other hand has contended that the bye-law gives the Corporation a right to fill up the posts by promotion, by transfer or by taking officers on deputation. The Corporation has a legitimate right to choose any one of the methods. The action in filling up the posts, according to the learned

counsel, is in strict conformity with the bye-law.

12. Indisputably, the petitioner is eligible for promotion to the post of Superintending Engineer. The averment that the petitioner has had a consistently good record of service and has not been communicated a single adverse report has been admitted. Still his claim for promotion has not been considered only on the ground that the officers with longer service are available in the Irrigation Branch of the Public Works Department and that the bye-law permits appointments by way of deputation. The bye-law, if literally construed, may permit such a course of action. When different sources of recruitment are prescribed without laying down any quota for each of the sources, it may be open to employer to fill up the posts from one of the prescribed sources. However, such a course of action which excludes one of the sources completely is bound to cause heart-burning, low morale and lack of interest. Advancement is a normal human aspiration. Lack of opportunity for advancement is bound to retard the growth of the institution. It is in this context that the Committee on Public Undertakings had recommended that the system of having persons on deputation should be abolished. The Corporation in its turn had accepted this principle and had resolved that the posts might continue to be manned by officers on deputation till such time as suitable employees of the Corporation became available. This assurance was given as far back as March, 1982 but has not been honoured. In fact, it has been completely violated.

13. It is no doubt correct that under the Articles of Association, the Government has the power to issue directives as they may consider necessary in matters of policy etc. It is also correct that vide its letter of October 1, 1984, the State Government had in exercise of this power directed the Corporation to broadly follow "the criteria applicable to promotion in the Irrigation Department in terms of length of experience and other qualifications." However, Mr. Gill has not been able to point out as to how the criteria prescribed in the bye-laws was contrary to the one being followed in the Irrigation Department. The conditions of service governing the Engineers in the Irrigation Branch of the Public Works Department are laid down in the rules called "the Punjab Service of Engineers (Class-I) Rules, 1964." The criterion prescribed in these rules is in no way different from the one laid down in the bye-laws of the Corporation. Under the bye-laws, a person who possesses a degree in Engineering and has an experience of seven years as an XEN/Divisional Engineer, is eligible for promotion to the posts of Superintending Engineer w.e.f. March 21, 1980. He had acquired the requisite qualification and experience on March 21, 1987. Consequently, he was fully eligible to be considered for promotion in January, 1988, when respondent No. 2 was appointed. This was not done. In my view, the action of the respondents was not only violative of the bye-laws or the decision taken in the meeting held on March 20, 1982, but also of the provisions of Articles 14 and 16 of the Constitution. The petitioner was denied equality of opportunity. He was not considered in spite of the fact that he was eligible.

14. Accordingly I hold that the appointment of respondent No. 2 as Superintending Engineer in the Corporation was illegal. It is accordingly quashed. I further direct the respondents to consider the claim of the petitioner along with those of other eligible officers for promotion to the post of Superintending Engineer. This shall be done within a period of three months. The petitioner shall also be entitled to his costs, which are assessed at Rs. 3,000/-.