
(2013) 09 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : LPA No. 143 of 2013

State of Himachal Pradesh and Others	APPELLANT
Vs	
Harbans Lal and Others	RESPONDENT

Date of Decision : 21-09-2013

Acts Referred:

Citation : (2014) LabIC 308

Hon'ble Judges : A.M. Khanwilkar, C.J; Sanjay Karol, J; Kuldeep Singh, J

Bench : Full Bench

Advocate : Shrawan Dogra, General, Romesh Verma, Anup Rattan, A.A.G, J.K. Verma and Ms. Parul Negi, Deputy Advocate Generals, for the Appellant; Tarlok Chauhan and Sanjeev Bhushan, for the Respondent

Judgement

Sanjay Karol, J.—The question as to whether the date of commencement of the academic year (session) or passing of its prescribed examination would be the relevant date for construing the expression "batch wise", as stipulated in various Rules, guidelines and instructions issued by the State of Himachal Pradesh, prescribing the eligibility criteria for appointment/promotion to posts reserved in various Departments of the State of Himachal Pradesh, is urged for consideration before us. Conflicting views, resulting into incongruous situation, taken by different Coordinate Benches (Division Bench) of this Court, was the reason for this reference to resolve the conflict.

2. In CWP No. 10737 of 2011-D, titled as Vimal Bharti v. State of H.P. and others, decided on 22.12.2011, this Court held that expression "batch" would mean the date when the candidate is admitted to a session and the academic year commences. Whereas in LPA No. 27 of 2010, decided on 26.5.2010, titled as Satpal Singh Bhardwaj v. State of H.P. and others, this Court held that the date on which a person can claim promotion, with respect to a batch, is the date when he passes the final examination of the academic session, which view was also expressed by a learned single Judge of this Court in CWP (T) No. 9701 of 2008, decided on 31.8.2012, titled Harbans Lal v. State of H.P. and others, which

is the subject-matter of the present LPA, in which we have been called upon to answer the issue.

3. The concept of appointment on "batch wise" basis, in the Education Department, was introduced by the State of Himachal Pradesh, for the first time, in the year 1974. State of Himachal Pradesh has framed Rules, regulating appointment to posts in various Departments. The relevant provisions of applicable law, which are subject-matter of the judgments in question, are referred to and considered by us hereinafter.

4. For filling up several posts, including the post of Trained Graduate Teacher (TGT), the State Government, in exercise of its power under Article 309 of the Constitution of India, enacted and notified Rules, known as the Himachal Pradesh, Education Department Class III (School and Inspection Cadre) Service Rules, 1973 (hereinafter referred to as the "TGT 1973 Rules"). 75% of the posts were required to be filled-up by direct recruitment and 25% by promotion, incorporating rules stipulating essential and mandatory educational qualifications, for appointment by both the methods of appointment.

5. On 22.10.2009, the State Government repealed these Rules by enacting new Rules, known as the Himachal Pradesh, Elementary Education Department, Trained Graduate Teacher, (Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2009 (hereinafter referred to as the "TGT 2009 Rules"). Here, for the first time, the concept of recruitment by "batchwise basis" was introduced by the State Government. Though prior thereto, concept of filling up the posts on "batchwise" basis stood codified by the State by way of Administrative instructions issued way back in the year 1974 itself, which is evident from communication dated 30.10.1974, addressed by the Under Secretary to the Director of Education, Himachal Pradesh, which reads as under--

I am directed to refer to your letter No. EDN.H(2)-5/74, dated the 2nd September, 1974 on the above subject and to convey approval of the Government to adopting the criteria of session-wise selection of candidates for appointment to the posts of trained graduate teachers in the Education Department and determining the inter se seniority in the same batch on the basis of merit.

6. In 1981, certain posts to be filled up on batchwise basis, were taken out of the purview of the Public Service Commission, by Notification dated 23.12.1981, whereby the H.P. Public Service Commission (Exemption from Consultation) Regulations, 1973, were amended.

7. The "TGT 2009 Rules" were amended vide Notification dated 16.7.2011, revising the prescribed essential eligibility criteria, i.e. educational qualification. Later on vide Notification dated 31.5.2012, State further amended these Rules, specifically providing that "the date of issuance of original professional certificate recorded on the detail marks card of final professional examination of the candidate by the concerned University, shall be deemed date for reckoning the

batch seniority of the candidate".

8. Significantly, on instructions from the State, it stands clarified by the learned Advocate General, that practice adopted by the State, for reckoning the batch seniority of a candidate, is the year commencing from 1st, January to 31st, December of passing professional examination as recorded in the detailed marks certificate. This date was considered as a "batch" for "batchwise" appointment. Inter se merit amongst the candidates obtaining the final professional examination certificate in the same year was determined on the basis of academic record of the candidate.

9. For filling up the post of Physical Education Teacher (PET), the Government of Himachal Pradesh notified the Himachal Pradesh, Elementary Education Department, Physical Education Teacher Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2010, vide Notification dated 10.1.2011 (hereinafter referred to as the "PET 2010 Rules"). 50% of the posts were to be filled up by the Department on "batchwise" basis, from amongst the eligible candidates fulfilling the criteria of educational qualification. Noticeably, hitherto before, these posts were filled up in accordance with the "TGT 1973 Rules".

10. We note that with regard to posts of Medical Officer (Dental), on 18.8.2010, the State Government notified Rules, known as the Himachal Pradesh Health and Family Welfare Department (Civil Dental Services), Medical Officer (Dental) (Class-I, Gazetted), Recruitment and Promotion Rules, 2010 (hereinafter referred to as the "Medical Officer (Dental) Rules, 2010"), the concept of recruitment on "batchwise" basis was introduced.

11. Thus, it is abundantly clear that the Government has prescribed minimum eligibility criteria, including educational qualification, which a candidate has to fulfill for consideration for appointment. Now, what should be the date of such eligibility, in our considered view, is no longer res integra, as it stands settled by a series of decisions of Hon'ble Supreme Court.

12. The Apex Court in Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, holds that the eligibility-criteria, prescribing minimum educational qualification must be fulfilled on the last date fixed for submission of the application.

13. In Union of India (UOI) and Another Vs. Yogendra Singh, the Apex Court categorically held that a candidate, who aspires to be considered, must possess the educational qualification prescribed at the time of filling up of the post in question. A candidate, who does not possess the currently prescribed educational qualification, cannot be said to qualify or have any vested right to appointment, even against an earlier unfilled vacancy.

14. Whether a person, who is ineligible as on the date of receipt of application for recruitment to the post, but subsequently acquires eligibility before the date of interview, could be considered at all or not, was the question which came up for

consideration before the Apex Court in Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions The Court unequivocally held that only such candidates, who possessed all the qualifications as on the last date of receipt of applications, are alone eligible, for applying and being considered for recruitment. The view stands reiterated in Alka Ojha Vs. Rajasthan Public Service Commission and Another, M.A. Murthy Vs. State of Karnataka and Others, and Shankar K. Mandal and Others Vs. State of Bihar and Others,

15. In identical circumstances, the Apex Court in AIR 1998 91 (SC) reiterated that a "cut-off date" by which all the requirements of qualification(s) have to be met, cannot be ignored in individual cases, and no sympathetic view can be taken, for the reason that such action would in fact cause injustice to others who may have not applied.

16. Relying upon its earlier decision, the Apex Court in Alka Ojha Vs. Rajasthan Public Service Commission and Another, refused to exercise its power under Article 142 of Constitution of India for regularizing illegal appointments, by observing that such power cannot be exercised for conferring legitimacy to the appointment of candidates who were not even eligible to be considered for selection.

17. Rule prescribed in Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, stands reiterated by the Apex Court in Dolly Chhanda Vs. Chairman, JEE and Others, , holding that:

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark-sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. (p-781)

18. As to whether a candidate, acquiring prescribed qualification subsequent to the last date prescribed for filling the application for recruitment, can be considered eligible or not, was a question, which again came up for consideration before the Apex Court in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, wherein the Court reiterated:--

20. Possession of requisite educational qualification is mandatory. The same

should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application. (p.65)

19. The position stands reaffirmed by the Apex Court in *Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another*, In this case, the Court clarified that recruitment to a post must be made in accordance with the Rules operating in the field. Essential qualifications must be possessed by a person, as on the date of issuance of notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date. Even if there exists a provision for relaxation, the same must strictly be complied with.

20. The Apex Court in *Union of India and another Vs. Dayanand Khurana*, had an occasion to interpret the terms "same batch" and "subsequent batch". On the given facts, the Court held that:

.....It is clear from the Scheme that the officers who were approved for "Command and Staff" stream can be appointed both for "Command" as well as "Staff vacancies whereas the officers who were approved only for stream of "Staff Only" can only be appointed to the vacancies relating to "Staff" and cannot be appointed relating to vacancies for "Command". The expression "same batch" which is referred to in paragraph 9 of the letter dated June 1, 1987 is for the officers who were considered for selection at one time and not the individual batch of the Major General.....

.....It is mentioned, even at the expense of repetition, in paragraph 7 of the aforesaid communication dated June 1, 1987 that the Two Stream Concept envisages that the officers approved in the "Command and Staff" stream will be en-block senior to the officers of the same batch approved in the "Staff Only" Stream. The same batch here refers to the three types of officers who were considered for promotion in the 1957 batch. Again in paragraph 9 it was repeated "it is clarified, that as regards the seniority within the same batch is concerned, officers approved on the "Command and Staff" Stream continue to be senior to officers approved in the "Staff Only" stream". It was further clarified that "however, an officer of an earlier batch approved on the "Staff Only" stream will be senior to an officer of subsequent batch approved on the "Command and Staff" stream. Here the "subsequent batch" means the next batch of promotion. The expression "same batch" in the communications of September 22, 1986 and June 1, 1987 took colour from the context and not from the definition of "batch" given in paragraph 169 noticed earlier..... (pp. 492, 493, 494).

21. The concept of session-wise/batchwise selection was evolved and introduced by the State to give appointment by way of direct recruitment to candidates who

fulfilled the prescribed essential educational qualifications/criteria, in relation to the examination cleared for the year in which the batch stood admitted. There may be a candidate who may have taken admission in a particular academic session, but may not have cleared the prescribed examination for acquisition of mandatory educational qualification within the stipulated period of time. Such candidate cannot be considered in the batch of the academic session in which he is admitted. The intention of the Rule makers is evidently clear from the instructions imparted to the learned Advocate General of Himachal Pradesh by the Principal Secretary (Education) to the Government of Himachal Pradesh, that the "date of issuance of original professional certificate recorded on the detail marks card of final professional examination of the candidate by the concerned University, shall be deemed date for reckoning the batch seniority of the candidate. If more than one candidate is issued the final professional examination certificate on the same date, then inter-se-merit would be determined on the basis of academic record of the candidate, knowledge of customs/manners as well as Viva voce". This clarification does not supplant the Rules but only supplements their intention and application, which we find is consistent with the law laid down by the Apex Court considered by us (supra).

22. In our considered view, the expression "batch" necessarily would mean the date on which the candidate qualifies the examination and acquires the mandatory educational qualifications for consideration in accordance with the Rules. Any other interpretation would only do violence to the Rules/pre-existing practice and cannot be said to be just, fair, equitable and reasonable and would in fact result in absurdity. Admission of a candidate to an academic session on its commencement cannot be construed to be "batch" for the purpose of public appointment for the simple reason that as on the date for consideration, the candidate must have acquired the eligibility criteria, which is a sine qua non for consideration to any public post "Batch" is only an identification of a group, which is fully eligible for consideration. Equality must precede any priority of seniority of a batch in public appointments, which is the Constitutional mandate of Article 14. Doctrine of past practice is squarely applicable in the instant case. The practice adopted by the State over a continuous period of time, now stands accepted and codified with the enactment of the "PET 2010 Rules", which we find to be in consonance with the Constitutional principles considered (supra). The Legislative and the Executive intent is thus crystal clear. Where Rules are clear and explicit, the same have to be given effect to. We find that there is no ambiguity at all either in the Rules or the stand taken by the State, reflecting the practice adopted over a continuous period of time.

23. It is the settled position of law that a Statute is to be interpreted, ascribing plain meaning to the words used and the Court cannot read omission or introduce the principle of casus omissus, this principle is equally applicable to interpretation of statutory Rules. UCO Bank and Another Vs. Rajinder Lal Capoor,

24. The Apex Court in Union of India (UOI) and Another Vs. Hansoli Devi and

Others, has held:

9.....The rule stated by Tindal, C.J. in *Sussex Peerage case*, (1844) II CI & Fin 85 : 8 ER 1034, still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

It is a cardinal principle of construction of a Statute that when the language of the Statute is plain and unambiguous, then the Court must give effect to the words used in the Statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson & Co. Ltd.*, 1955 (2) All ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that (All ER 366 C-D)

A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.

It is no doubt true that if on going through the plain meaning of the language of Statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd. v. Vandray*, AIR 1920 PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words, so as to make the statute effective..... (p.280)

25. It is also settled principle of law that appointment made in violation of mandatory provisions of statute/rules and in particular, ignoring the minimum educational qualification and other essential qualifications would be illegal, which cannot be cured subsequently, by adopting a policy decision. (See: State of Himachal Pradesh Vs. Suresh Kumar Verma and another,

26. We are dealing with posts where successful candidates are teaching children, who need to be groomed and prepared to shoulder future responsibilities of the Nation. Aspirations of the Constitution makers, in fulfilling and achieving Constitutional goals, more particularly Part-IV of the Constitution, can only be fulfilled if the duty holders discharge their functions, duties and obligations with devotion, care and dedication. This onerous responsibility cannot be left in the hands of unqualified and ineligible candidates.

27. We are unable to persuade ourselves to agree with the view taken by the Division Bench in CWP No. 10737/2011-D, titled as Vimal Bharti v. State of H.P. and others, decided on 22.12.2011. The view taken by the Court in LPA No. 27 of 2010 titled as Satpal Singh Bhardwaj v. State of H.P. and others, decided on 26.5.2010, in our considered opinion, is the correct view.

We hold, that the date on which a candidate qualifies the examination and not the date on which he is admitted into the academic session, becomes relevant for construing the expression "batch"/"batchwise" for appointment to the public post.

Reference is answered accordingly. The appeal be placed before the appropriate Bench for hearing.