

(1979) 07 BOM CK 0021

In the Bombay High Court

Case No : Spl. C.A. No. 781 of 1972 with Spl. C. Application No's. 124/73, 125/73, 126/73 and 127/73

S.W. Phadke and others

APPELLANT

Vs

Union Government and others

RESPONDENT

Date of Decision : 04-07-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 16, 226, 227

Citation : (1980) MhLj 89

Hon'ble Judges : V. Mohta, J;B.C. Gadgil, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; R.R. Deshpande for respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

V. Mohta, J.—Common questions fall for determination in these 5 petitions by public servants invoking writ jurisdiction under Article 226 read with Article 227 of the Constitution of India. Their grievance is about practice of inequality in the matter of public employment. The petitioners are Junior Grade I Instructors in "National Fitness Corps Scheme" organised by the Government of India. The contention of the petitioners is that even though their appointment is on the basis of Ail India Cadre, their seniority has been fixed region wise and., therefore, this fixation is violative of Article 16 of the Constitution of India. Initially, a common petition by all these petitioners came to be filed on 7-7-1972. This petition was registered as Special Civil Application No. 781 of 1972. By order of this Court dated 17-7-1972 it was restricted only to the first petitioner, namely, Shri S. W. Phadke with liberty to file separate petitions individually. Subsequently, four additional petitions came to be filed sometime in September 1972 They were ordered to be heard together. Accordingly, they have been so heard and are being disposed of by this common judgment.

2. Brief facts, narration of which is necessary to deal with the points involved, are these :

The Union Ministry of Education as far back as in the year 1954 decided to organise a scheme known as "National Discipline Scheme" with the object of imparting integrated training to school going children of V to XI classes in physical education, auxiliary cadet corps and discipline etc. After working the scheme for about 7 to 8 years, a Committee was appointed by the Government of India known as "Kunzru Committee" to go into the details of the implementation of the said scheme. The said Committee submitted its report sometime in the year 1963 and on acceptance of the said report in the year 1964, the Union Government decided to rename the scheme as "National Fitness Corps Scheme" and made it compulsory for the students learning in V to XI classes, all over India.

3. A Directorate was established at Delhi to implement the said scheme in all the States of the Indian Union which was divided for the purposes of operation of that scheme into 7 regions. At each of the regional level, a post of Regional Director or Senior Supervisor was created who was made overall in charge of a particular region. Under each Regional Director, there were posts of Senior Supervisors, Supervisors, Instructors Senior Grade I, Instructors Senior Grade II, Instructors Junior Grade I and Instructors Junior Grade II. As the scheme was new, a training institute was conducted at a place known as "Sariska" near Alwar in the State of Rajasthan. The training was to be given to all personnel including the Regional Directors and the posts subordinate to them, though of course the qualifications for the posts were different. The lowest post was that of Instructor Junior Grade II and the highest promotion post was that of Regional Director. Thus, the post right from Junior Grade II Instructor to the post of Regional Director was to be considered promotion post while the Director General was to be appointed from Armed Services. With this set up, thus a person duly qualified could join as a Junior Instructor Grade II and could reach, if found fit, to the post of Regional Director. The trainees were getting Rs. 85 as stipend during the training period.

4. After completion of this training, the petitioners were appointed to the posts of Junior Instructors Grade II between 2-5-1963 and 22-5-1963. This post carried a Pay Scale of Rs. 95-3-131-EB-4-155. Undertaking was taken from the petitioners to the effect that they could be posted and subsequently transferred anywhere in India. Terms of appointment subject to which the petitioners were made public servants can be found at Annexure-A appended to Special Civil Application No. 124 of 1973. On the basis of this undertaking and the terms of appointment posting order was issued placing the petitioners at the disposal of Regional Director which in the case of all the petitioners has been of Western Division.

5. When the scheme was ushered in, the Government of India issued a set of instructions regulating the service conditions, conduct, discipline, seniority and promotion of all cadres. Those instructions are appended to Special Civil

Application No. 781 of 1972 as Annexure-B in which there is a Column bearing No. 13 relating to promotion and in which there is a further mention that promotions are decided by the "National Discipline Scheme Directorate, New Delhi" and not by the Regional Office. It appears that an integrated seniority list of the Junior Instructors Grade II on AH India basis came to be prepared by the Director General which was sent to various Regional Directors along with the accompanying letter dated 16-6-1971. It further appears that this was communicated to the petitioners by the Regional Director on 20-8-1971. In the said list, the petitioners found that some junior persons particularly respondents Nos. 4 to 22 who were not even made quasi-permanent were placed above them and indeed were promoted to Grade I Junior Instructors. The petitioner submitted a representation, a copy of which is appended as Annexure-E to the petition making a grievance that the seniority list was not prepared in accordance with law and promotion if any on regional basis had no legal sanctity under these circumstances. The petitioners received a reply dated 16-11-1971, a copy of which is appended to the petition as Annexure-F clarifying and also reiterating that the petitioners could not be promoted to the post of Instructor, Junior Grade I, because of regional seniority and for want of vacancies in particular region, namely, Western. The petitioner issued a notice on 23-2-1972 u/s 80 of the Civil Procedure Code, making a detailed grievance and calling upon the respondent to fix seniority on All India basis. The petitioners grievance is that they were not even favoured with a reply and hence they have been compelled to file these petitions.

6. It is in the back ground of these undisputed positions that various points urged before us by Shri C. G. Madkholkar, the learned Advocate for the petitioners have to be appreciated.

7. The learned Advocate urged before us that the services of the petitioners were of All India Cadre and, therefore, then promotions on the basis of seniority list prepared region wise, even if any, is violative of Article 16 of the Constitution of India. Shri R. R. Deshpande, the learned counsel for the Union of India, however, seriously disputed the claim of the petitioners and the only contention that he raised before us is that because the services of the petitioners are transferable on AH India basis that does not necessarily mean that the services were of All India Cadre. Having given our considered thought to the subject, we feel that the petitioners grievance is correct and that the stand taken by the Union of India and the other respondents is not sustainable in law.

8. Firstly, it is to be seen that admittedly in these cases the appointing authority is the Union of India and the scheme in which the appointments have been made is All India wise. Appointments initially were duly not made regionwise but were specifically made on the basis of one National level. The matter does not rest there. Before the appointment order is issued, undertaking is taken from the petitioners to the effect that their services are transferable anywhere in India and the appointments can also be made anywhere in India. It may be worthwhile

recording one of the terms of appointment from Annexure-A referred to above, which is as follows:

He is liable to serve anywhere in the Indian Union.

It will also be worthwhile recording the relevant extract, from the Instructions for the guidance of N. D. S Instructors, which is to the following effect:

13. PROMOTION.

Promotions are decided by the N. D. S. Directorate, New-Delhi and not by the Regional Office.

In fact, from the record, it appears that a Seniority List of All India basis was made but was not finalised perhaps due to administrative problem. Though there is a vague reference to the seniority list alleged to have been prepared regionwise, no such list is placed before us. Considering all the circumstances, the terms and the nature of the employment, we have no hesitation in accepting the contention raised in this connection on behalf of the petitioners that the services were of All India cadre. Having come to this conclusion that the services of the petitioners were not regionwise we see no difficulty in accepting the other point that in such a situation seniority could not be fixed regionwise. In our view, there is no reasonable nexus between such differentiation considering the nature of the office to which the recruitment is made. The differentiation in promotion between the members of the same cadre or class cannot have any legal sanction or justification. It is not permissible for the Union of India to appoint any person on All India cadre, to make the services transferable from one region to the other and on subsequent occasions to prepare a seniority list regionwise. Such a course, in our opinion, would be glaring example of denial of equality of opportunity for employment in public service. Our attention was also invited by Shri Madkholkar to certain extracts from the Return on behalf of Respondent No. 1, the Union Government, which are quoted hereunder:

..... According to this order, the candidate selected for training was liable to be transferred anywhere in India after the training. This did not, however, mean that promotions from Junior Grade II to Junior Grade I were to be made on All India basis. In fact, no All India seniority of Junior Grade I and II was maintained by the N. D. S. Directorate; and, by and large, the N. D. S. Instructors were posted in the same regions from where they were recruited..... Transfers from one region to another were made on certain unavoidable administrative reasons and on compassionate grounds..... It is submitted that in the year 1971, attempt was made by the erstwhile N. F. C. Directorate to prepare draft All India Seniority List of the N. D. S. Instructors but this was never finalised..... It is submitted that the requirement to serve in any part of the country had no bearing with the regional seniority list.

It is thus clear that discrimination has been practised without any rationale in the matter of promotion in the cadre.

It is no more debatable that the principle of equality in the matter of public employment applies not only at the initial stage of appointment but also at all subsequent stages including of promotion during employment.

9. Our attention was invited by the learned counsel for the petitioners to the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, in general and to the following passage in paragraph No. 15 of the said Judgment in particular:

It must be remembered that the cadre of Deputy Collectors is a State cadre and for promotion to such State cadre every Mamlatdar must have equal opportunity to be considered. Where promotion is made by selection on the basis of merit-cum-seniority, every Mamlatdar should be able to enter the lists; he should have equal opportunity with others for being considered for promotion. There must be one common door for entry into the cadre of Deputy Collectors through which every Mamlatdar should be equally entitled to enter, provided he is selected on the application of the principle of merit-cum-seniority. There cannot be six doors of entry, one door available exclusively for the Mamlatdars of each division. That is bound to create inequality of opportunity in the matter of promotion. It is true that confirmations in the cadre of Deputy Collectors are made on the basis of combined seniority list of officiating Deputy Collectors, but that does not cure the infirmity in the mode of promotion.

This case was of Deputy Collectors in a State cadre whose seniority was sought to be fixed on divisional basis. The Supreme Court struck down the action.

10. In our opinion, the principles laid down in the aforesaid case apply on all fours to the present petitioners. We, therefore, declare the procedure followed by the Union Government in preparing seniority list regionwise to be invalid on the ground that it denies equal opportunity of promotion and, therefore, hit by Article 16 of the Constitution and consequently quash the seniority list so prepared and direct that the petitioners should be treated as Instructors Grade 1 with seniority in the cadre from the day on which they were eligible to the promotion to that post on All India seniority basis.

11. In the result, the petitions are allowed with costs.