

(1999) 01 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 266 of 1992

V.K. Kapur and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 19-01-1999

Acts Referred:

Punjab Service of Engineers (Class II) Public Works Department (Buildings and Roads Branch) Rules, 1965 — Rule 6

Citation : (1999) 122 PLR 96

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : K.K. Jagia, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The three appellants were recruited as Junior Engineers. Vide order dated December 28, 1991 a copy of which is on record as Annexure P-1, the appellants were promoted as Sub- Divisional Engineers on ad hoc basis for a period of six months. Despite a categorical direction in the order for ensuring that "the period of those ad hoc promotions does not in any case exceed 6 months", the appellants were somehow allowed to continue working as Sub Divisional Engineers. In the year, 1988, they approached this Court through a petition under Article 226 of the Constitution with the prayer that a suitable writ or direction be issued to quash the guide-lines laid down by the State Government in the letter dated August 12, 1988. They further prayed that the respondents be directed "not to give effect to the above guide-lines". The appellants also prayed that the respondents be directed to recognise them as "having been regularly promoted as S.D.Es and thus not liable to reversion."

2. The learned Single Judge considered the matter at length. Even the original record was sent for. On perusal of the record, it was found that since suitable persons belonging to source No. (4) viz. "member of the Haryana PWD (B&R) Selectional Officers (Engineering) Services and the Draftsmen and Tracers

Service possessing the qualifications prescribed in Appendix "B" were not available, 9 posts had been diverted for being filled up by direct recruitment. The learned Judge found that there was no merit in the writ petition. It was, consequently, dismissed. Hence this appeal.

3. Learned counsel for the appellants has been heard.

4. Admittedly, the appellants had been promoted as Sub Divisional Engineers on purely ad hoc basis. It is not their claim that they were ever considered in accordance with the provisions of the statutory rules governing the appointment to the Class II service. The promotion was purely ad hoc. It has continued to be so. In this situation, the appellants had no right to the posts of Sub Divisional Engineers.

5. Mr. Jagia contends that the appellants have continued in service on the higher posts for a long time. It may be so. However, it is the admitted position that the appointment to the Class II posts is governed by the provisions of the Punjab Service of Engineers Class II PWD (Buildings and Roads Branch) Rules, 1965. Rule 6 lays down the method of recruitment. It is inter alia provided that the posts shall be filled up by direct recruitment as well as by promotion from the prescribed sources. Rule 7 lays down the qualifications. Rule 9 gives the procedure for promotion. According to this provision, the claims have to be considered by a Selection Committee. This Committee is charged with the responsibility of preparing a select list of suitable persons for promotion to the Service. The names have to be included in the list on the basis of merit and suitability in all respects with due regard to seniority. The list so prepared has to be revised every year. It has to be sent to the Public Service Commission for approval. Persons have to be promoted from the list as finally approved by the Commission. It is the admitted position that the names of the appellants have not been included in any list which may have been approved by the Public Service Commission so far. Thus, they have not been promoted to the posts in the Class II service in conformity with the rules. That being so, the prayer that the respondents be directed to recognise them as "having been regularly promoted as S.D. Es and thus not liable to reversion", cannot be accepted.

6. Mr. Jagia contends that the guide-lines issued by the State Government vide letter dated August 12, 1988 are wholly arbitrary and illegal.

7. By this letter, the Government had decided that "the list of eligible candidates for promotion should be prepared according to the seniority in the respective class, in accordance with the practice of the Department." It was further provided that "as and when senior employees acquire the higher qualification, their names should be considered for promotion. And the case of employees who having acquired the higher qualifications earlier are working on ad hoc basis against Class II posts beyond their promotional quota, but are thus rendered junior should be reviewed and if they do not fall within the range of seniority, they should be reverted." This decision is in complete conformity with law. It is

not shown to be violative of any of the provisions of the rules. It is not arbitrary. It is not unfair. It only ensures that if a senior becomes eligible by acquiring the requisite qualification, his claim should be considered and a junior person who has been promoted on ad hoc basis should make room for him. There is no infirmity in the order which may call for any interference. Thus, the prayer that the circular dated August 12, 1988 should be quashed or that the respondents should be restrained from acting upon it, cannot be accepted.

8. Learned counsel has further contended that no order has been passed to the prejudice of the appellants despite the circular. If it is so, one wonders as to why the appellants have challenged this order of the Government.

9. Mr. Jagia has also referred to the decisions of this Court in S.C. Diwan v. State of Haryana and Ors. 1991(4) S.L.R. 583, Deva Ram Bajaj v. State of Punjab and Ors. 1992 (1) R.S.J. 571 and C.D. Gupta v. State of Punjab 1992(1) S.C.T. 30.

10. We have perused these decisions. These have no application to the facts and the controversy as arising in this case.

11. No other point has been raised.

12. In view of the above, we find no merit in this appeal-. It is, consequently, dismissed. No costs.