
(1987) 01 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No. 2547 of 1985

Yogender Pal Singh and others

APPELLANT

Vs

Union of India others

RESPONDENT

Date of Decision : 23-01-1987

Acts Referred:

Constitution of India, 1950 — Article 16
Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 30, 32, 9
Delhi Police Act, 1978 — Section 147, 149
Punjab Police Rules, 1934 — Rule 12.14, 12.15

Citation : AIR 1987 SC 1015 : (1987) 1 JT 227 : (1987) 1 LLJ 337 : (1987) 1 SCALE 175 : (1987) 1 SCC 631 : (1987) 2 SCR 49 : (1988) 1 SLJ 7 : (1987) 1 UJ 569

Hon'ble Judges : K. N. Singh, J; E. S. Venkataramiah, J

Bench : Division Bench

Advocate : S.A.K. Dar and P.D.Sharma, for the Appellant; Anand Prakash, N.D.Garg and Sushma Relan Advs., for the Respondent

Final Decision : Dismissed

Judgement

E.S. Venkataramiah, J.—The above appeal by special leave arises out of a writ petition filed by the appellants in the High Court of Delhi for the issue of a direction to the Delhi Administration to appoint them as police Constables.

2. Prior to the coming into force of the Delhi Police Act, 1978 (Act No. 34 of 1978) (hereinafter referred to as 'the Act') with effect from the 1st day of July, 1978, there was in force in the Union territory of Delhi the Police Act, 1861. On the commencement of the Act, the Police Act, 1861 ceased to be in force in Delhi by virtue of Section 149 of the Act. The first proviso to Section 149(1) of the Act, however, provided that all rules and standing orders (including the Punjab Police Rules, as in force in Delhi) made under the Police Act, 1861 would be in so far as they were consistent with the Act be deemed to have been respectively made under the Act. Accordingly the Punjab Police Rules, 1934 as in force in Delhi which had been enacted under the Police Act, 1861 continued to be in force even

after the commencement of the Act. Chapter 12 of the Punjab Police Rules, 1934 contained the rules relating to the appointments and enrolments of Assistant Superintendents of Police, Deputy Superintendents of Police, Inspectors, Sergeants, Assistant Sub-Inspectors, Range Auditors, Head Constables and Constables. Recruitment to the cadre of Constables was done under rules 12.12 to 12.22 of the Punjab Police Rules, 1934. Rules 12.14 and 12.15 dealt with the status of the recruits, the qualifications, age and the physical standards which the recruits had to satisfy. Rules 12.14 and 12.15 of the Punjab Police Rules, 1934 read as follows:

12.14. Recruits-Status of. (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment.

(2) The enlistment in the police of Gurkhas of Nepalese nationality is absolutely forbidden. The enlistment of Gurkhas, who can prove British nationality or continuous domicile, is permitted, but only with the formal sanction of the Deputy Inspector-General. Before giving sanction the Deputy Inspector-General should verify the nationality of the proposed recruit by a reference to the recruiting Officer for Gurkhas.

(3) Sons and near relatives of persons who have done good service in the Punjab Police or in the Army shall, subject to the consideration imposed by Rule 12.12 have preference over the other candidates for police employment.

12.15. Recruits-age and physical standards of. (1) Recruits shall be not more than 25, or less than 18 years of age, at the time of enrolment, and shall have a minimum height of 5'-7" and normal chest measurement of 33", with expansion of 1 1/2 inches. These physical standards shall not be relaxed without the general or special sanction of the Deputy Inspector-General. A general reduction of the standard may be allowed by Deputy Inspectors-General in the case of special castes or classes, which provide desirable recruits, but whose general height does not come up to that prescribed. In such cases a standard of chest measurement and general physique shall be fixed, which will permit the enlistment of strong and well-proportioned youths of the class in question.

(2) The greatest care shall be taken to ensure that the age of every police officer is correctly recorded at the time of his enrolment and appointment. The record then made becomes of utmost importance when the question arises of an officer's right to pension, and is accepted as decisive in the absence of full proof both that the original entry was wrong and that the date of birth originally given was due to a bona fide mistake.

A copy of this rule shall be pasted inside the cover of the recruit register (form 12.13) and the attention of the Civil Surgeon shall be drawn to it.

Section 147 of the Act authorises the Administrator (Lt. Governor of the Union territory of Delhi) to make rules for carrying out the purposes of the Act. Clause

(a) of Section 147 (2) of the Act expressly states that such rules may provide for recruitment to, and the pay, allowances and all other conditions of service of the members of, the Delhi police under Clause (b) of Section 5. In exercise of the said power the Administrator (Lt. Governor of the Union territory of Delhi) promulgated the Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter referred to as "the Rules") providing for the appointments of Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. Rule 9 of the Rules laid down the procedure for the recruitment of the Constables. The said rule, as it was originally promulgated, read as follows:

9. Recruitment of Constables.-Delhi being a cosmopolitan city, it is imperative to attract candidates from all parts of the country.

(ii) The recruitment of constables shall be done twice a year in the months of January and July by the Board to be nominated by Commissioner of Police as per Rule 8.

(iii) The Commissioner of Police may also order special recruitment at any time if there are sufficient number of vacancies and the panels prepared earlier have exhausted.

(iv) A panel shall be drawn up of selected candidates on the basis of existing and anticipated vacancies. This panel shall be valid till the next recruitment is held.

(v) Physical, educational, age and other standards for recruitment to the rank of constables shall be as under:-

(a) Age 18-21 years Relaxable by 5 years for (i) Scheduled Caste/Scheduled Tribes candidates (ii) Sportsmen of distinction. (iii) Ex-servicemen as per Rule 28 of these rules. (b) Height 170 Centi- Relaxable by 4 centimeters meters for residents of Hill area e.g. Gurkhas, Garwalis. (c) Chest 170 Centi- Relaxable by 2 centimeters meters for residents of hill areas. (d) Educational Matric/Relaxable up to 9th pass tional Higher only for:- Qualified Secondary (i) Bandsmen, buglers, Education 10th of mounted Constables, drivers, 10 plus 2 despatch riders etc. (ii) for sons of police personnel who die in service. (e) Physical Sound state No relaxation permissible, standard of health, free from defect/ deformity/ disease, vision 6/12 without glasses both eyes, free from colour blindness. (f) Reserve (i) For Scheduled Castes, tion of Scheduled Tribes, Ex-service- vacancies men etc. as per orders issued by Government from time to time. (ii) For sons of police personnel not more than 5% of vacancies. (vi) The Commissioner of Police shall frame standing orders prescribing application forms and detailed procedure to be followed for conducting physical efficiency, physical measurement, written tests and viva-voce for regulating the above mentioned recruitment.

3. The Rules were amended by the Administrator (Lt. Governor of the Union territory of Delhi on May 2, 1983 and one of the amendments made on that occasion was the addition of Rule 32 to the Rules. The new Rule 32 of the Rules

read as follows:

All provisions contained in the Punjab Police Rules as applicable to the Union territory of Delhi, relating to appointments and recruitment of employees are hereby repealed, subject to the provisions as contained in the provisos to Sub-section (1) and (2) of Section 149 of the Delhi Police Act, 1978.

4. The Rules were again amended in 1985. On that occasion Rule 9 of the Rules which provided for the recruitment of the Constables was amended but we are not concerned with these amendments made in the year 1985 since we are concerned in this case with the rules which were in force prior to the above said amendment. Rule 30 of the Rules which is relevant for purposes of this case reads as follows:

30 Power to relax.-When the Administrator is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class, category, or persons or posts or in an individual case.

5. As stated at the commencement, this appeal arises out of the writ petition bearing no. C.W.P. No. 1891 of 1982 on the file of the High Court of Delhi filed under Article 226 of the Constitution. The said writ petition was filed by 23 petitioners, who were applicants for the posts of Constables in the Delhi Police Force governed by the Act, They prayed for the issue of a writ to the Delhi Administration to appoint them as Constables and for other consequential reliefs. None of them was fully qualified to be recruited as a Constable under the Rules. But being the sons of Delhi policemen, they depended upon an order dated 3.10.1981 passed by the Deputy Commissioner of Police Headquarters (I) Delhi under which he had relaxed the rules relating to the qualifications in favour of the sons or wards of Delhi policemen. The relevant part of the said order dated 3.10.1981 reads thus:

The wards of Delhi policeman should be given the following concessions in age, educational qualifications and physical standards, etc., for recruitment as Constables in Delhi Police:-

1. Age Upto 25 years 2. Educational 9th Pass Qualifications 3. Height 5'-5" 4. Chest -2" Relaxation. All those wards of Delhi Police Personnel who conform to the qualifications laid down above should be allowed to appear in the physical and written tests. Their forms should be accepted as it was being done before the introduction of New Rules.

The last date for acceptance of forms may be enhanced from 3rd Oct., 1981 to 15th October, 1981 and forms should be sold during holidays also.

sd/-A.K. Aggarwal

Deputy Commissioner of Police, HQ (1) Delhi

No. 19512-45/SIP dated Delhi, the 3-10-81.

6. The appellants were eligible to be considered for the appointment as Constables in the light of the order of relaxation referred to above but even then they were not sent up for training which they had to undergo before the appointment because six of them were found to be ineligible since their brothers had already been recruited in the Police Department by relaxing the rules of appointment in their favour. 15 of them were refused permission to join the training course on the ground that the Administrator (Lt. Governor of Union territory of Delhi) had not relaxed the qualifications in their cases. Two of them, however, had in fact received a letter stating that the Administrator (Lt. Governor of the Union territory of Delhi) had accorded sanction for relaxation for recruitment in their cases and they could join the training course with effect from 15.6.1982 but later on they were also denied admission into the Police force because their brothers had been recruited earlier the Delhi Police service after according relaxation. The order of relaxation in their favour had, therefore, been withdrawn. The appellants who were thus aggrieved by the denial of admission into the service preferred the above mentioned writ petition in the High Court for the issue of writ of mandamus to the Delhi Administration to appoint them as Constables on the ground that they satisfied the qualifications prescribed by the rules read with the order of relaxation dated 3.10.1981 referred to above.

7. The petition was resisted by the Delhi Administration. It was contended on behalf of the Delhi Administration that the order of relaxation which had been passed on 3.10.1981 was not a valid one because (i) it had been passed on the assumption that Rule 12.14(3) of the Punjab Police Rules, 1934 was in force on the date on which it was passed but in fact the said rule stood repealed on the coming into force of the Rules on 31.12.1980 framed u/s 147 of the Act and (ii) under Rule 30 of the Rules relaxation of qualifications could be made by the Administrator (Lt. Governor) not by the Deputy Commissioner of Police. The Delhi Administration further alleged that Standing Order No. 212 of 1981 had been issued in connection with the recruitment of Constables in Delhi Police and Clause 10 of the said Standing Order No. 212 read as follows:

10. RELAXATION:

(i) No relaxation in qualifications/standards mentioned in this Standing Order shall be given except in the cases and manner as laid down in the Delhi Police (Appointment and Recruitment) Rules, 1980.

(iii) Children of Police officers of subordinate rank serving or those who die in office will be granted 5 marks in the written test as bonus. Relaxation in other standards will not be given excepting with the sanction of competent authority.

8. Standing Order No. 212 of 1981 referred to above was further amended as follows:

The wards of the Delhi Policemen will, however, be given the following concessions in age, educational qualifications and physical standards, to enable them to take the physical and written tests :-

(1) Age Upto 25 years (2) Educational 9th Pass Qualification (3) Height 5'-5" (4) Chest 2 inches relaxation However, their enlistment would be done only in case of relaxation being granted by the competent authority and mere fact that a candidate has qualified in the test will not in itself give him a right to enlistment.

9. The Delhi Administration, however, agreed to grant relaxation to the wards of Delhi Policemen/Class IV employees only upto the limit of 7 1/2% of the total selection. Accordingly the Police authorities in charge of the selection of candidates recommended cases of 259 candidates out of a total of 420 candidates who came within the category of wards of Policemen/Class IV employees (within the limit of 7 1/2 % of the total selection) to the Delhi Administration for seeking approval of the competent authority on the basis of the following criteria:

"(i) Only one son of police personnel/class IV employee to be considered for grant of such relaxation.

(ii) First preference to be given to wards of deceased, retired and incapacitated policemen and class IV employees.

(iii) Selection of the remaining candidates to be done, in order of merit in the tests within the maximum permissible limit of 7 1 1/2% provided that they do not need relaxation in more than two standards.

(iv) With regard to Scheduled Castes and Scheduled Tribes candidates who are the wards of Delhi Police personnel, the lowering of the limit of qualifying percentage would also be applicable in addition.

10. The aforesaid recommendations having been accepted by the competent authority the police authorities allowed the candidates whose cases were covered by the above criteria and the fixed percentage of 7 1 1/2% of such appointment to join the training course. Since the case of the appellants were not covered by the above criteria they were treated as being not eligible to be appointed as Constables.

11. After hearing the learned Counsel for both the parties the learned Single Judge who heard the writ petition allowed it by his judgment dated July 21, 1983. He held that the Punjab Police Rules, 1934 continued to remain in force even after the promulgation of the Rules which came into force on 31.12.1980 and the cases of the appellants were protected by the relaxation order dated 3.10.1981 issued by the Deputy Commissioner of Police and the fact that any of the brothers of the appellants had been appointed earlier under the cover of similar order of relaxation did not disentitle the appellants to claim the benefit of the order of relaxation. The learned Judge was, therefore, of the view that the appellants were entitled to be appointed as Constables. Since two of the appellants had already been sent for training under the two letters of relaxation issued in their favour the learned Judge issued a writ directing the Delhi Administration to send the remaining 21 candidates also for training and to

appoint them as Constables after the completion of their training.

12. Aggrieved by the decision of the learned Single Judge the Union of India and the Delhi Administration filed an appeal before the Division Bench of the High Court in Letters Patent Appeal No. 157 of 1983. The Division Bench held that on the promulgation of the Rules with effect from 31.12.1980, Rule 12.14(3) of the Punjab Police Rules, 1934 which dealt with the subject of appointment of Constables stood repealed. It further held that under Rule 30 of the Rules the power to relax the Rules in appropriate cases having been vested with the Administrator (Lt. Governor of the Union territory of Delhi) the order of relaxation issued by the Deputy Commissioner of Police on 3.10.1981 did not give any right to the appellants for enlistment as Constables unless relaxation was granted by the competent authority i.e. the Administrator (Lt. Governor of the Union territory of Delhi) and the mere fact that a candidate was successful in the test by itself would not give him a right to enlistment. The Court further held that since by its letter dated April 3, 1982 the Delhi Administration had decided that only one son of a police officer would be considered for grant of such relaxation the appellants whose brothers had already been employed in the police service on the basis of an earlier order of relaxation were not entitled to be recruited by relaxing the Rules once again. Accordingly the judgment of the learned Single Judge was set aside by the Division Bench and the writ petition filed by the petitioners therein was dismissed.

13. Aggrieved by the decision of the Division Bench the appellants filed this appeal by special leave.

14. The first point which requires to be considered is whether the Punjab Police Rules, 1934 in so far as they related to the recruitment to the post of Constables was concerned were in force after the promulgation of the Rules on 31.12.1980. It is urged on behalf of the appellants that since Rule 32 which provided that "all provisions contained in the Punjab Police Rules as applicable to the Union territory of Delhi, relating to the appointments and recruitment of employees are hereby repealed, subject to the provisions as contained in the provisos to Sub-sections (1) and (2) of Section 149 of the Delhi Police Act, 1978" had been introduced by an amendment of the Rules on May 2, 1983 it must be presumed that the Punjab Police Rules, 1934 in so far as they related to the recruitment and appointment of Constables remained in force till May 2, 1983. The contention of the Delhi Administration is that the said rule had been introduced by way of abundant caution although in fact the Punjab Police Rules, 1934 had ceased to be in force on 31.12.1980 and the mere addition of Rule 32 did not have the effect of keeping the relevant Punjab Police Rules, 1934 alive after December 31, 1980. We are of the view that the Division Bench was right in accepting the plea urged on behalf of the Delhi Administration in this regard. Section 149(2) of the Act no doubt provided that the rules framed under the Police Act of 1861 would continue to be in force after the Act came into force in so far as they were consistent with the Act but at the same time Section 147 of

the Act authorised the Administrator (Lt. Governor of the Union territory of Delhi) to make rules regarding recruitment to, and the pay, allowances and all other conditions of service of the members of the Delhi Police under Clause (b) of Section 5. It is not disputed that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 and the rules promulgated on December 31, 1980 dealt with the identical subject, namely, the appointment and recruitment of Constables to the Delhi police service. Therefore, on the promulgation of the Rules on December 31, 1980 which covered the subject dealt with by Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 had the effect of repealing by necessary implication Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 even though initially there was no express provision in the Rules to the effect that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 stood repealed with effect from December 31, 1980. It is well-settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the later law. Applying the above test it has to be held in this case that Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 stood repealed with effect from December 31, 1980 and Rule 32 of the Rules which was introduced by way of amendment on May 2, 1983 had not the effect reviving Rule 12.14 and Rule 12.15 of the Punjab Police Rules, 1934 and keeping them alive beyond December 31, 1980 upto May 2, 1983. When once this conclusion is reached it follows that the appellants cannot rely upon Rule 12.14(3) of the Punjab Police Rules, 1934 which provided that "sons and near relatives of person who have done good service in the Punjab Police or in the Army shall, subject to the consideration imposed by Rule 12.12 have preference over the other candidates for police employment". Under Rule 30 of the Rules any relaxation should be made by the Administrator (Lt. Governor of the Union territory of Delhi) and not by the Deputy Commissioner of Police. Thus no reliance can be placed on the order of relaxation passed by the Deputy Commissioner of Police on 3.10.1981 and since by the letter dated April 3, 1982 the Delhi Administration had imposed an additional condition in respect of the wards of Delhi Policemen/Class IV employees that only one son of police personnel/Class IV employees would be considered for grant of such relaxation the appellants cannot claim that they were entitled to be recruited because admittedly their brothers had already been recruited in the Delhi Police service on the basis of an earlier order of relaxation. The appellants have not, therefore, made out any case in support of their plea.

15. We should, however, point out at this stage a fundamental defect in the claim of the appellants, namely, that Rule 12.14(3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons and near relatives of persons serving in the police service became unconstitutional on the coming into force of the Constitution. Clauses (1) and (2) of Article 16 of the Constitution which are material for this case read thus:-

16. (1) There shall be equality of opportunity for all citizens in matters relating to

employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

16. While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, the question relating to the constitutional validity of Section 6(1) of the Madras Hereditary Village-Offices Act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in Section 3, Clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the Constitution. The Court observed in that connection at pages 940-941 and 946-947 thus:

"Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds-religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16 Clause (1), quarantines equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention 'descent' as

one of the prohibited grounds of discrimination, whereas Article 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject.... (Pages 940-941).

There can be no doubt that Section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Article 16(2) of the Constitution." (Pages 946-947).

17. We are of opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards or children or relatives of the police officers has got to be negatived since their claim is based on 'descent' only, and others will thereby be discriminated against as they do not happen to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional. The appellants have not shown that they were otherwise eligible to be recruited as Constables in the absence of the order of relaxation on which they relied. Hence they cannot succeed.

18. We, however, make it clear that this judgment shall not affect the appointments of sons or wards of police officers already made by relaxing the Rules and they shall remain undisturbed.

19. In the result the appeal fails and it is dismissed. There shall, however, be no order as to costs.