

(1983) 07 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No. 1891 of 1982

Yoginder Pal Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-1983

Acts Referred:

Citation : (1984) 25 DLT 429 : (1983) 5 DRJ 357 : (1984) LabIC 542

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : S.A.K. Dhar, A.K. Dhar and O.P. Sharma, for the Appellant;

Judgement

A.B. Rohatgi, J.

(1) The future of these petitioners hangs in the balance. They are 23 Young men of about 25 years of age. They are "strong and well proportioned youths". They have chosen to become constables in the Delhi Police Department. They appeared at a test in October 1981. They first appeared at a physical test. After qualifying at the Physical test they were allowed to appear in the written test. At the written test they were declared successful. After this an order was issued to petitioner No. 1, Yoginder Pal Singh, the petitioner No. 2, Yash Pal Singh, in identical terms : Memo

"YOU are informed that the Lt. Governor Delhi has accorded sanction for relaxation for your recruitment for a post of Constable in Delhi Police. Therefore, you deposit your original educational certificates and declaration forms, given to you after medical examination duly filled in by you by date 28-5-1982 in this office, so that you are called for training with effect from 15-6-1982."

in all there are 23 petitioners. Out of them two have been Sent for training after the admission of the Writ Petition. Now 21 remain. They have not been sent for training though they have qualified at the written, physical and medical tests. So they have come to Court

(2) Out of these 21 petitioners 6 are those cases where their brothers were recruited in the police department earlier. But when the case of the second brother came for recruitment to the Delhi Police the appointment was declined on the ground that relaxation can be given only to one son of the police constables according to the policy formulated by the department. This policy says that only one son of the police personnel shall be considered for grant of relaxation. In the remaining 15 cases the respondents have refused to send them for training on the ground that the Lt. Governor has not given them relaxation.

(3) All the petitioners rely on the order dated 3-10-1981 which is in the following terms:

"THE Wards of Delhi Policemen should be given the following concessions in age, educational qualifications and physical standards, etc., for recruitment as Constables in Delhi Police : - 1. Age up to 25 years 2. Educational Qualifications 9th pass 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.

(4) 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 (I) Delhi. No. 19512-45./SIP dated Delhi, the 3-10-81."

(5) The petitioners rest their case on this order. This is the cornerstone of their claim. All the petitioners are the wards of Delhi Policemen. They are their sons. 6 of the petitioners have been declined appointment on the ground that their brothers were given relaxation once in 1975, 1976 and 1977. In the remaining cases of 15 petitioners the only answer of the department is that the above order does not apply to them and that the power rests with the Lt. Governor to give relaxation or not to give relaxation in education qualification, physical standards, etc. There is no dispute before me that if the above order applies, all the petitioners are entitled to be sent up for training and to be appointed as constables.

(6) The petitioners' case is that the order dated 3-10-1981 was passed under the Punjab Police Rules, 1934 (P.P. Rules). The following are the relevant rules for our purpose : (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(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 1.5 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 those 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."

(7) It will be seen from Rule 12.14 that "sons and near relatives" of persons who have done good service in the Punjab Police or in the Army are entitled to a preference over other candidates for police employment. Rule 12.15 prescribes age, physical standards etc. for recruitment and gives power to the Deputy Inspector General to relax these standards. The above order dated 3-10-81 seems to have been made under P.P. Rules 12.15 read with 12.14(3). So there is an order of relaxation in favor of the wards of the Delhi Policemen. On the basis of this order petitioners I and 2 were called for training. But they have not gone for training so far. Why ? One does not know.

(8) The short question for decision is whether the order dated 3-10-81 is still in force. It was passed in 1981. The department cannot argue against its own order. This is exactly what they are seeking to do in this case. But this cannot be allowed. (State of Assam v. Raghuva Rajgopalachari 1972 Slr 44. The respondents to this writ petition cannot be allowed to attack their own order as respondents. Mr. O.P. Sharma on behalf of the police department says that after the Delhi Police Act 1978 which came into force on 1-7-1978 and the Delhi Police (Appointment and Recruitment) Rules 1980 which came into force with effect from 31-12-1980 the Punjab Police Rules stood repealed by necessary implication, if not expressly. The question for decision is whether the P.P. Rules continue to be in force or they have been repealed by necessary implication as is the contention of the counsel.

(9) A short history of the Police Act may be traced here. There was a Police Act of 1861. The P.P. Rules of 1934 were framed under that Act. The Act and the P.P. Rules were extended to Delhi. In 1978 the Delhi Police Act was passed. Section 149 says :

"CESSER of operation of certain enactments and savings. (1) On the commencement of this Act the enactments specified in Schedule Ii shall cease to be in force in Delhi : Provided that:- (1) all rules and standing orders made (including the Punjab Police Rules, as in force in Delhi), appointments made, powers conferred, orders made or passed, directions and certificates issued, consent, permit, permission or license given, summons or warrants issued or served, persons arrested or detained or discharged on bail or bond. search warrants issued, bonds forfeited and penalties incurred under any such enactment shall, in so far as they are consistent with this Act, be deemed to have been respectively made, conferred, passed, given, issued, served, arrested, detained, discharged, forfeited or incurred under this Act ;

(10) Schedule Ii of the Delhi Police Act declares that the Police Act of 1861 shall

cease to be in force in Delhi on the commencement of the Delhi Police Act. So the Police Act of 1861 does not apply to Delhi now This much is certain. But the question remains : Do the P.P. Rules also cease to have force in Delhi ? In my opinion the proviso makes it quite clear that all " rules including the PP. Rules as in force in Delhi, in so far as they are consistent with the Delhi Police Act of 1978, shall be deemed to have been made under the Delhi Police Act of 1978. The proviso saves the P.P. Rules. It gives them a new lease of life. They do not cease to have force, though the parent Act under which they were framed has ceased to apply in Delhi. So the question of implied repeal does not arise because the Delhi Police Act has expressly saved them by enacting a proviso to Sec 149, I have Therefore no hesitation in rejecting the argument of Mr. Sharma that the P.P. Rules have impliedly been repealed.

(11) The Department's own conduct clearly shows that they are applying these rules on the assumption that they continue to be in force in Delhi.

(12) The petitioners have produced three orders dated 1-5-1982, 20-5-1982 and 1-7-1982 by which thousands of persons were enlisted in Delhi Police during the same period and as a result of the same test at which these petitioners appeared. In these three orders it is expressly stated that "Punjab Police Rules as applicable in Delhi Police will be applicable to these persons who have been enlisted by these orders."

(13) The petitioners have also brought on record the minutes of certain meetings at which the officials of the Delhi Administration and the Police Department were present. At these meetings which were held on 5-5-1982 and 8 3-1982 the question mooted was whether the P.P. Rules still continue to be in force notwithstanding the enforcement of a new set of rules promulgated as the Delhi Police (Appointment and Recruitment) Rules 1980 under the Delhi Police Act. At these meetings a decision was taken that unless a new rule in the form of Rule 32 is enacted in the following form, the P.P. Rules till continue to be in force in Delhi. The suggested draft of the proposed Rule 32 is in these words :

"WITH the coming into force of these rules, the corresponding provisions contained in Ppr relating to appointments and recruitments shall stand superseded and these rules shall operate and be in force, subject to the provisions as contained in the proviso to Subsections (1) and (2) of Section 149 of the Delhi Police Act, 1978".

(14) This suggests a specific rule superseding the P.P. Rules. This suggestion was forwarded by the Delhi Police Department to the Joint Secretary (Home) Delhi Administration so that this amendment may be carried out in the rules by issuing a notification. Nothing of the kind has been done so far. So the position remains that the P.P. Rules continue to be in force in Delhi. This is the conclusion I have arrived at in this case.

(15) If the P.P. Rules continue to remain in force as I hold them to be the conclusion is inescapable that the relaxation order dated 3-10-81 was validly

issued because P.P. Rules give power to relax. And the petitioners' case is founded on this relaxation order, as I have said. This relaxation has been made in favor of the wards of the Delhi Policemen. If the petitioners come within the relaxations regarding age, educational qualifications, height and chest etc. there is no reason why they should not be taken in service if they have qualified, at the tests. This is what has been denied to 15 of these petitioners, namely, petitioners Nos. 3,4,5,7,8,10,11,13,14,17,18,19,21,22 and 23. The remaining 6 petitioners Nos. 1,2,16, 9,20 and 6 have been denied appointment on the ground that one of their brothers was accorded a relaxation in 1975, 1976 or 1977. Petitioners 12 and 15 do not claim any relief since they have been appointed as constables after the admission of this writ petition.

(16) With regard to six petitioners who have been denied appointment on the ground that one of their brothers was accorded a relaxation in 1975, 1976 or 1977 I think the action of the department is illegal because it is contrary to the express wording of Sub-rule (3) of Rule 12.14 of the P.P. Rules. Sons and even near relatives of the police personnel are entitled to have preference over other candidates for police employment. It is not the case before me that this provision of public employment is invalid because no one from outside has come to challenge the validity of this provision. In 1975, 1976 and 1977 the Government itself acting under this very provision granted relaxation. Now they deny relaxation because they say that it can be availed of only by one son of a policeman. I find there is no such restriction in Subsection (3). If the Government itself makes a special provision as it does by making the order dated 3-10-81 in favor of the wards of the Delhi Policemen, there is no good reason why the provision of Sub-rule (3) of Rule 12.14 should also not be followed in cases of sons and near relatives of police constables.

(17) Mr Sharma on behalf of the police department has drawn my attention to a letter of Mr. M.K. Singal, Additional Commissioner of Police, dated 30-4-1982 addressed to Secretary (Home) Delhi Administration. In this letter it is said that "only one son of police personnel/class Iv employees shall be considered for grant of such relaxation." This is directly opposed to the P.P. Rules. P.P. Rules so long as they are in force will prevail over this decision of the Additional Commissioner of Police. This letter further says that the maximum permissible limit for relaxation shall be 7% per cent provided that relaxations are not required in more than two standards. If the decision regarding one son cannot hold good this also cannot hold good in the face of the P.P. Rules. So long as the P.P. Rules do not cease to be in force these decisions taken by the police will not be valid because they do not have the force of rules.

(18) For these reasons I allow the writ petition of all the petitioner except petitioners 12 and 15 as they have already been appointed as constables. The petitioners will be appointed as constables and will be given the required training subject to fulfilling the requirements of the order dated 3-10-81. Seniority of these petitioners will be reckoned from the date when their colleagues were sent

for training and were appointed as constables. Future increment and other benefits will be given on that basis. No pay will be given for this period. Pay will be given from the date of their appointment. The Government will implement this order of appointment and training within 3 weeks from today. There will, however, be no order as to costs.