

State of Haryana, Etc. Etc.

Vs

Shamsher Jang Bahadur, Etc. Etc.

Civil Appeals No. 1639 to 1641 of 1968 and Nos. 31, 1279 and 2227 of 1969

(G. K. Mitter, K. S. Hegde, A. N. Grover JJ)

19.04.1972

JUDGMENT

HEGDE, J. –

1. These appeals by certificate raise two common questions of law for decision viz., whether the Government can by administrative instructions add to the conditions of service relating to the promotion of a Government servant, prescribed under Article 309 of the Constitution and further whether such an addition requires an approval of the Central Government under Section 115 of the States' Re-organization Act 1956.
2. For deciding the two questions of law formulated earlier, it would be sufficient if we refer to the facts of any one of the aforementioned cases. Hence we shall refer to the fact in the Civil Appeal No 1639 of 1968.
3. Shamsher Jang Bahadur, the respondent in that appeal joined Government services as a clerk in the erstwhile Pepsu Secretariat on January 3, 1955. Pepsu State became a part of the State of Punjab on November 1, 1956, under the Provision of the States' Re-organization Act, 1956. Shamsher Jang Bahadur was provisionally promoted as an assistant on December 9, 1959, in the Punjab Civil Secretariat at Chandigarh. He was reverted as a clerk on February 3, 1960 on the ground that he failed to qualify the test prescribed under the certain administrative instructions issued on June 21, 1958. He filed a civil suit challenging the reversion. The suit was decreed by the trial court. That decree was affirmed by the appellate court. The High Court of Punjab and Haryana dismissed the Second Appeal filed by the State. Somewhat similar are the facts in the other appeals.
4. It was conceded before us that the appellant at the relevant time were governed by the Punjab Civil Secretariat (State Service Class III) Rules, 1952 (to be hereinafter referred to as the Rules), in view of certain instructions issued by the Central Government under the provisions of the States' Re-organization act, 1956. Hence it is not necessary to refer to the Pepsu Secretariat Service, Recruitment, Promotion, Punishment and Seniority Rules, 1952.
5. Rule 6 of the 'Rules' regulates the appointment of Assistant by promotion. The relevant portion of that rule reads :

"6(1) Post in the Service shall be filled -

#(a) X X X(b) X X X(c) X X X(d) X X X(e) X X X##

(f) in the case of Assistants

#(i) X X X##

(ii) By promotions of Senior Clerks; or

(iii) By selection from among officials employed in departments of Government other than the Civil Secretariat.

#6(2) X X X##

6(3) Appointment to any post by the promotion of the officials already in the service or by transfer of officials employed in Government departments other than Civil Secretariat shall be made strictly by selection, and no official shall have any claim to such appointment as of right."

6. On June 21, 1958, the Government issued instructions to the effect that 25 per cent. of the vacancies in the cadre of Assistants in the Punjab Civil Secretariat will be filled by appointments of suitable personnel from serving officials in the Offices of the Head of the Departments in the State while the remaining 75 per cent. will be filled by promotions from amongst the clerks in the Punjab Civil Secretariat. Clause (b) of that order provides :

"For the purpose of appointment of an officials from the offices of the Heads of Departments as Assistants in the Punjab Civil Secretariat as also for promotion of clerks of the Secretariat to the posts of Assistants in the cadre, a test-separately will be held by the Punjab Public Service Commission. For officials belonging to the offices of Heads of Departments, this test will be a competitive one and for Secretariats Clerks it will be a qualifying test. As at present this test will be conducted simultaneously in accounts as also in Noting and Drafting. The question as to what standard of account test it would be fair to expect of the examines is being considered separately."

7. It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribes under the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in *Sant Ram Sharma v. State of Rajasthan and Another* ((1968) 1 SCR 111.), that while the Government cannot amend or supersede the statutory rules by administrative instructions. If the rules are silent on any particular point, the Government can fill up the gap and supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned, so far as relate to the clerks in the Secretariat amend or they alter the condition of service prescribed by the rules framed under Article 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of services. The instructions issued by the Government undoubtedly affects the promotion of concerned officials and therefore they relate to their conditions of services. The Government is not competent to alter to alter the rules framed under Article 309 by means of administrative instructions. We area unable to agree with the contention of the State that by issuing the instructions in questions, the Government has merely

filled up the gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules.

8. There is a further difficulty in the way of the Government. The additional qualification prescribed under the administrative instructions referred to earlier undoubtedly relates to the conditions of service of the Government servants. As laid down by this Court in Mohammed Bhakar and Others v. Y. Krishna Reddy and Others (1970 SLR 768.), any rule which affects the promotion of the persons relates to his conditions of service and therefore unless the same is approved by the Central Government in terms of proviso to sub-section (7) of Section 115 of the States' Re-organization Act, 1956, it is invalid as it violates sub-section (7) of Section 115 of the States Re-organization Act. Admittedly the approval of the Central Government had not been obtained for issuing those instructions. But reliance was sought to be placed on the letter of the Central Government, dated March 27, 1957, wherein the Central Government accorded advance approvals to the State Government regarding the changes in the condition of service obtaining immediately before November 1, 1956, in the matter of traveling allowance, discipline, control, classification, appeal, conduct, probation, and departmental promotions. The scope of that letter has been considered by the court of Mohammed Bhakar's case (supra). Therein this Court held that the letter in question cannot be considered as permitting the State Government to alter any conditions of service relating to promotion of the affected Government servants.

9. For the reason mentioned above these appeals fail and they are dismissed with costs.

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