

State of Punjab

Vs

S. P. Sharma

and

State of Punjab

Vs

Harbant Singh

Civil Appeals Nos. 1678 and 314 of 1970

(D. G. Palekar, A. Alagiriswami JJ)

27.07.1973

ALAGIRISWAMI, J. -

1. The question that arises in these two appeals is the same as arose in the judgment of this Court in Shamsher Jang Shukla's case reported in the (1972) 2 SCC 188. The respondents in these cases are officials of the Punjab Government, the history of whose services is the same as that of the persons whose cases were dealt with in that judgment. On the basis of that judgment these two appeals have to be dismissed. However, an application, C.M.P. No. 193 of 1973, has been filed in C.A. No. 1678, of 1970 for amendment of the written statement and for urging additional grounds in the appeal. By that petition the appellant wants to contend that since the post of Assistant, for which the passing of the examination which was struck down in the reported judgment was made a necessary qualification under the rules, was newly created and there was no such post earlier there is no question of changing the service conditions of the respondent to his disadvantage, and Section 115(7) States Reorganisation Act, 1956 would, therefore, not apply. We consider that it is too late in the day to permit the appellant to amend its written statement and allow it to urge the additional grounds in this appeal. It would necessitate the matter being remanded to the trial court for establishing various facts as for instance whether in the Pepsu State, in which these respondents were originally employed there was any necessity for clerks to pass any examination before they could be promoted to a higher post, what that higher post was, and what was the equivalent post in the Pepsu Secretariat to the post of Assistant in the Punjab Secretariat. That apart the fact that there was no post of Assistant in Pepsu secretariat would not affect the merits of the question. The post of Assistant is not the only step in the official hierarchy nor is it final step. Therefore, if the passing of an examination is made a prerequisite for a Clerk to be promoted as an Assistant, he can never hope to get any promotion except by passing an examination and becoming an Assistant. There is, therefore, clearly a change in the conditions of service of the respondents contrary to the provisions of Section 115(7) of the States Reorganisation Act, 1956. We, therefore, dismiss the Civil Miscellaneous Petition No. 193 of 1973, and these two appeals are also dismissed. The appellant will pay the respondent's costs in C.A. No. 1678 of 1970. There will be no order as to costs in C.A. No. 314 of 1970 as the respondent did not enter appearance.

2. There are nine special leave petitions. Respondents in S.L.P's. Nos. 250, 785 and 1010 of 1972 and 419 of 1973 are represented by counsel. These three petitions as well as six other Special Leave Petitions Nos. 307 and 602 of 1970 and 249, 2308-2309 and 2816 of 1972, in which no notice has yet been issued to parties, have been kept pending because of the pendency of these two appeals. As a consequence of dismissal of these two appeals, these Special Leave Petition will also stand dismissed. The petitioner will pay the costs of respondents in the first mentioned three petitions in which counsel have appeared on behalf of the respondents. There will be no order as to costs in the other Special Leave Petitions.

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