

N. S. Mehta and Others

Vs

Union of India and Others

Writ Petition No. 156 of 1972

(CJI M. H. Beg, A. C. Gupta, P. S. Kailasam JJ)

20.04.1977

JUDGMENT

BEG, C.J. –

1. This is a petition under Article 32 of the Constitution praying for a writ of certiorari, or a writ of mandamus, or, any other appropriate writ, order or direction for the enforcement of the fundamental rights of the petitioners under Articles 14 and 16 of the Constitution. The petitioners have been working as Upper Division Clerks and pray for the quashing of a list, issued with Office Memorandum dated February 7, 1972, for making promotions to the next grade of Assistants on which the names of respondents 4 to 203 appear but not those of the petitioners. They claim that the principles of seniority, contained in the Ministry of Home Affairs' O. M. dated June 22, 1949, as interpreted by this Court in *Union of India v. Ravi Varma* (1972) 2 SCR 992 : (1972) 1 SCC 379), had not been applied to them. The contention seems to be that the last mentioned decision contained an invariable mechanical rule of seniority applicable to all classes of services so that nothing beyond length of service in a particular grade could determine seniority. It was alleged that the impugned list was formulated in an arbitrary fashion. Hence, the petitioners complain of violation of Articles 14 and 16 of the Constitution.

2. In paragraph 6 of the petition it was stated that even persons appointed nine or ten years after the petitioners had been promoted as long ago as 1969 to the grade of Assistants to which the petitioners put forward their own claims. It was also stated that a large number of persons have superseded the petitioners but a few names only have been mentioned from amongst them. The whole case of the petitioners thus rests on the submission that nothing beyond length of service must determine the place on the list for promotion to the grade of Assistants.

3. The petitioners allege a common cause of action inasmuch as the impugned list of February 7, 1972 affects all of them. They claim that all of them should have been governed by the principles contained in the Memorandum of June 22, 1949. This Memorandum (Annexure 'C' to the petition) shows that it was only directory laying down a general rule of seniority which was presumably subject to other exceptional factors which could also be taken into account. Hence, an alleged violation of the rule of seniority according to length of service was not decisive even according to this Memorandum.

4. The counter-affidavit filed by Shri P. L. Gupta, Deputy Secretary to the Government of India, given the long history of a scheme which culminated in the promulgation of the statutory rules framed under Article 309 of the Constitution of India, called the Central Secretariat Clerical Service Rules, 1962, by the President of India. It shows that the scheme of 1949 was given a final shape by

the Cabinet in 1954 and became effective from May 1, 1954. Under the scheme, as finally framed, it was provided that those officers who were otherwise eligible for confirmation in the services at the initial constitution, should also pass a typewriting test to be held by the Union Public Service Commission within a period of two years from May 1, 1956. It appears that the confirmation of the initial constitution of the service was delayed until 1958.

5. Some of the rather ambiguous assertions of the petitioners suggest that their case is that they had been appointed to an Upper Division grade on a regular basis so that their seniority must date back to their date of promotion. This suggestion was controverted by the respondents who alleged that the petitioners had been only allowed to continue provisionally on a temporary basis in the grade of Upper Division Clerks. It was stated, in the counter-affidavit, that a typing test had to be passed within two years of May 1, 1958, those who did not come within this class came in the class of the petitioners who were serving on an ad hoc or temporary basis. Hence, it was submitted that those who had passed the typewriting test within two years of the fixed date belong to another category altogether. The respondents, therefore, submit that there has been no contravention of Articles 14 and 16.

6. Serious grounds of objection to the petitioner's case are three fold : firstly, that there was a reasonable criterion for the difference made between the cases of the petitioners and those placed on the impugned list of February 7, 1972 who are above the petitioners because they have passed the prescribed typing test so that Articles 14 and 16 of the Constitution could not be said to have been violated in this case whatever else may have been infringed; secondly, that the petitioners, not having assailed the order of confirmation of the scheme on May 1, 1958, prescribing a reasonable ground for distinction between the class of cases in which typing test had been passed, to which the contesting respondents in the impugned list belong and the class of the petitioners, which had not passed this test, the petitioner could not challenge the impugned scheme of 1972 at all; thirdly, a number of persons had been promoted and put above the petitioners since 1962, acting under the scheme providing the typing test, so that there was inordinate delay in filing the petition under Article 32 of the Constitution on April 24, 1972.

7. In their Writ Petition the petitioners have no doubt challenged the validity of Rule 17 of the Central Secretariat Clerical Service Rules for inconsistency with the Memoranda of June 22, 1949 and December 22, 1959 and alleged that this also constitutes a violation of Articles 14 and 16 of the Constitution. This rule was among rules notified on September 28, 1962. It lays down as follows :

17. Seniority. (1) The relative seniority of members of the Service appointed to any Grade before the appointed day shall be regulated by their relative seniority as determined before that day.

Provided that if the seniority of any such officer had not been specifically determined before the appointed day it shall be as determined by determined by the Department of Personnel in the Cabinet Secretariat.

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Provided further that the seniority of an officer referred to in the proviso to clause (a) of Rule 2 shall be determined by the Department of Personnel in the Cabinet Secretariat by taking into account the continuous length of regular service rendered before the appointment day by such officer in the grade of lower Division or in any

higher grade in the offices of the Central Government.

(2) All permanent officers included in the initial constitution of a Grade under Rule 7 shall rank senior to all persons substantively appointed to that Grade with effect from a date after the appointed day, and all temporary officers included in the initial constitution of a Grade under that rule shall rank senior to all temporary officers appointed to that Grade after the appointed day.

(3) Except as provided in sub-rules (4) and (5), the seniority of persons appointed to the two grades of the service after the appointed day shall be determined in the following manner, namely :

#### I. UPPER DIVISION GRADE

(I) Permanent Officers - The seniority inter se of officers substantively appointed to the Grade after the appointed day shall be regulated by the order in which they are so appointed to the Grade.

(ii) Temporary Officers - The seniority inter se of temporary officers appointed to the Grade after the appointed day shall be regulated as follows, namely :

(a) Persons included in the Select List for a Grade shall rank senior en bloc to those not included in the Select List.

(b) The seniority inter se of persons included in the Select List shall be in the order in which their names are included in the Select List.

(c) The seniority inter se of persons not included in the Select List shall be regulated by the order in which they are approved for long term appointed to the Grade.

Rule 7 provides as follows :

7. Initial Constitution of each cadre - The permanent and temporary officers of each Grade in each cadre on the appointed day shall be as determined by the Department of Personnel in the Cabinet Secretariat.

8. We find that, acting under Rule 7 set out above the Government of India had issued an order on November 12, 1962 allotting permanent and temporary officers of the Upper Division grade to the Central Secretariat Clerical Service. Apparently, that allotment also determined the order of seniority. In other words, the rule relating to the passing of a typing test had been followed for a period and had actually been given effect to under the statutory rules in promotions made and lists drawn up. This explains the petitioners' challenge to the validity of Rule 17.

9. We are unable to see how a rule prescribing a typing test is unconnected with the duties of Clerks who desire a promotion to the next grade. We do not find that a discrimination made on such a ground could violate. Article 14 or 16 of the Constitution whatever else it may be said to violate. It is not necessary for us to hold that a violation of a statutory or other kind of rule in a particular case cannot amount to a violation of Articles 14 and 16 of the Constitution. There may also be cases in which a rule made is ultra vires for unreasonableness or on any other ground and should not be deemed to exist. In such a case, if the rule is enforced, it may, on the facts of the particular case,

amount to a violation of Articles 14 and 16 of the Constitution also. The case before us does not appear to be such a case at all. It seems to be covered by what this Court said in *P. C. Sethi v. Union of India* (1975) 3 SCR 201 : (1975) 4 SCC 67 : 1975 SCC (L & S) 203), with regard to the Office Memorandum of June 22, 1949 (at pp. 207-208) :

-the Office Memorandum of June 22, 1949, is no bar to the Government in making separate provisions for the mode of constitution and future maintenance of the service of Assistants. There is, therefore, no obligation under the aforesaid Office Memorandum on the part of the Government to enforce a rule of bald length of continuous service irrespective of other considerations when the service was sought to be reorganised and reinforced. As noticed earlier the service had to be reconstituted and the temporary Assistants properly absorbed keeping in view the question of quality and efficiency as well as at the same time regard being had to accommodate as large number as possible for gradual absorption. In doing so we are unable to hold that the Government has violated the provisions of Article 14 or 16 of the Constitution. The classification under the instructions for the constitution of regular temporary establishment in the manner done cannot be characterised as unreasonable in view of the object for which these had to be introduced in re-efficiency in the service. There is no discrimination whatsoever amongst the equals as such nor any arbitrary exercise of power by the Government.

10. This Court has also explained in *Joginder Nath v. Union of Indian* (1975) 2 SCR 553 : (1975) 3 SCC 459 : 1975 SCC (L & S) 2) and *Amrit Lal Berry v. Collector of Central Excise, New Delhi* (1975) 2 SCR 960 : (1975) 4 SCC 714 : 1975 SCC (L & S) 412), the principles on which this Court will interfere under Article 32 of the Constitution for an alleged violation of Articles 14 and 16 of the Constitution. It is also explained there how delay in invoking the jurisdiction of the Court, which may create equitable rights of others, may give rational grounds for discrimination so that it would cease to be a case of any violation of Articles 14 and 16 at all. We think that the principles laid down in the cases mentioned above apply here.

11. Consequently, we dismiss this Writ Petition, but, in the circumstances of the case, the parties will bear their own costs.

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