

Ram Sarup

Vs

State of Haryana and Others

Civil Appeal No. 1385 of 1978

(P. N. Bhagwati V. D. Tulzapukkar, R. S. Pathak JJ)

28.08.1978

JUDGMENT

BHAGWATI, J. -

1. The appellant was appointed as a statistical Officer on 20th February, 1961 and he was confirmed in that position on 15th October, 1966. It appears that sometime thereafter on 22nd February, 1967 he was appointed to the post of Chief Inspector of Shops and he worked in that capacity until 1st January, 1968 when he was appointed Labour-cum-Conciliation Officer by the Government of Haryana. It is clear from the record that the appellant was transferred from the post of Chief Inspector of Shops to the post of Labour-cum-Conciliation Officer since the Government had taken a decision that the posts of Statistical officer and Labour-cum-Conciliation Officer should be treated as interchangeable, but unfortunately for the appellant, the Punjab Labour Service (Class I & II) Rules, 1955 which were statutory rules made in exercise of the power conferred under the proviso to Article 309 of the Constitution, were not amended in conformity with this decision. The appellant continued in the post of Labour-cum-Conciliation Officer up to 28th April, 1977 when an order was passed by the Government reverting him to the post of statistical officer. The Ground on which the order of reversion appeared to be appointed as a Labour-cum-Conciliation Officer under the Punjab Labour Service (Class I and II) Rules, 1955 because he did not possess one of the minimum qualifications required under Rule 4, clause (1), namely, that he should have experience of at least five years in the working of Labour Laws as Labour Inspector, Deputy Chief Inspector of Shops or Wage Inspector. The appellant challenged the order of reversion by filing a petition in the High Court. The petition was dismissed by a single Judge and on appeal, the Division Bench of the High Court took the same view and rejected the appeal in limine. The appellant thereupon brought the present appeal with special leave obtained from this Court.

2. It is clear on a plain reading of sub-clause (1) of Rule 4 of the Punjab Labour Service (Class I & II) Rules, 1955 that no person can be appointed as Labour-cum-Conciliation Officer unless he possesses the educational and other qualifications mentioned in that clause. The minimum educational and other qualifications required by a candidate in order to be eligible to be appointed by as Labour-cum-Conciliation Officer are that, in the first instance, he must be a graduate of a recognised university preferably in one of the special sciences such as Economics, Commerce, Sociology or Law; secondly, he must have a five years' experience of the working of Labour laws as Labour Inspector, Deputy Chief Inspector of Shops or Wage Inspector and lastly, he must hold a diploma in social welfare of a recognised university or institution. The appellant was undoubtedly a graduate of a recognised university in Economics and he also held diploma in social welfare of a recognised university but admittedly he did not have five years' experience in the field of Labour Laws as Labour Inspector of Deputy Chief Inspector of Shops or Wage Inspector. He was a

Statistical Officer for about six years and thereafter for a period of about ten months he held the post of Chief Inspector of Shops. His experience of the working of Labour laws as Chief Inspector of Shops which is a post higher than the Deputy Chief Inspector of Shops was, therefore, limited only to a period of about months and he did not satisfy the requirement of five years' experience. He was, in the circumstances, ineligible to be appointed as Labour-cum-Conciliation Officer under Rule 4 clause (1). But the argument was that by reason of clause (2) of Rule 4 the minimum educational and other qualification set out in sub-clause (1) were applicable only to a candidate who was appointed by promotion and these qualifications could not possibly apply in case of direct recruitment or transfer. Now it is true that clause (2) of Rule (4) deals with a case of recruitment by promotion and it requires in so many terms that the candidate who is to be promoted must possess the minimum qualifications prescribed for the higher post to which promotion is to be made and the proviso permits the Government to relax these qualifications in case of an official who is of outstanding merit. But we fail to somehow this clause which deals with the specific case of recruitment by promotion can possibly be read as cutting into the requirement imposed by sub-clause (1) that every person appointed to the service must possess educational and other qualifications set out in the clause by limiting such requirement only to cases of recruitment by promotion Clause (2) of Rule 4 does not seek to qualify sub-clause (1) or to restrict its ambit and operation. What it does is merely to deal with specific cases of recruitment by promotion and to confer power on the Government to relax the requirement of qualifications in case of promotion, where the official to be promoted is of outstanding merit. Clause (1) of Rule (4) is absolute in its terms and does not permit appointment of any person as Labour-cum-Conciliation Officer unless possesses the educational and other qualifications set out in that clause, regardless whether the appointment is to be made by promotion or by direct recruitment or by transfer. The appellant could not, therefore, be legitimately appointed to the post of Labour-cum-Conciliation Officer unless, amongst other things, he possessed five years' experience in the working of Labour laws as Labour Inspector, Deputy Chief Inspector for Shops or Wage Inspector, which he admittedly did not. It is no doubt true that the Government at one time decided that the post of Statistical Officer and Labour-cum-Conciliation Officer should be made interchangeable but this decision was not implemented by carrying out the necessary amendments in the Punjab Labour Service (Class I & II) Rules, 1955. The result was that the decision of the Government remained what we may call *brutum fulmen* and it could not operate in derogation of the requirement of the statutory rules made in exercise of the power conferred under the proviso to Article 309 of the Constitution. The appointment of the appellant to the post of Labour-cum-Conciliation Officer was, therefore, clearly in breach of Rule 4, clause (1) of the Rules.

3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of labour laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from 1st January, 1968 and that being a post higher than that of Labour Inspector of Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of Labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to, constitute fulfilment of the requirement of five years' experience provided in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation

Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, therefore, clearly illegal and it must be set aside.

4. We accordingly allow the appeal, set aside the judgment of the Division Bench as well as of the single Judge of the High Court and quash the order of reversion passed against the appellant reverting him from the post of Labour-cum-Conciliation Officer to that of Statistical Officer. We further make it clear that the appointment of the appellant as Labour-cum-Conciliation Officer must be deemed to have been regular and he must be deemed to have been appointed to that post only on the expiry of a period of five years calculated from the date when he was appointed Chief Inspector of Shops. There will be no order as to costs of the appeal.

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