

Subhash Chand Jain

Vs

Delhi Electricity Supply Undertaking and Others

Writ Petition No. 3083 of 1978

(V. R. Krishna Iyer, D. A. Desai, A. D. Koshal JJ)

13.12.1978

JUDGMENT

Krishna Iyer, J. -

1. The petitioner who really represents a class of aggrieved persons who are employees under the Delhi Electricity Supply Undertaking (DESU) has come up to this Court under Article 32 of the Constitution claiming that his fundamental right under Article 16 of the Constitution had been violated and that an appropriate writ should be issued in enforcement of that right.

2. A detailed narration of the facts is uncalled for and a capsulated statement sufficient to bring out the core contention will now be made.

3. Among the various categories of posts in the hierarchy under the DESU are two posts designated as steno-typist and junior stenographer. They were different in the nature of their duties, different in the salary scales and naturally different in their status. Indeed, steno-typists form the basic cadre from which promotion is given as junior stenographers. At some intermediate stage in the history of this service (around 1973) distinctions in regard to salary scales got blurred and steno-typists and stenographers were given the same scales of salary. This confusion led to a demand from steno-typists that they should also be allowed to be posted as junior stenographers.

4. Some misapprehension crept in as a consequence of which steno-typists were posted as junior stenographers although counsel for respondents 3 to 46 has a case that this was done in accordance with the extant executive instructions.

5. On a later date, thanks to an award of Industrial Tribunal relating to the junior stenographers, the DESU introduced a prescription by way of qualification for promotion as junior stenographers. This prescription otherwise called trade test insisted upon a speed of 100 words per minute in shorthand as an eligibility qualification for becoming junior stenographers. It must be stated here that tests were conducted in this behalf to enable the steno-typists as well as the junior stenographers who had not passed this test to acquire this qualification. However, the steno-typists who had already been functioning as junior stenographers without passing the trade test declined to take advantage of the trade test held by the DESU, and insisted that regardless of such additional qualification they should be entitled to hold the posts of junior stenographers.

6. As a consequence of this stance, the steno-typists who were not occupying the post of junior stenographers, the petitioner (representing many of his ilk) has come up to this Court stating that this is an invidious discrimination. He has not passed the test but has recently appeared for the test.

If he passes the test, he must be entitled to be a junior stenographer over the heads of steno-typists who are currently occupying the posts of junior stenographers without passing the test. This, in brief is the bone of contention raised in this writ petition.

7. We see no difficulty in resolving the conflict and we discern a plain discrimination in the petitioner being denied the claims that he puts forward that if he passes the trade test which is the qualification for junior stenographers' post, he should be posted in displacement of steno-typists who have not passed the trade test but are still functioning as junior stenographers. It is well established law that qualifications for a particular post can be a rational differentia within the meaning of Article 16. It is equally clear that when a qualification has been prescribed for a post, that cannot be obliterated by posting those who do not have that qualification as against those who have that qualification. It is within the powers of the DESU to prescribe relevant qualifications and the prescription of stenographic ability of 100 words per minute is a relevant qualification.

8. In this view there is substance in the submission of the petitioner's counsel that the scheme of posting hence as junior stenographers must be rationalised, classified and harmonised with Article 16. Having heard counsel for respondents 3 to 16 and also counsel for the DESU, we think it right to issue the following directives upholding the application of Article 16 to the circumstances of the case. We may add at this point that counsel for the DESU agrees that his client also regards these directions as substantially just and workable. Counsel on both sides who are the real contestants also do not have any serious differences except on adjustment of minor equities which will be taken care of in the order that we make.

9. There is an earlier order of this Court made at an interlocutory stage whereby steno-typists who are functioning as junior stenographers are allowed to continue as such until the disposal of the writ petition. They are also permitted to take the trade test which was to be held by the DESU and which since has been held.

10. Without detracting from the efficacy of that interlocutory order, we make the following decision :

(a) It is obligatory for steno-typists to become junior stenographers to pass trade test, namely, stenographic ability of 100 words per minute;

(b) The existing junior stenographers who do not possess this qualification will be permitted to take the trade test within four months from today. The DESU undertakes to and is hereby directed to hold the requisite trade test in this behalf within this period. In case any one of them fails to qualify in the said test, such person or persons will be allowed to take the same trade test within two months thereafter and the DESU will hold such a trade test to enable the failed candidates to appeal for the test.

(c) One test has already been held and the petitioner and others like him have appealed therein. The results have been withheld but we direct the DESU to release the results. Those who have passed will not automatically get into the post of junior stenographers. Those who have failed will be allowed to appeal in the trade test conducted four months late or two months thereafter as indicated above.

(d) In the two tests so held, the steno-typists who are now working as junior

stenographers and who pass and qualify them, they will be given precedence over those who are not now functioning as junior stenographers and their allocation inter se will be according to their seniority (counted on a continuous basis from the time they were first posted as junior stenographers).

(e) Those junior stenographers who do not pass the trade test and fail in both the examinations above indicated are free to appear in further trade tests held by the DESU but will not have the benefit of seniority over steno-typists who have earlier passed the examination.

(f) Those junior stenographers who have not passed the trade test and fail to pass the trade test in the two examinations we have indicated above will no longer be entitled to continue as junior stenographers and shall be liable to be reverted.

(g) The junior stenographers who have functioned as such although without the qualification of trade test will be paid the salary due to junior stenographers until the date of their reversion in keeping with the order we have passed.

11. Respondents 3 to 46 have filed a writ petition entitled Satish Chandra v. DESU in the High Court of Delhi. The order that we have made completely governs the points raised in that writ petition. Therefore, counsel for respondents 3 to 46 has fairly undertaken that he will withdraw the writ petition in the Delhi High Court.

12. This judgment does not stand in the way of the DESU prescribing qualifications or tests under the statute if they choose to do so.

13. The writ petition is disposed of accordingly.

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