

Mohinder Singh

Vs

State of Haryana and Others

Civil Appeal No. 294 of 1982

(Rangath Misra, G. L. Oza JJ)

07.04.1989

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal is by special leave and is directed against the appellate judgment of a Division Bench of the Punjab and Haryana High Court upholding the decision of a learned Single Judge of the court by dismissing the appeal in limine. The Haryana Public Commission advertised the filling up of one post of D.F.S.C. and 4 posts of District Food and Supplies Officers by direct recruitment. The Commission prescribed, inter alia, that one of the essential qualifications shall be "five/three years' experience as an executive officer in a commercial organisation of government or semi-government office before or after acquiring the academic degree" and the Special Secretary to Haryana Government in the Food and Supplies Department, on February 20, 1981, wrote to the Secretary of the Commission affirming that position and added that :

Certain Inspectors/Sub-Inspectors of this department seem to have sent their applications (advance copies) to the Commission for these posts. The work of Inspector/Sub-Inspectors is of executive nature through they are not officers. As such, in case the Commission feels that they fulfill the qualifications for the posts in question, this department have no objection to the names of the Inspectors/Sub-Inspectors who have applied directly to the Commission, to be considered for these posts.

2. The Commission called the appellant and other similarly placed candidates for interview but required them to produce certificates from the State Government to the effect that they had the requisite experience of executive officer. The State Government, however, did not issue such certificates and in their absence the Commission did not consider the Inspector and Sub-Inspector candidates as having the requisite qualification for being candidates for the post. The selection was undertaken excluding them. Thereupon a writ petition was filed before the High Court claiming that the appellant had the requisite qualification having been an executive officer for the requisite period and his exclusion was unjustified and the selection made by the Commission was hit on account of infraction of the provisions of Article 16 of the Constitution. The learned Single Judge negatived this stand and dismissed the writ petition and the Division Bench upheld the decision of the Single Judge by dismissing the appeal in limine.

3. In this appeal the sole question for consideration is whether Inspectors and Sub-Inspectors of Food and Supplies Department are executive officers. That they held executive posts and for the required period was conceded in government letter of February 21, 1981. It has, therefore, to be found out whether Inspectors and Sub-Inspectors could be treated as officers.

4. The selected candidates were not made parties to the writ petition. A civil miscellaneous petition has been filed to add them as party-respondents to the appeal and that application had been placed for hearing along with the appeal.

5. Mr. P. P. Rao appearing in support of the appeal has contended that the post of Inspectors and Sub-Inspectors belonged to the category of executive office (sic officer) and the High Court, therefore, came to a wrong conclusion. In earlier certain similarly situated Inspectors and Sub-Inspectors of the department had been appointed on the basis that they satisfied the requirements of clause (c) of the advertisement and there was no justification for a different basis when further recruitment was undertaken in 1980.

6. None of the parties has placed any definition of the term 'officer' from any Haryana statute. It is not the contention of counsel appearing to the term. In such a situation, the common parlance meaning of for any of the parties that the administrative orders gave a definition 'officer' has to be accepted for the purpose of finding out whether Inspectors and Sub-Inspectors held the post of officer. The ordinary dictionary meaning of the term 'officer' is :

a person appointed or elected to a position of responsibility or authority in a government, society etc.

Stroud's Judicial Dictionary (5th edn.) has given a variety of instances of "officer" with reference to different statutes. Some of the instances given therein do support Mr. Rao's stand that an Inspector of Sub-Inspector would indeed be an 'officer' inasmuch as under statutory orders made in exercise of powers conferred under the Essential Commodities Act on the State Government, authority has been vested in these categories of officers to exercise jurisdiction.

7. Black's Law Dictionary states :

In determining whether one is an 'officer' or 'employee', important tests are the tenure by which a position is held, whether its duration is defined by the statute or ordinance creating it, or whether it is temporary or transient or for a time fixed only by agreement; whether it is created by an appointment or election, or merely by a contract of employment by which the rights of the parties are regulated; whether the compensation is by a salary or fees fixed by law, or by sum agreed upon by the contract of hiring.

A person invested with the authority of an office has been treated as an officer.

8. In Words and Phrases (Permanent Edition - Volume 29-A) an 'officer' has been stated to mean :

a person who is invested with some portion of the functions of government to be exercised for the public benefit.

If the powers and duties reposed in this incumbent of a position are such that he exercises the function of the sovereignty, the incumbent is an 'officer' regardless of the name by which he may be designated.

If these tests are applied, the appellant who held an office and was clothed with functions of sovereignty was an officer.

9. In Articles 146 and 229 of the Constitution officers and servants of the Supreme Court and the High Court have respectively been provided for. In service jurisprudence even ministerial employees have been referred to as officers. The terms 'officer' and 'employee' put together obviously signify the grade to employee. Keeping the nature and duty assigned to the Inspector or the Sub-Inspector working in the department to whom powers have been delegated, it cannot be doubted that the holders of posts of Inspector and Sub-Inspector are officers. We, therefore, accept the contention of Mr. Rao that the appellant held the post of an officer and since the State had conceded that it was an executive office and the appellant was holding the said post from April 1973 till September 1978, by 1980 when selection was to be made he had the requisite qualification.

10. Mr Rao relied upon decisions of this Court in *G. A. Monterio v. State of Ajmer* (1956 SCR 682 : AIR 1957 SC 13 : (1957) 2 LLJ 538) and *Bajrang Lal v. State of Rajasthan* ((1976) 2 SCC 217 : 1976 SCC (Cri) 272 : 3 SCR 497) in support of his plea that the appellant was an offer. Both these cases were with reference to the definition of 'public servant' in Section 21 of the Indian Penal Code. On principle, these decisions support the conclusion which we have reached.

11. Counsel appearing for the respondents did not attempt to contend that if the appellant had the requisite qualification when selection was being made and he had been kept out on the wrong premises that he did not have the qualification, he would be entitled to challenge the selection. The selected candidates were, however, not impleaded as respondents in the writ petition and attempt to implead them at this stage is bound to prejudice him. They have now been in service for more than eight years and respondent 4 has even been holding a promotional post for some time. We do not think in such a situation there would be any justification to allow challenge to the recruitment of the respondents. At the same time the State had on justification to keep out the appellant from consideration. The appellant was entitled to be considered for recruitment in 1980 and since his claim had been overlooked without justification, the State and the Haryana Public Service Commission are bound to consider his case now on the basis that he was entitled to recruitment in 1980.

12. Reliance was placed by Mr. Rao on some decisions of this Court, as to the nature of relief that can be granted in a case of this type. We do not think in the facts of this case, the ratio of the decisions can be applied as a guideline.

13. It has been brought to our notice that an enquiry was undertaken by government against some of the selected candidates on the allegation that forged/false certificates had been produced by them in support of qualification/eligibility and in the enquiry a prima facie case had been made out. We express no opinion about it as it shall be for the State Government to deal with the question and the appellant's appeal has nothing to do with it.

14. The appeal is allowed, the order of the learned Single Judge as also the appellate order are vacated and the State Government and the public Service Commission are directed to consider the appellant's claim for recruitment on the basis of the notification for recruitment. In case the appellant is found qualified, he shall be selected for the post and duly appointed. The question of appellant's seniority is left open to be dealt with by the State Government in consultation with the Public Service Commission. The appellant shall have the cost of the appeal. Hearing fee is assessed at Rs. 3000 to be recovered from the respondent-State only.

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