

K. K. Khosla and Another

Vs

State of Haryana and Others

Civil Appeal No. 653 of 1981

(K.N. Singh, Dr. T.K. Thommen, N.M. Kasliwal JJ)

20.02.1990

JUDGMENT

SINGH, J. -

1. This appeal is directed against the judgment and order of a Division Bench of the Punjab and Haryana High Court dated 11th August, 1980 dismissing the appellants' writ petition under Article 226 of the Constitution challenging validity of the appointment of Bhagwan Das Sardana, respondent No. 3 to the post of Executive Engineer in Public Works Department (Public Health Branch).

2. The post of Executive Engineer in Public Works Department (Public Health Branch) in the State of Haryana is borne in Class I Engineering Service recruitment to which is made by direct recruitment and promotion under the provisions of the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules 1961 (hereinafter referred to as 'the Rules'). Under Rule 5, 50 per cent of the posts of Executive Engineers in Class I are required to be filled by direct recruits while the remaining 50 per cent posts are to be filled by promotion from members belonging to Class II Service. Rule 8 provides for constitution of Committee for making selection for promotion to the post of Executive Engineer. The list so prepared is forwarded to the State Public Service Commission and on its approval the State Government is required to make the appointments. Rule 9 lays down that promotion shall be made by selection on the basis of merit and suitability in all respects. Rule 9(3) lays down that a member shall not be eligible for promotion to the rank of Executive Engineer, unless he has rendered five years' service as an Assistant Executive Engineer, and has passed the departmental examination as provided in Rule 15. The first proviso to the Rule lays down that an Assistant Executive Engineer found suitable for promotion shall be given preference over an eligible Class II officer. The second proviso to Rule 9(3) confers power on the Government to reduce the period of five year's service as an Assistant Executive Engineer. Rule 11 lays down that an officer appointed to the service shall remain on probation for a period of two years in case of direct recruitment. Rule 15 lays down that officers appointed to the service unless they have already done so shall pass such departmental examination and within such period as may be prescribed by the Government. Under the proviso to Rule 15(1) the Government is empowered to extend the period within which an officer may pass the departmental examination. Rule 22 confers power on the government to relax the requirements of Rules if it is satisfied that the operation of any of these Rules causes undue hardship in any particular case.

3. The appellants S/Shri K. K. Khosla and L. C. Goyal were holding the post of Sub-Divisional Engineers PWD (public Health Branch) in the State of Haryana in Class II service of Engineers. They were considered for promotion to the post of Executive Engineers, Class I Service. The

eligible class II officers prepared a select list for promotion. The list so prepared contained the name of nine officers including the two appellants but ultimately the appellants were not appointed by promotion to the post of Executive Engineer instead other seven officers belonging to Class II Service were promoted and in addition to that Bhagwan Das Sardana, respondent 3 a direct recruit was also appointed on the recommendation of the Public Service Commission. Aggrieved the appellants filed a writ petition in the High Court challenging the validity of the appointment of respondent 3 on the ground that he had not rendered five years' service as an Assistant Executive Engineer and had not passed the departmental examination which was a minimum requisite qualification for promotion to the post of Executive Engineer in Class I Service. On behalf of the State Government, it was pleaded that the State Government had relaxed the requirement of Rule 9(3)(a) with regard to five years period of service not only to respondent 3 but to other officers also. The High Court dismissed the writ petition on the finding that there was no infirmity in the government's Order granting exemption to respondent 3 and his promotion and appointment to the post of Executive Engineer did not suffer from any legal infirmity. The appellants have challenged the view taken by the High Court in the instant appeal.

4. On behalf of the appellants it was urged that the promotion and appointment of respondent 3 to the post of Executive Engineer was made in utter disregard of the Rules as he had not rendered five years' service as an Assistant Executive Engineer as required by Rule 9(3)(a) and he had not passed the departmental examination as contemplated by Rule 15 and lastly he was not eligible for promotion as he had not completed two years' probationary period as Assistant Executive Engineer on the date of his promotion.

5. On a careful scrutiny of the Rules and the material on record we do not find any merit in the submission made on behalf of the appellants. No doubt respondent 3 by reducing the period of service under Clause (a) to Rule 9(3) in exercise of its power under the proviso to the said Rule. This relaxation was granted as the respondent 3 was the only officer in the department who was a direct recruit to Class I Service. The State Government had power to grant relaxation under the second proviso to Rule 9(3); therefore we find no legal infirmity in the respondent's promotion. In addition to that Rule 22 further confers power on the State Government to grant relaxation with regard to the operation of the rules. The government's order granting relaxation in favour of respondent 3 is sustainable under Rule 22 also. The scope of State Government's power to relax operation of Rules has been discussed by us in *J. C. Yadav v. State of Haryana* ((1990) 2 SCC 189) decided today. On the application of those principles we find no illegality in the order of the government granting relaxation to respondent 3 in respect of operation of Rule 9(3)(a).

6. As regards the departmental examination is concerned it is true that the respondent 3 did not pass the departmental examination afresh in the Public Health Branch. On behalf of the State Government it is pointed out that prior to his recruitment to the post of Assistant Executive Engineer in the Public Health Branch respondent 3 had been working as Sub-Divisional Engineer (SDE) in the Public Works Department (Building and Road Branch) for a period of 6 1/2 years and during that period he had passed departmental examination. In this view the Government did not consider it necessary to require the respondent 3 to pass the departmental examination once again. The Public Health Branch as well as the Building and Road Branch both belong to the Public Works Department. The syllabus prescribed for the departmental examination in the Building and Road Branch as well as in the Public Health Branch is almost the same, as except one, all other subjects are common to both the branches. The State Government's opinion that since the respondent 3 had already passed a departmental examination while working in the Building and Road Branch it was not necessary for him to have passed the departmental examination again was justified though it had

at an earlier stage directed the respondent 3 to pass the departmental examination again. Later on the government was satisfied that since the respondent had already passed the departmental examination in Building and Road Branch, there was no necessity for the respondent to pass the examination again. In these circumstances we hold that respondent's promotion to the post of Executive Engineer was not rendered illegal merely because he had not undergone departmental examination in the Public Health Branch afresh.

7. Respondent 3 had been appointed as a direct recruit to the post of Assistant Executive Engineer on 7th December, 1977 on probation for a period of two years. Before the expiry of the probation period he was selected for promotion to the post of Executive Engineer. The appellants' contention that unless the respondent had satisfactorily completed the probation period, he could not be promoted to the post Executive Engineer, is misconceived. There is no specific provision in the rules requiring completion of probationary period for the purposes of promotion within the service. Under Rule II an officer is required to be appointed on probation, if during the period of probation his work is not found satisfactory his services are to be dispensed with and in the event of his services being found satisfactory he is entitled to confirmation on the post. It is thus clear that the completion of the probationary period of respondent was relevant only for the purpose of confirmation in Class I Service and same was not a precondition for the purpose of promotion within the service. Moreover, the Government issued an order waiving the probationary period of one year in the respondent's case. Non-completion of probationary period of two years on the post of Assistant Executive Engineer did not affect the validity of the respondent's promotion to the post of the Executive Engineer under the Rules.

8. In view of the above discussion, we find no merit in the appeal and it is accordingly dismissed. There will be on order as to costs.

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