

Bashir Ahmed and Others

Vs

State of Punjab and Others

Civil Appeal No. 6909 of 1996

(K. Ramaswamy, G. B. Patianaik JJ)

22.03.1996

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment and order of the High Court of Punjab and Haryana made on 22-2-1994 in CWP No. 12838 of 1993. Admittedly, the appellants had worked initially as cleaners and thereafter they were promoted as drivers in the Poultry Department of the State of Punjab. Since they were found to be in surplus, they were retrenched. When the Government had notified for direct recruitment in the Department of Animal Husbandry, the appellants also had applied for direct recruitment. They were not selected on the ground that they did not possess the required educational qualifications. Consequently, they filed the writ petition which came to be dismissed. Thus, this appeal by special leave.

3. The learned counsel for the appellants has strenuously contended that this Court in *B.N. Saxena v. New Delhi Municipal Committee* ((1990) 4 SCC 205 : 1990 SCC (L&S) 588 : (1990) 14 ATC 881) read down the rule holding that after the initial appointments experience gained for a considerable length of time is itself a qualification for promotion and, therefore, requirement of further qualification was bad in law. He also relied upon another judgment in *State of U.P. v. J.P. Chaurasia* ((1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929). Relying thereon, it is contended that the rule prescribing educational qualifications as one of the qualifications for direct recruitment must be read down. So read down, since the appellants have the necessary experience, it must be construed to be a qualification for recruitment. The view taken by the High Court and recruitment authority is bad in law. We find no force in that contention. It is seen that for direct recruitment as a driver, the rules prescribe two qualifications, namely, light vehicle driving licence and knowledge of Punjabi language up to middle standard. The Rules also prescribe promotion of 10% drivers from the lower rank of cleaner. Therein, it is provided that apart from the qualifications prescribed for direct recruitment, the cleaner also must have an experience of a minimum period of 4 years. We are not concerned with regard to the promotion from the cadre of cleaners to the post of driver within the quota of 10%. Therefore, the question of reading down the rule does not arise. We are concerned with the direct recruitment only. The Government in the Rule have prescribed driving licence and also knowledge of Punjabi language up to middle standard to be the qualifications. Therefore, anyone who possesses those qualifications has to be considered for recruitment. Since, admittedly, the appellants are not fulfilling the said criteria, the dismissal of the writ petition cannot be said to be illegal.