

SUPREME COURT OF INDIA

Chandigarh Administration

Vs.

Shri Sumesh Kumar

(K Ramaswamy and G Pattanaik JJ.)

24.10.1996

JUDGMENT

PATTANIK, J.

Leave granted.

These Appeals by Special Leave are directed against different orders of the Central Administrative Tribunal, Chandigarh cancelling the notices issued by the appellant to the respondents and further directing the appellant not to revert the respondents from the promoted post. But the question of law involved being one and the same they were heard together and are being disposed of by the common judgment. The short question that arises for consideration is whether promotions of these respondents on different dates in the year 1993 to the posts of Masters/Mistress (TGTs) is contrary to the Statutory Recruitment, Rules framed by the Government of India, Ministry of Home Affairs in exercise of powers conferred by proviso under Article 309 of the Constitution called the Chandigarh Education Service (School Cadre) Group 'C' Recruitment Rules, 1991 (hereinafter referred to as "The Recruitment Rules"). We will consider the facts in one case for deciding the point in issue, namely, in the appeal arising out of Special Leave Petition No 11122 of 1996 which is directed against the order of the Central Administrative Tribunal, Chandigarh dated 12.10.1995 in O.A. No. 138/CH/95. In the said case Suresh Kumar, the respondent was a classical teacher having been appointed as a Drawing teacher on 30th March, 1972. He was promoted alongwith three others to the post of Social Studies Master on officiating basis on the recommendation of Departmental Promotion Committee by order dated 24th April, 1993. The said post of Social Studies Master borne in the School Cadre in Group 'C' and recruitment thereto since 1991 is governed by the Statutory Recruitment Rules. The appellant being of the opinion that the said promotion is contrary to the Recruitment Rules issued notice to the respondents as to why the said promotion be not withdrawn as the Recruitment Rules did not provide for promotion to the post of Master/mistress from amongst the Classical teachers. The notice was issued on 3rd January, 1995. The respondents though filed a representation pursuant to the notice issued by the appellant but before any decision could be taken by the appellant the said respondents approached the Central Administrative Tribunal with the prayer that show cause notice issued by the appellant be quashed and the appellant be restrained from cancelling/withdrawing the promotion given to the respondents to the post of Social Studies Master on 29th April, 1993. The appellant appeared before the Tribunal and reiterated its

stand to the effect that the Recruitment Rules do not provide for promotional avenue to the post of Master from amongst the Classical and vernacular instructors and, therefore, the promotion having been made after the Rules came into force the said promotion is invalid and inoperative. It was also contended that prior to 1991 Rules coming into force appointments to the post of Master within Union Territory of Chandigarh were being made by direct recruitment and the departmental candidates were allowed to compete with the candidates sponsored by Employment Exchange from time to time.

At this stage it would be appropriate to notice the facts in two other cases which are similar to the one narrated earlier. In Civil Appeal arising out of Special Leave Petition (C) No. 11123 of 1996 the respondents had been appointed as Classical Teachers in the Education Department of Chandigarh Administration in August 1969 and they were promoted to the post of Master on officiating basis on the recommendation of Departmental Promotion Committee on 29th April, 1993. Show cause notice was issued to them by the appellant on 3rd January, 1995 and they approached the Tribunal which was registered as OA No. 137/CH/95 and the Tribunal disposed of the matter and allowed the same by order dated 14th November, 1995, following its earlier decision in OA No. 138/CH/95, which is the subject matter of the appeal in the Civil Appeal arising out of Special Leave Petition (C) No. 11123/96. In the third appeal the respondents were appointed as Electrical Works Experience Teacher on 15th September, 1973 which was the post borne in Classical and Vernacular Cadre in the Education Department of Chandigarh Administration. The respondents were promoted to the post of Social Studies Master on 29th April, 1993 on the recommendation of the Departmental Promotion Committee on officiating basis and show cause notice was issued to them on 3rd January, 1995. They approached the Tribunal which was registered as OA 121/CH/95 and the Tribunal by its judgment dated 9th November, 1995 quashed the notice issued by the appellant and restrained the appellant from cancelling the promotion order dated 29th April, 1993. In OA 138/CH/95 the Tribunal by its judgment dated 12th October, 1995 came to hold that even though the appellant had issued a notice to show cause as to why the promotion of the respondents should not be cancelled, but in view of their stand to the effect that the promotion is contrary to the Statutory Rules, the application before the Tribunal cannot be held to be premature and is maintainable. Though the respondents had taken a stand that the vacancies which were filled up by promoting them on 29th April, 1993, really occurred in the year 1989-90 and, therefore, Rules then in force would govern the promotion, the Tribunal rejected the said stand and came to hold that the promotion made on 29th April, 1993 is governed by the Statutory Recruitment Rules which came into force in the year 1991. The contention of the respondents that the Rules in question are violative of Article 14 of the Constitution was negated. But interpreting the Rules of Recruitment the Tribunal came to hold that a Classical Teacher who is either BT or B.Ed. can be promoted under the Recruitment Rules as such teachers are covered under Clause (ii) of Column 11 and therefore the promotion in question cannot be said to be contrary to the Statutory Rules.

Ms. Kamini Jaiswal, learned counsel appearing for the appellant contended that the aforesaid interpretation of the Tribunal is wholly erroneous in as much as under the Recruitment Rules no promotion is conceived from Classical teacher to that of master, a post borne in the school cadre of Group 'C' and the Tribunal committed serious error of law in coming to the aforesaid conclusion. Learned counsel for the respondents on the other hand contended, that the post of Classical teachers being filled up by promotion to the extent of 20% from amongst the PST teachers it would be wholly unsound to construe that the promotion to the post of Master can be made only from amongst the PST teachers and not from Classical teachers. In other words PST teachers being an eligible category for promotion to the post of Classical and Vernacular teachers the said

promoted category people cannot be debarred from getting promotion to the post of Master/Mistress (TGTs) and, therefore, the Tribunal did not commit any error of law in interpreting the Rules by allowing promotion to the post of Master from the category of Classical and Vernacular teachers. According to the learned counsel for the respondents if the interpretation given by the appellants' counsel is adhered to then PST teachers may be eligible for being appointed by promotion as a Master/Mistress (TGT) but if he or she has been already promoted to the post of a Classical and Vernacular teacher then he or she should be debarred for being considered for promotion to the post of Master/Mistress (TGTs). We find sufficient force in the contentions advanced by the learned counsel for the respondents. For correct interpretation of the relevant rules it would be appropriate to notice some of the provisions of the Recruitment Rules. Rule 4 provides for Method of Recruitment, Age limit and qualifications etc. which reads as under:

"The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in Column 5 to 13 of the said Schedule."

Columns 5 to 13 of the Schedule indicate the qualification and other matters connected with the recruitment to the different posts. For our purpose it would be relevant to extract columns 10 and 11 for the post of Master/Mistress (TGT) teachers serial no. 3 of the Schedule and Classical & Vernacular teachers which is in serial no. 4 of the Schedule. :-

(10) (11)

3.Masters/

(i) Direct recruitment By Promotion Mistresses : 60% (T.G.Ts)

(ii) By Promotion

(i) From amongst : 20% PST teachers teachers who

(iii) By transfer on possess B.A./ deputation B.Sc. degree:

20% with required subject combination.

(ii)B.T./B.Ed. Transfer on Deputation from amongst persons holding analogous Posts on regular basis in the State of Punjab & aryana in the ratio of 60 : 40

4.Classical & (i) By direct (i) By promotion Vernacular recruitment from amongst Teachers : 60% P.S.T.teachers (ii) By Promotion (ii) By transfer on : 20% deputation from amongst (iii) By transfer persons hold- -ing analogous posts on regular basis in the State of Punjab and Haryana in the ratio of 60:40

Though on a plain reading of the aforesaid provisions of the Recruitment Rules support to a great extent the contention advanced by Ms. Kamini Jaiswal, learned counsel appearing for the appellant but such interpretation would result in absurdity if two Rules relating to the appointment of Master/Mistress (TGTs) Clalssical and Vernacular teachers are read together. The post of Classical and Vernacular teachers under the Recruitment Rules in question are to be filled up by direct recruitment to the extent of 60%, by promotion to the extent of 20% and by transfer on deputation to the extent of 20%. And as per column 11 promotion can be made from amongst the PST teachers.

The posts of Masters/Mistress (TGTs) with which we are concerned in the present appeals under the relevant rules can also be filled up by direct recruitment to the extent of 20%, by promotion to the extent of 20% and by transfer on deputation to the extent of 20%. Column 11, however, indicates that the promotion can be made from PST teachers who possess B.A./B.Sc. degree with required subject combination. Classical and Vernacular teachers are not mentioned in Column 11 for being considered for promotion to the post of Master/Mistress. But it is to be seen that while PST teachers can be appointed as Classical and Vernacular teachers on promotion but a Classical teacher would be debarred from being considered for promotion for the post of Master whereas a PST teacher would alone be considered for promotion to the post of Master. Such an interpretation of Rule will not only cause great injustice but will create absurdity by giving unwarranted advantage to the incumbents of the lower post of PST teacher over the incumbents of the higher post of a Classical teacher, and such an interpretation cannot be sustained in law. In other words the PST teacher being feeder category for promotion to the post of Classical and Vernacular teachers under the Recruitment Rules in question, the said Classical and Vernacular teacher can not be debarred for being considered for promotion to the post of Master/Mistress (TGTs). The Tribunal, therefore, was wholly justified in giving harmonious construction to both the Rules and interpreting the Rule in a manner which would make rules of Recruitment to both the categories of post namely, master/mistress (TGTs) and Classical and Vernacular teachers legal and valid.

In view of the aforesaid conclusion of ours we find no case has been made out for interference with the impugned orders of the Tribunal. The appeals are accordingly dismissed, but in the circumstances there will be no order as to costs.