

P. K. Sandhu (Mrs)

Vs

Shiv Raj V. Patil

P. K. Sandhu (Mrs)

Vs

Hon'ble Speaker, Lok Sabha and Another

Writ Petitions (C) No. 785 of 1995

(K. Ramaswamy, D. P. Wadhwa JJ)

25.03.1997

### ORDER

1. Writ Petition No. 785 of 1995 has been filed by Mrs. P.K. Sandhu, one of the in-service officers in the Lok Sabha Secretariat, seeking issue of a writ of quo warranto against Respondents 5 to 10 to show their functioning in their respective capacities, viz., Respondents 5 and 6 as Additional Secretaries, Respondents 7 to 9 as Joint Secretaries and Respondent 10 as Secretary to the Speaker, Lok Sabha. After perusal of the relevant rules, this Court after hearing the counsel at length passed the following order on 2-8-1996 :

"The petitioners, in-service officers in the Lok Sabha Secretariat, are questioning in this writ petition the appointments of Respondents 5 to 9, two Additional Secretaries and three Joint Secretaries, on deputation. Article 98 of the Constitution provides for Secretariat to each House of Parliament and the secretarial staff to assist the Hon'ble Speaker and Hon'ble the Chairman of the Rajya Sabha respectively. Under its proviso, common posts in both Houses of Parliament are permissible. By operation of Article 98(2) Parliament may by law, regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament. Until the provision is made in this behalf by Parliament, clause (3) of the article provides that the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

In exercise of the said power under clause (3) of Article 98 the President of India after consultation with the Speaker framed rules called the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955. Rule 4 provides the method of recruitment. Sub-rule (1) clause (a) provides method by promotion of any person employed in the Secretariat; clause (b) by permanent transfer or deputation of a person serving outside the Secretariat in connection with the affairs of the Union or

of a State; (c) by direct recruitment. Sub-rule (2) of Rule 4 empowers the Speaker by order to specify the method or methods by which post or class of posts may be filled, determine the proportion of vacancies to be filled by such method and in case of recruitment by promotion, specify the class of officers who, and the conditions subject to which they, shall be eligible for such promotion from time to time. Rule 5 prescribes the qualifications for recruitment with which we are not presently concerned.

It would appear that though from time to time the Rules came to be amended with regard to the recruitment and appointment of various officers, as regards the appointment to the posts of Secretary and Joint Secretaries initially they remained for appointment by promotion 100% and no amendment in that behalf came to be made. It would appear that due to increase in the work in the Lok Sabha Secretariat the Speaker convened the meeting of the opposition leader and Floor leaders of all the political parties. Thrice, the leaders had met and they decided certain procedure to be adopted in recruitment to the posts of various categories. For the posts of Secretaries which include Additional Secretaries and Joint Secretaries, suggestions came to be made for appointment by promotion, so long as the in-service candidates are available and merit and ability alone should be taken into consideration in giving promotions. Where in-service candidates are not available for promotion, candidates serving outside the Secretariat would be taken on deputation. Pursuant to that recommendation of the Committee, the Secretary-General has called for the prevailing procedure in other departments. At that stage, pending decisions, Respondents 5 to 10 came to be drafted on deputation as Additional Secretaries and Joint Secretaries.

It is seen that the statutory rules having been made, one of the methods as provided under Rule 4(1)(b) is, by deputation. It would be obvious that drafting the officers serving in the UOI or States outside the Lok Sabha Secretariat would be inconsistent with, unless suitable amendments are made to the Rules. When we have asked the learned counsel for respondents to place before us any orders that might have been passed by Hon'ble the Speaker in that behalf, he placed the entire record before us. We have perused the record and found that no statutory amendment to the Rules came to be made. We find some orders but they do not cover the aforesaid offences. We are assured by the learned counsel that expeditious steps would be taken to have the rules amended as per law and placed before us for further consideration. It would be obvious that to improve efficiency of administration and also to enthuse discipline and inculcate among in-service officers the spirit of competence, efficiency and excellence, opportunities for promotions are necessary. It would provide impetus to achieve the above objectives. This aspect also needs to be kept in view in amending the rules. The counsel sought for and is granted two months' time to take the steps in that behalf and place before us the relevant amended rules for further hearing the matter.

Post immediately after two months."

2. In furtherance thereof, the Speaker amended the Rules and issued the Order dated 19-10-1996. It has been duly published and came into force with effect from 19-10-1996. The title of the Order reads as under :

"The Lok Sabha Secretariat (Methods of Recruitment and Eligibility Conditions for Appointment) Amendment Order, 1996."

3. By operation of clause (2), this order has come into force with immediate effect. The method of recruitment, eligibility conditions for appointment for the posts of Joint Secretary, Additional Secretary and Secretary-General in the Lok Sabha Secretariat shall be, by operation of Rule 1 thereof, as indicated in the Schedule attached thereon.

4. The Schedule mentions that for the posts of Joint Secretary in the scale of Rs. 5900-6700, the method of recruitment is 75% by promotion, failing which by transfer on deputation; and 25% by transfer on deputation; provided that the Speaker may, at his discretion, fill up a vacancy falling to the share of the transfer on deputation by the method of promotion. The eligibility conditions for promotion have been mentioned in column 3, namely : "By selection from amongst officers holding posts of Director in the Lok Sabha Secretariat in the pay scale of Rs. 4500-5700 with at least three years of service in the scale and a total of seventeen years of service in Group 'A' posts. For the purpose of this provision, service in Group 'A' posts will also include service rendered in functionally corresponding posts prior to their being assigned Group 'A' scales." For transfer on deputation, it is mentioned as under :

"By selection from amongst :

1. Officers belonging to All India Services/Central Services holding posts of Joint Secretary or equivalent OR officers of these services who have been approved for appointment as Joint Secretaries by the respective Cadre Controlling Authorities.

2. Officers of the State Legislature Secretariats holding posts comparable to that of Joint Secretary in the Government of India, that is, the scale of Rs. 5900-6700 OR officers of these Secretariats who have been approved for appointment to the said posts on the said scales by their respective Cadre Controlling Authorities.

The period of transfer on deputation shall not ordinarily exceed three years."

5. Similarly, for the post of Additional Secretary, the conditions have been mentioned as under :

"For Promotion

By selection from amongst officers holding posts of Joint Secretary in the Lok Sabha Secretariat in the scale of pay of Rs. 5900-6700, with at least three years of service in the scale and a total of twenty years of service in Group 'A' posts. For the purpose of this provision, service in Group 'A' posts will also include service rendered in functionally corresponding posts prior to their being assigned Group 'A' scales.

For Transfer on Deputation

By selection from amongst :

1. Officers belonging to All India Services/Central Services holding posts of Additional Secretaries or equivalent OR officers of these services who have been approved for appointment as Additional Secretaries by the respective Cadre Controlling Authorities.

2. Officers of the State Legislature Secretariats holding posts comparable to that of Additional Secretary in the Government of India, that is, in the scale of Rs. 7300-7600 OR officers of these Secretariats who have been approved for appointment to the said posts on the said scales by their respective Cadre Controlling Authorities.

The period of transfer on deputation shall not ordinarily exceed three years."

6. For the post of Secretary, it has been mentioned as under :

"By selection by the Speaker in consultation with the Leader of the House and the Leader of the Opposition from amongst those who have made their mark by long years of service in Parliament or State Legislatures or the Civil Service, appointment being by any of the methods of recruitment, viz., promotion, deputation, contract, as may be considered appropriate on each occasion."

7. Shri Aruneshwar Gupta, learned counsel for the petitioner, contends that this Court has indicated in the order that to improve efficiency of administration and also to enthuse discipline and inculcate, among in-service officers, the spirit of competence, efficiency and excellence, opportunity for promotion would be made available. This method of reserving 75% recruitment by way of promotion and giving option to call for transfer on deputation from other sources is ultra vires. We find no force in the contention. It is seen that the rule indicates that in-service candidates would be eligible to be considered for promotion to the extent of 75% of the posts in accordance with the eligibility conditions prescribed in column 3 thereof. In that event, if the officers were not found eligible to be promoted, instead of keeping the post vacant and the work suffering, options have been given to the Speaker to take the services of other officers on deputation. Therefore, the officers on deputation would remain on deputation without any incursion into the 75% quota reserved for the promoted officers. As and when the promotee officers are found to be fit for promotion, considered and promoted, the deputation officers necessarily would give place to the officers promoted within the 75% quota. 75% quota for in-service officers encourages the officers and inculcates spirit of competence, character and integrity. Otherwise, the in-service officer would lose his chances of promotions to higher echelons of service. Equally, induction of officers of competence and ability on deputation of 25% quota will be an opportunity to accelerate competence and efficiency apart from improving excellence. Therefore, the respective quota is fair and in the best interest of the service. It cannot be characterised as arbitrary.

8. Similarly, it is contended that the Rules have not been given any retrospective effect and, therefore, the officers on deputation, i.e., Respondents 5 to 10 - is bad in law. We find no force in the contention. It is settled legal position that Rules would be operative from the date when they came into force, namely, in this case, 19-10-1996. Therefore, the officers on deputation would get legal right to remain in service from that date. Though they have been drafted earlier in consultation with the Leader of the Opposition etc., it is contended that the deputation to the Secretariat Service was not in accordance with the Rules and, therefore, it is not valid in law. With a view to remove the ambiguities, we had directed Hon'ble the Speaker to take necessary steps by way of an amendment to the Rules. In furtherance thereof, the above Rules came to be made. The Rules are now streamlined.

9. It is seen that in 1955 Rules, which were framed by the Speaker in consultation with the President by exercising the power under clause (3) of Article 98 of the Constitution of India, Rule 4 contemplates the method or methods by which a post or class of posts may be filled. Since the 1962

Orders are only an outcome of the exercise of the said power, which was further modified by amendment in the Order dated 1-12-1974, the power of modification of the original order was still available to the Speaker and, therefore, the deputation of Respondents 5 to 10 was not without any authority of law or in excess of authority. Therefore, they are not void ab initio for issue of a writ of quo warranto. It is not necessary for us to decide the controversy whether the Speaker had power, when services of Respondents 5 to 10 were requisitioned and availed of on transfer basis from the All India Administrative Service for the reason that under the amended Rules, one of the sources of recruitment to the service is transfer. Therefore, the continuance of Respondents 5 to 10 on deputation is in accordance with law and their retention in Lok Sabha Secretariat is valid as they have legal authority to remain in its Services. The further contention that availment of the services of the Secretary-General on contract basis is invalid, is without substance. It is settled legal position that an in-service officer, if taken on contract basis during the period of service, renders service on contract basis and on expiry thereof he gets to his substantive post in the parent Department from where he came to be in the services of the Lok Sabha Secretariat. In the interregnum, he cannot be compelled to lose his lien on the substantive post in the parent Department. Even if the services of an incumbent on superannuation is required in the public interest, the same can be availed on contract basis. Equally, if any other competent officer who on attaining superannuation from any other service was required to be taken in due to exigency of the service, it may be open to the Speaker to avail of services of such an experienced officer on contract basis for a specified period. Thus in either event the option available to the Speaker to avail of the services of an experienced officer as Secretary-General, cannot be assailed as invalid or arbitrary.

10. It is then contended by Shri Aruneshwar Gupta that the petitioner was recruited through direct recruitment from the State Service of Punjab and she has been continuing in service. The respondents have disputed the correctness thereof. We need not go into that aspect of the controversy. His only contention is that 17 years of service prescribed in the Rules for promotion is unwarranted and arbitrary. We do not find any merit since the rule-making authority is equally competent to prescribe the conditions of service for promotion. 17 years' service is one of the conditions prescribed by the Speaker for promotion to the next higher post. Under these circumstances, the Rule cannot be characterised as ultra vires the power. It would be obvious that when promotion is sought to be made with a view to ensure competence and efficiency in service, obviously, the Speaker had in view the length of service as one of the conditions for promotion. Under these circumstances, prescription of length of service for promotion is not an arbitrary exercise of power violating Article 14. Whether the petitioner, Smt. P.K. Sandhu, would be considered for promotion or not and whether she fulfils the qualifications, conditions of service are all matters for the Speaker to consider and until that exercise is done, we need not go into that controversy.

11. The writ petitions are accordingly dismissed. No costs.