

B. L. Gupta and Another

Vs

M.C.D.

Civil Appeals No. 6114 of 1997

(B. N. Kirpal, M. Jagannadha Rao JJ)

05.09.1997

ORDER

1. Leave granted.

2. The appellants are all employees of the Delhi Electric Supply Undertaking and the question which arises for consideration relates to the appointment to the post of Assistant Accountant under Respondent 1.

3. Briefly stated the facts are that there were statutory rules which were framed in 1978 inter alia dealing with the question of promotion to the various posts in the respondent-Organisation. For the post of Assistant Accountant there were two feeder posts, one was that of Senior Clerks with three years' experience and the other was of the Junior Clerks with eight years' experience.

4. It appears that no examination was held for filling up the post of Assistant Accountant for a number of years. Some ad hoc arrangement was made and the appellants in Civil Appeals @ Special Leave Petitions (C) Nos. 13322-13323 of 1997 and others, who had been working as Senior Clerks, had been upgraded in the post on 4-1-1990. This was pursuant to a resolution passed by the Corporation. The resolution, however, clearly stated that these employees will be working as Assistant Accountants and will be holding only current duties without any extra remuneration and that the arrangement was purely stopgap and would not give them any higher claim for the seniority or other benefit in the service matter. It was also stated therein that the arrangement was without prejudice to the outcome of the decision in the matter of an appeal which was filed by the management against the judgment of the trial court pending before the Additional District Judge, Delhi. This appeal which was pending had arisen from a suit which has been filed by one of the Junior Clerks, wherein the civil court had passed a decree on 19-5-1979 inter alia directing the respondent to fill up the posts of Assistant Accountant which were calculated to be 171 in number and the posts were required to be filled on the basis of the 1978 Rules. An appeal was filed against this judgment which was referred to in the aforesaid office order dated 4-1-1990. The aforesaid appeal was dismissed on 21-12-1992. The decree of the civil court became final and no further steps were taken by the respondent to challenge the said decision.

5. At long last the respondent advertised the posts in January 1993 and after a period of nearly 12 months, the examination was held on 26-12-1993. According to the advertisement the posts which were to be filled were those which were available on that date. In the absence of a definite figure, we must proceed on the basis that the number of vacancies which were available and which were required to be filled were 171, which is the number which was specified by the civil court in its decree dated 19-5-1989.

6. On the examination being held, the results were declared in February 1994. Only 79 persons who had appeared in the examination were appointed as Assistant Accountants. Two sets of writ petitions were thereafter filed in the Delhi High Court. Civil Writ No. 5771 of 1993 was filed by the Senior Clerks who were holding the current duty charge of Assistant Accountants and who are represented by Mr. G. L. Sanghi and their claim was as they were upgraded to the post and have been working as Assistant Accountants for a number of years, their services should be regularised in the post of Assistant Accountants.

7. The other petition was Civil Writ No. 2356 of 1994. It was filed by the Junior Clerks who had taken the examination and the prayer in their writ petition was that the respondents should have filled the vacancies which were available and the number of vacancies which were filled should not have been restricted to 79. It appears that though the Senior Clerks who were holding the current duty charge in the higher post of Assistant Accountants, could take the examination which was held in December 1993, it is only a few of them who took the examination. The High Court by the impugned decision has come to the conclusion that 79 persons had been validly appointed pursuant to the examination which was held. During the pendency of the writ petitions the Corporation amended the Rules in 1995. As per the amended Rules, 80% posts of Assistant Accountants were to be filled by promotion on the basis of seniority and 20% by examination. The High Court directed that the appointment of 79 persons pursuant to the examination which has been held in December 1993 was in order, but the rest of the vacancies had to be filled as per the 1995 Rules.

8. In these appeals the main contention which has been raised by the aggrieved erstwhile Junior Clerks is that the vacancies which had arisen prior to 1995 amendment of the Rules could only be filled as per the Rules of 1978. Therefore, the High Court could not have directed the vacancies which had arisen prior to 1995 to be filled according to 1995 Rules. It was secondly submitted that the number of vacancies which existed being 171 and if the minimum standard which was required to be attained by the persons taking the examination was 50%, as was alleged to have been stated in the counter-affidavit filed in the High Court and 171 candidates were available, then the number of posts which should have been filled was 171 and the shortfall in filling up of the vacancies should be made good. Mr. Sanghi, on the other hand, submitted that as his clients have been working as Assistant Accountants ever since 4-1-1990 and a large number of them had retired and only about 140 or so remained in service and who are likely to retire in the near future, it would be very unjust that they who were previously working as Senior Clerks and were senior to the other appellants, who were erstwhile Junior Clerks, should be required to take the examination and compete with them.

9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in the case of *N. T. Devin Katti v. Karnataka Public Service Commission* ((1990) 3 SCC 157 : 1990 SCC (L&S) 446 : (1990) 14 ATC 688). In that case after referring to the earlier decisions in the cases of *Y. V. Rangaiah v. J. Sreenivasa Rao* ((1983) 3 SCC 284 : 1983 SCC (L&S) 382), *P. Ganeshwar Rao v. State of A.P.* (1988 Supp SCC 740 : 1989 SCC (L&S) 123 : (1988) 8 ATC 957) and *A. A. Calton v. Director of Education* ((1983) 3 SCC 33 : 1983 SCC (L&S) 356) it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which

admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.

10. We are unable to agree with Shri Sanghi that by virtue of their length of service while holding current duty charge as Assistant Accountants, his clients should be regularised in the said posts. Merely because the same posts have been upgraded from Senior Clerks to Assistant Accountants, it would not mean that persons who were given the current duty charge could be regularised without any selection. The clients of Mr. Sanghi presumably hold lien in the posts of Senior Clerks. If they were to be regularised as Assistant Accountants, the effect would be that they would be promoted to the said posts. The Rules of 1978 prescribe the mode in which the promotions can be made. This mode has to be followed before the appointments could be made. If no statutory rules had existed, it may have been possible, though we express no opinion on it, that the existing incumbents may have been regularised. Where, however, statutory rules exist, the appointments and promotions have to be made in accordance with the statutory rules specially where it has not been shown to us that the Rules gave the power to the appointing authority of relaxing the said Rules. In the absence of any such power of relaxation, the appointment as Assistant Accountant could only be made by requiring the candidates to take the examination which was the method which was prescribed by the 1978 Rules.

11. We are informed at the Bar by Dr. Singhvi, on the basis of instructions received by him, that now there are about 323 posts of Assistant Accountants. Out of these about 80 have been filled on the basis of the December 1973 examination. The respondents are directed to fill 91 more vacancies on the basis of December 1993 examination which they have already conducted. This will leave a balance of 152 vacancies. The number of persons who are holding these posts on current duty charge appears to be less than the number of vacancies so available. Therefore, there will be no immediate danger of Mr. Sanghi's clients being reverted to the post of Senior Clerks. The respondents will be at liberty to continue to retain them in the higher post, but it is made clear that the vacancies which had arisen prior to amendment of the Rules in 1995 can only be filled in accordance with the 1978 Rules, which means that if Mr. Sanghi's clients want to be regularly appointed as Assistant Accountants, they will have to compete with and take the examination under the 1978 Rules. This is with regard to the vacancies which remain and are required to be filled under the 1978 Rules. Any vacancies which arise after 1995 will have to be filled as per the amended Rules. It is but obvious that the seniority in all these cases will have to be fixed according to the seniority rules which are applicable.

12. With these observations, the appeals are accordingly disposed of in the above terms.

13. The results for 91 posts on the basis of the 1993 examination should be declared within four weeks from today. No costs.