

State of M. P. and Another

Vs

Dharam Bir

Civil Appeals Nos. 7333-7334 of 1995

(S. Saghir Ahmed, G. B. Pattanaik JJ)

08.06.1998

JUDGMENT

S. SAGHIR AHMAD, J. -

1. "No, mere experiential knowledge is no equivalent to a Degree in Engineering" is our positive answer to the negative argument that the respondent, though not possessing the requisite qualification, be held to be validly holding the post of Principal, ITI, on the basis of his experience.
2. The facts, the questions raised and the findings thereon are recorded hereinafter.
3. The respondent was appointed as Senior Instructor on 3-12-1957 and was promoted as Supervisor Instructor on 13-12-1959. Thereafter he was promoted as Foreman and then as Group Instructor.
4. On 15-6-1976, the respondent was promoted as Principal, Class II, for a period of six months or till the candidates duly selected by the Public Service Commission for that post were available (whichever was earlier). The post of Principal, Class II was a newly-created post and was not included in the M.P. Industrial (Gazetted) Service Recruitment Rules, 1965 and since the mode of appointment or recruitment on that post was not prescribed till about 1985, the respondent continued to work on that post at different places where he was transferred from time to time.
5. On 28-6-1985, the Madhya Pradesh Industrial Training (Gazetted) Service Recruitment Rules, 1985 (for short "the Rules"), made by the State Government under Article 309 of the Constitution, were published. These Rules replaced the M.P. Industrial (Gazetted) Service Recruitment Rules, 1965. The new Rules provided that the post of Principal, Grade II, would be filled up by direct recruitment to the extent of 75 per cent and by promotion to the extent of 25 per cent. The manner of recruitment by way of promotion was indicated in Rules 13 to 18.
6. After the Rules were made and duly promulgated, a meeting of the Departmental Promotion Committee was held in November 1985 to consider the eligible candidates for regular promotion on the post of Principal, Class II. Since the respondent did not possess a Degree or Diploma in Engineering prescribed under the Rules for the post of Principal, Class II, the Committee found him fit only for the post of Vice-Principal and, therefore, by order dated 12-6-1986, he was promoted and appointed as Vice-Principal, Industrial Training Institute, Bhilai.
7. It is this order which constitutes the basis of this protracted litigation as the respondent who was already working as Principal, Class II characterises the said order as an order of reversion.

8. The respondent challenged this order in a writ petition filed before the M.P. High Court which was transferred to the M.P. State Administrative Tribunal, Jabalpur, and the Tribunal, by its judgment dated 19-4-1994, allowed the petition with the finding that the requirement of possessing the educational qualification of a Degree or Diploma in Engineering for the post of Principal was applicable only to direct recruitment and not to promotions and as such the respondent who, admittedly, did neither possess a Degree nor a Diploma in Engineering, was still entitled to be promoted as Principal, Class II.

9. It is the logic of this apparently illogical reasoning which is to be scrutinised by us in this appeal.

10. Appointments, either by direct recruitment or by promotion, on the post of Principal, Class I or Class II, as pointed out earlier, are made in accordance with the provisions of the Rules promulgated in 1985. Rule 7 which deals with "appointment to the service" provides as under :

"7. Appointment to the service. - An appointment to the service, after commencement of these rules, shall be made by the Government and no such appointment shall be made except after selection by one of the methods of recruitment specified in Rule 6."

11. Method of recruitment has been indicated in Rule 6 which is quoted below :

"6. Method of recruitment. - (1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely :

(a) By direct recruitment through selection;

(b) By promotion of the members of the Service as specified in column (2) of Schedule IV;

(c) By transfer of the persons substantively appointed on the specified posts in the specified Service.

(2) The number of the persons recruited under clauses (b) and (c) of sub-rule (1) shall not at any time exceed, the percentage as shown in Schedule II of the number of duty posts.

(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the Service, as may be required to be filled during any particular period of recruitment, and the number of the persons to be recruited by each method shall be determined on each occasion by the Government in consultation with the Commission.

(4) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Government the exigencies of the Service so requires, the Government may, after obtaining the approval of the Government in the General Administration Department, adopt such method or methods of recruitment to the Service other than those specified in the said sub-rule, as it may by order issued in this behalf prescribe."

12. Conditions of eligibility of the candidates for direct recruitment are indicated in Rule 8. First part of the Rule deals with the requirement of "age". Sub-rule (2) which prescribes educational

qualifications is quoted below :

"8. (2) Educational qualifications. - The candidates must possess the educational qualification prescribed for the Service as shown in Schedule III :

Provided that -

(a) In exceptional cases the Commission may, on the recommendations of the Government, treat any candidate as qualified for appearing for selection who though not possessing any of the qualifications prescribed in this clause, has passed examination conducted by other institutions by a standard which, in the opinion of the Commission justifies the consideration of the candidate for selection;

(b) Candidates, who are otherwise qualified but have taken degrees from foreign Universities not specifically recognized by the Government, may also be considered for selection at the discretion of the Commission."

13. The educational qualification prescribed in Schedule III is a Degree or Diploma in Engineering.

14. Rule 13 provides for appointment by promotion. Rule 14 provides conditions of eligibility for promotion. Both the Rules are quoted below :

"13. Appointment by promotion. - (1) There shall be constituted a Committee consisting of the members mentioned in Schedule IV for making a preliminary selection for promotion of the eligible candidates.

(2) The Committee shall meet at intervals ordinarily not exceeding one year.

(3) 15 per cent and 18 per cent of the vacancies available for promotion in such posts in which the percentage of promotion is $33 \frac{1}{3}$ or more as specified in Schedule II, shall be reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes respectively who are eligible for promotion in accordance with the provisions of Rule 14.

(4) The procedure for promotion to the reserved vacancies shall be in accordance with the instruction issued by the Government in the General Administration Department from time to time.

14. Conditions of eligibility for promotion. - Subject to the provisions of sub-rule (2), the Committee shall consider the cases of all those persons, who, on the first day of January of that year had completed service of such number of years, whether in officiating or substantive capacity, on the posts from which promotion is to be made as specified in column (3) of Schedule IV and are within the zone of consideration in accordance with the provisions of sub-rule (2) :

Provided that the services of the released officers of the Emergency Commission and Short Service Commission after their appointment in the Service, shall be counted from the date from which, they have been deemed to have been appointed in the Service in accordance with General Administration Deptt. Memo No. 2266/1987/1 (3) 67 dated the 21st October, 1967 :

Provided further that under this rule no junior person shall be considered for Select Grade/Promotion in preference to the person senior to him merely on the basis of his completing the prescribed service.

(2) The field of selection shall ordinarily be limited to seven times of the number of officers to be included in the select list in respect of posts to be filled on the basis of 'merit-cum-seniority' and five times the number of officers to be included in the select list in respect of posts to be filled on the basis of 'seniority-cum-merit' :

Provided that if required number of suitable officers are not available in the field so determined, the field may be enlarged to the extent considered necessary by the Committee by mentioning the reasons in writing."

15. Rule 15 provides for the preparation of a list of officers found suitable for promotion. Rule 16 requires this list to be sent to the Commission for approval. Once the list is approved by the Commission, it becomes the Select List contemplated by Rule 17. Rule 18 provides that appointment to the service shall be made from the Select List and in making appointment of the officers included in the Select List, the order in which their names appear in the Select List shall be strictly adhered to except as otherwise provided in the proviso to sub-rule (1) of Rule 18. Since Rule 14 which sets out the conditions of eligibility for promotion specifically refers to Schedule IV for purposes of indicating the number of years of service which should have been completed by the officer concerned in order to be eligible for promotion, the relevant provisions of Schedule IV are reproduced below :

"SCHEDULE IV (See Rule 13)-----Name of the Name of the Minimum Name of the Service Name of the Department Service or experience or post to which Members of post from for promotion is to be the which eligibility made Departmental promotion Promotion is to be Committee made-----
----- (1) (2) (3) (4) (5)-----Manpower The
MadhyaPlanning Pradesh Department Industrial Training (Gazetted) Service * * * Principal Class II
3 years Dy. Apprenticeship Director, Adviser (Junior) Employment Principal, Class I and Training,
Madhya Pradesh - Member. Group 3 years Principal Class II Instructor/ Technical Assistant/ junior
Adviser, Apprenticeship /Mill wright Foreman/ Superin- tendent, Training provided that they
possess the technical and educational qualifications specified in column (5) of Schedule III. Group
10 years Vice-Principal Instructor/ Technical Assistant/ Junior Adviser Apprenticeship /Mill wright
Foreman/ Superin- tendent, Technical, not possessing Diploma/ Degree * * *"
-----##

16. It is thus specifically mentioned in Schedule TV that Group Instructor/Technical Assistant/Junior Adviser etc. who have completed 3 years of service would be eligible for promotion to the post of Principal, Class II. The requirement does not stop here. It proceeds further to say, "provided they possess the technical and educational qualification specified in column 5 of Schedule III". Reading Rules 13 and 14 along with Schedule IV as also column 5 of Schedule III, it becomes apparent that in order to be eligible for promotion to the post of Principal, Class II, the officer concerned should not only have put in 3 years of service but should also possess the technical and educational qualification set out in column 5 of Schedule III, namely, that they should have either a Degree or Diploma in Engineering. Column 5 of Schedule III which prescribes

educational qualifications for direct recruitment thus becomes a part of Schedule IV on the principles of "legislation by reference or incorporation". These qualifications will, therefore, be applicable not only to direct recruitment but also to promotions.

17. Schedule IV also indicates that Group Instructor/Technical Assistant/Junior Adviser Apprenticeship/Millwright Foreman, Superintendent, Technical who do not possess Degree or Diploma in Engineering will be eligible only for promotion to the post of Vice-Principal provided that they have put in 10 years of service.

18. Thus, the Rules specifically provide for promotion of both the groups, namely, those who hold the Degree or Diploma in Engineering and those who do not possess this qualification. Those who possess Degree or Diploma in Engineering can be promoted to the post of Principal, Class II and other higher posts indicated in Schedule IV while those who do not possess such Degree or Diploma can be promoted only up to the post of Vice-Principal.

19. Admittedly, the respondent does not possess either a Degree or Diploma in Engineering. He possesses Diploma in Craft and consequently was not eligible for promotion to the post of Principal, Class II or Class I.

20. The Tribunal failed to notice the relevant provisions of the Service Rules in their true perspective and proceeded to allow the claim of the respondent on an erroneous view that the requirement of possessing a Degree or Diploma cannot be applied to appointments by way of promotion.

21. The post of Principal whether it is of Class II or Class I is a post of higher responsibilities. The administrative qualities are mixed and blended with the academic achievements of the candidates and, therefore, it has been specifically provided in the Rules, specially the Schedule appended thereto, that the candidates, whether they are to be appointed by direct recruitment or by promotion, must possess a Degree or Diploma in Engineering.

22. Learned counsel for the respondent contended that since he had already been promoted to the post of Principal, Class II and was also placed on the post of Principal, Class I before the promulgation of the Rules, his promotion as Principal cannot be disturbed. It is contended that the Rules would apply to a situation where the post was lying vacant and was intended to be filled up after the promulgation of the Rules. It is also contended that having worked on the post of Principal since 1976, he cannot be shifted to the post of Vice-Principal after such a long period of dedicated service on the higher post. These contentions are devoid of merit.

23. It is not disputed that the respondent was promoted to the post of Principal, Class II for a short period of six months or till the availability of candidates duly selected by the Commission, whichever was earlier. It is also not disputed and the Tribunal itself has found it as a fact that the respondent was placed on the post of Principal only in an ad hoc capacity. Consequently, the post, having not been filled up on a regular basis in accordance with the Rules, was rightly treated by the appellant to be vacant. That being so, the respondent had only ad hoc status which he would continue to hold till it was altered by the appointing authority.

24. Government service is essentially a matter of status rather than a contract. A Constitution Bench of this Court in *Roshan Lal Tandon v. Union of India* (AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576) had observed as under :

"It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

25. These observations were quoted with approval by another Constitution Bench in *Union of India v. Tulsiram Patel* ((1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416 : 1985 Supp (2) SCR 131). A nine-Judge Bench in *Delhi Transport Corpn. v. D. T. C. Mazdoor Congress* (1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101 : 1990 Supp (1) SCR 142) also approved the principles laid down in *Roshan Lal Tandon* case (AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576) that the legal relationship between the Government and its servants is something entirely a different, it is much more than a purely contractual relationship and is in the nature of "status".

26. Whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointment. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service.

27. Applying these principles to the instant case, since the respondent, admittedly, was appointed in an ad hoc capacity, he would continue to hold the post in question in that capacity. On the promulgation of Rules, therefore, the post of Principal which he was holding could not be treated to have been filled up on regular basis and had to be treated as vacant. In order to make regular appointment by promotion on that post, the eligible candidates were considered and the respondent, not possessing the required educational qualification, was not found fit or suitable for the post of Principal and was consequently directed to be appointed on regular basis as Vice-Principal as he was found suitable only for that post principally for the reason that he did not possess a Degree or Diploma in Engineering.

28. It is next contended by the learned counsel for the respondent that although the respondent does

not possess a Degree or Diploma in Engineering, he has been working on the post of Principal for a long time and since he has acquired sufficient experience on that post he need not, in the circumstances, be disturbed by reverting him as Vice-Principal. This plea is also without merits.

29. Rule 8(2), which provides for educational qualifications, is in mandatory terms and it is mentioned therein that "the candidates must possess the educational qualification prescribed for the service as shown in Schedule III". In column 2 of Schedule III, the posts of Principal, Class I and Principal, Class II are mentioned and in column 5 thereof, it is again mentioned in mandatory terms that the candidates

"must possess a Degree in Engineering from any recognised University or must possess a Diploma in Engineering from any recognised University or Board along with five years' experience of working in any training institute or in any reputed business concern".

30. We have already held above that educational qualifications mentioned in column 5 of Schedule III for the post of Principal, Class I or Principal, Class II are also applicable to appointments by promotion and that the applicability of column 5 of Schedule III is not restricted to direct appointments. In this situation, therefore, before a person is eligible for a being promoted to the post of Principal, Class II or Principal, Class I, he must possess a Degree or Diploma in Engineering.

31. The plea that the Court should have a "human approach" and should not disturb a person who has already been working on this post for more than a decade also cannot be accepted as the courts are hardly swayed by emotional appeals. In dispensing justice to the litigating parties, the courts not only go into the merits of the respective cases, they also try to balance the equities so as to do complete justice between them. Thus the courts always maintain a human approach. In the instant case also, this approach has not been departed from. We are fully conscious that the respondent had worked on the post in question for quite a long time but it was only in ad hoc capacity. We are equally conscious that a selected candidate who also possesses necessary educational qualification is available. In this situation, if the respondent is allowed to continue on this post merely on the basis of his concept of "human approach", it would be at the cost of a duly selected candidate who would be deprived of employment for which he had striven and had ultimately cleared the selection. In fact, it is the "human approach" which requires us to prefer the selected candidate over a person who does not possess even the requisite qualification. The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

32. "Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.

33. The post in question is the post of Principal of the Industrial Training Institute. The Government has prescribed a Degree or Diploma in Engineering as the essential qualification for this post. No

one who does not possess this qualification can be appointed on this post. The educational qualification has a direct nexus with the nature of the post. The Principal may also have an occasion to take classes and teach the students. A person who does not hold either a Degree or Diploma in Engineering cannot possibly teach the students of the Industrial Training Institute the technicalities of the subject of Engineering and its various branches.

34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A compounder, sitting for a considerably long time with a doctor practising in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification. Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the court or the tribunal.

35. For the reasons stated above, the appeals are allowed, the judgment and order dated 19-4-1994 passed by the M.P. Administrative Tribunal is set aside and the claim petition of the respondent is dismissed but without any order as to costs.