

State of Jammu & Kashmir

Vs

Shiv Ram Sharma

Civil Appeal No. 1904 of 1999

(S. Saghir Ahmad and S. Rajendra Babu, JJ.

30.03.1999

JUDGMENT

S. Rajendra Babu, J.

1. Leave granted.

2. Respondents filed writ petitions in the High Court of Jammu & Kashmir seeking quashing of the Rules published vide notification No. SRO 328 dated November 22, 1992 to the extent it related to qualification bar in Class-A categories I & II and for further direction to fill up the posts on the basis of seniority irrespective of qualifications. Respondent Nos. 1 and 2 were initially appointed as Rig-man in the months of March, 1967 and November, 1967 respectively. Respondent Nos. 3, 4 and 5 were initially appointed as Boring Mistry, Grade II in February, 1984, July, 1984 and January, 1984 respectively. Respondent Nos. 1 and 2 were promoted in the month of February, 1983 from the post of Rig-man which was later on re-designated as Boring-Mistry, Grade I and again re-designated as Drill Operator, Grade I in the year 1990. Respondent Nos. 3, 4 and 5 were working on the post of Drill Operator, Grade II. On November 22, 1990 rules were promulgated under Section 124 of the Constitution of Jammu and Kashmir styled as "Jammu & Kashmir Geology and Mining (Subordinate) Service Recruitment Rules, 1990." The Rules were to come into force from the date of their publication in the Government Gazette, which, it is said, was done on November 22, 1990. Under these Rules, the requisite qualification for promotion of a Drilling Assistant was prescribed as "matriculation with five years service as Boring Mistry, Grade I or Drill Operator, Grade I. For promotion to the post of Boring Mistry, Grade I/Drill Operator, Grade I, the minimum basic qualification prescribed was matriculation with seven years service as Boring Mistry, Grade II or Drill Operator, Grade II."

3. Recruitment to the post of Rig-man, that is, Drill Operator, Grade II and Assistant Drilling (Now Drilling Assistant) were made partly by appointment from State subjects whose academic qualification was matriculation and above and partly on contract basis from non-State subjects possessing vast experience in drilling but without necessary academic qualification. The services of these persons appointed on contract basis was subsequently regularised by a Government order with all benefits of promotion, pension, etc. It was noticed that in the higher promotional posts the incumbents had to shoulder higher responsibilities, such as, maintaining log books, keeping records of inventories and do other technical and administrative tasks for which qualification of matriculation was considered necessary. None of the respondents possessed the qualification of matriculation. Therefore, they could not be promoted to higher grades. The High Court took the view when respondent Nos. 1 and 2 had been promoted last in the year 1983 insistence on matriculation qualification for promotion to a higher post was illogical and for such posts service

experience should be the sole criteria. On that basis, the learned Single Judge allowed the writ petitions. The Division Bench, to which the appeal was preferred, also took the similar view and it was stated that the respondents were promoted in the year 1983 and therefore, they are facing complete stagnation not because of absence of promotional avenues but because of the requirement of matriculation qualification. By the time they reach that stage they would be at the fag end of their career and insistence on the passing of the matriculation would be fatal as it is impossible for them to take such an examination now and it was observed that the Rules have to be amended suitably to avoid stagnation and adverted to the decision of this Court in *T.R. Kothandaraman and others v. Tamil Nadu Water Supply & Drainage Board and others*, 1994(6) SCC 282.

4. The learned counsel for the appellants submitted that the High Court could not have directed amendment of the Rules particularly when it had noticed that the promotional avenue from one grade to another was available subject to certain conditions, such as, fulfilment of qualifications and experience. It is not a case where the Rules did not permit promotional opportunities at all to higher grade from lower grade and the hardship resulting to one or two individual employees should not be taken note as a general standard to give the impugned directions and, therefore, the learned counsel submitted that the view of the High Court is not justified at all.

5. The learned counsel for the respondents vehemently contended that the promotional opportunity under the Rules is only a mirage by reason of the qualifications prescribed thereto which are impossible of fulfilment by the respondents. When the respondents joined the service long before these Rules were promulgated there was no prescription of qualification of matriculation for promotion and sole avenue for promotion is deprived of by reason of prescription of such qualification. He, therefore, submitted that relaxation in the Rules is required and all that the High Court has directed is to relax the relevant rules which would result in benefit to the respondents and, therefore, no interference is called for. He also pointed out that in case of one J.R. Sharma the benefit had been extended to him in relaxation of the Rules.

6. The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service the requirement of passing the matriculation was not needed and while they are in service such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In *Roshan Lal Tandon v. Union of India*, 1968(1) SCR 185, it was held by this Court that once appointed an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as rules provide for conditions of service making an avenue for promotion to higher grades the observations made in T.R. Kothandaraman's case (supra) stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents.

7. The case of J.R. Sharma stood altogether on a different footing who was appointed in the year 1962 and he was promoted to higher grades with effect from 1989, that is, prior to the coming into

force of the Rules. In that view of the matter we do not think that the case could be taken note of in giving any directions in favour of the respondents.

8. In the result, we allow this appeal and set aside the order made by the High Court affirming the order made by the learned Single Judge and dismiss the writ petitions filed by the respondents. No order as to costs.

Appeal allowed.