

Yadvinder Singh Virk & Others

v.

State of Haryana & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. GOKHALE HON'BLE MR. JUSTICE J.  
CHELAMESWAR

Civil Appeal No. 6723 Of 2013 | 13-08-2013

Chelameswar, J.

1. Leave granted.

2. This appeal arises out of judgment and order of the High Court of Punjab & Haryana in LPA No.952 of 2010 dated 10th August 2010.

3. The facts leading to the present litigation are as follows:

The third respondent herein is a Cooperative Sugar Mill whose activities are regulated by the Haryana Cooperative Societies Act, 1984. It appears from the record that the Managing Director of the Haryana State Federation of Cooperative Sugar Mills Ltd., apparently the apex Body, insofar as the Cooperative Sugar Mills are concerned, (hereinafter referred to as "the Registrar") by his letter dated 5.9.2007 communicated to all the Cooperative Sugar Mills that the Managing Director acting in his capacity as the Registrar Cooperative Societies has reviewed various Service Rules operating in different Sugar Mills in the background of certain discrepancies and shortcomings existing therein and updated the Rules. The relevant portion of the communication reads as follows:

"Accordingly Managing Director Haryana Sugarfed exercising the powers of RCS Haryana has reviewed and updated the above qualification in view of the aforesaid feedback under the provisions of Rule 29 of the Haryana Cooperative

Societies Rules, 1974. These qualifications will come into force immediate effect. A copy of revised qualification of all categories annexed with Service Rules of the Mills as Appendix C is herewith for necessary action."

4. The dispute in the instant litigation revolves around the post of Security Inspector/Assistant Security Officer (Clerical-III). It appears from the record that originally the Rules did not stipulate any qualification for seeking appointment to the said category of posts. By the decision of the Registrar referred to above, a person seeking appointment to the said post is required to be an Ex-Serviceman not below the rank of Hawaldar and matriculate from any recognized Education Board with knowledge of computers - course 'O' level. It is also indicated in the Appendix – Name of Post Revised Qualifications By Promotion Security Inspector/ Asst. Security Officer (Clerical-III) Academic: Ex-Servicemen not below the rank of Havaldar with Matric from the recognized Education Board. Computer Course upto 'O' level. Same as direct recruitment to the communication dated 5.9.2007 that the qualifications are the same irrespective of the mode of appointment whether it is by direct recruitment or by promotion.

5. On 31.10.2007, the Managing Director of the third respondent requested the Zila Sainik Board, Kurukshetra to send the names of eligible candidates - the eligibility was specified expressly in terms of the Registrar's communication dated 5.9.2007. In response to the said letter, the Zila Sainik Board forwarded the names of 33 candidates. An interview was conducted by third respondent for selection of the suitable candidates where 19 of the candidates sponsored by the Sainik Board appeared and three were eventually selected and appointed on 29.12.2007.

6. It is to be mentioned here that in the interregnum i.e. on 10.12.2007, the fifth respondent herein who had been a Naib-Subedar in the Indian Army earlier, who was already in the service of third respondent on daily wages as Security Guard (Permanent Seasonal) wrote a letter to the third respondent. The relevant portion reads as follows:

"The applicant has come to know that some posts of Security Inspectors will be filled up in near future. Keeping in view the experience of Security Guard in the Sugar Mills and by granting the relaxation in educational qualification, the

applicant may kindly be promoted to the post of Security Inspector. I shall be highly grateful to you."

7. The third respondent rejected the request of the fifth respondent by a communication dated 12.12.2007 on the ground that he did not fulfil the prescribed eligibility criteria.

8. It can be clearly inferred from the letter of the fifth respondent dated 10.12.2007 that he was aware of the fact that he did not have the requisite educational qualification for the post of Security Inspector as it can be seen from the said letter that he clearly requested for granting of relaxation of educational qualification.

9. The fifth respondent along with four others approached the High Court challenging the appointment of the appellants herein and also the communication of third respondent dated 12.12.2007 whereby the representation of the fifth respondent was rejected.[Prayer (i) of the Writ Petition:

"Issue a writ in the nature of certiorari quashing the order dated 29.12.2007, Annexure P-10, whereby respondent nos.4 to 6 have been appointed as Security Inspectors in 'The Shahabad Cooperative Sugar Mills Ltd. Shahabad' without considering the claim of the petitioners for promotion to the post of Security Inspectors and the order dated 12.12.2007, Annexure P-12 whereby petitioner no.2 has been informed that he is not eligible for promotion to the post of Security Inspector being totally illegal and arbitrary."]

10. It must be stated here that the attack of the respondents (writ petitioners) as disclosed in the pleading of the writ petition is threefold:

1. That under the relevant Rules applicable to the recruitment to the post in question, three modes of recruitment are possible, they are -

(i) By Promotion;

(ii) by Deputation; and

(iii) by Direct Recruitment.

That all the five writ petitioners were already working as Security Guards on daily wage basis with the third respondent and according to them they are fully eligible for being appointed by promotion as Security Inspectors and their claim was ignored and the third respondent chose to fill up the posts by resorting to direct recruitment.

2. In the alternative it was submitted that even if the posts are to be filled up by direct recruitment, such recruitment should have been made after proper advertisement in the newspapers inviting application from all the eligible candidates.

3. Thirdly, though the writ petitioners no.1 and 2 are ex- serviceman, their names were not sponsored by the Zila Sainik Board.[Para 6 of the Writ Petition:

"That the grievance of the petitioners in the present writ petition is that although they are fully eligible for promotion to the post of Security Inspectors and are available in the department for promotion to the post of Security Inspectors, yet respondent nos.4 to 6 have been appointed by way of direct recruitment without considering the case of petitioners for promotion. The alternative prayer for petitioners is that even if the post is to be filled by way of direct recruitment, the same should have been advertised in the newspaper, so that the petitioners and other eligible persons could have applied for the same for consideration for appointment. Although petitioner nos.1 and 2 are also Ex-servicemen, yet their names have not been sent by the Zila Sainik Board, Kurukshetra as they are already in service of the respondent - Mill as Security Guard. As per the practice adopted by the Zila Sainik Board, the Ex-servicemen whose names are registered with the Zila Sainik Board, on their appointment, names are deleted."]

11. In making the assertion that they are "fully eligible" to be appointed as Security Inspectors the writ petitioners relied upon the Rules which prescribe the eligibility prior to the decision of the Registrar dated 5.9.2007 (which is already noticed). The Rules prior to the amendment by the Registrar stipulated the eligible criteria vis-à-vis the posts in question as "Ex-serviceman with good health".

12. The learned Single Judge of the High Court in his judgment dated 29.7.2010 recorded the finding that only first two writ petitioners were ex- servicemen though all of them have been working as Security Guards with the third respondent. The learned Single Judge did not record any finding of the claim of the writ petitioners to seek appointment by promotion. He only dealt with the objections of the writ petitioners that the post in question could not have been filled up without an appropriate advertisement. In the process, the learned Single Judge referred to the minutes of the meeting of the Board of Administrators of the third respondent dated 1.11.2008 [From the reply filed by the respondents, it is admitted position on record that no advertisement was ever issued and the names of the private respondents were requisitioned from the Zila Sainik Board. Respondents have attempted to justify the appointment on the ground that since the post is meant only for ex-serviceman, Zila Sainik Board was the most appropriate organization from where names could be requisitioned. The petitioners have placed on record proceedings of the minutes of meeting of the Board of Administrators of the respondent - society held on 1.11.2008. From the Agenda Item No.18 it appears that the Board decided to fill up the post of Security Officer by giving an advertisement in the newspapers. It is, thus, contended on behalf of the petitioners that even according to the Board decision and rule 6 ) the post could only be filled by inviting applications through advertisement which is otherwise in consonance with Articles 14 and 16 of the Constitution.] (a meeting which was held almost 10 months after the appointment of the appellants herein) to derive factual support to the proposition advanced by the writ petitioners that the third respondent is required to fill up the post of Security Inspector by giving an advertisement in the newspaper. The very fact that the resolution was made in a meeting held almost after 10 months of the appointment must have prompted the learned Judge not to place any reliance on such proceeding. We also do not find any reference to the minutes dated 1.11.2008 in the writ petition.

13. Be that as it may, the learned Judge then went on to examine the legality of the procedure adopted in filling-up the posts in question in the light of the judgment of this Court in Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao and others (1996) 6 SCC 216 and reached at the conclusion that the procedure adopted by the third respondent is violative of Articles 14 and 16 of the Constitution of India and, therefore, quashed the appointment of the appellants herein.

14. Aggrieved by the decision of the learned Single Judge, the appellants herein unsuccessfully carried the matter in LPA. The Division Bench affirmed the judgment of the learned Single Judge in the light of the principle laid down by this Court in K.B.N. Visweshwara Rao (supra).

15. The whole recruitment process proceeded on the basis of the requisite qualifications to be possessed by the candidates seeking appointment to the posts in question are those prescribed under the communication of the Registrar dated 5.9.2007. The legality of the prescription of the Registrar has never been in challenge. Therefore, we proceed on the basis that the Registrar is competent to make such prescription. The writ petitioners are obviously aware of the fact that they do not possess the academic qualification prescribed. The letter of the fifth respondent dated 10.12.2007 seeking exemption from the qualification leads to an irresistible conclusion that they are aware of the qualifications prescribed by the Registrar. It appears from the counter filed on behalf of the third respondent that none of the five writ petitioners possessed the requisite qualification. Three of them were not ex-serviceman though they were matriculate. Two of them though ex-serviceman were not matriculate. [Counter Affidavit filed in the Writ Petition on behalf of Respondent Nos.2&3:

"So far as the qualification of the petitioners are concerned they are not at all eligible for promotion. The details of all the petitioners are given as under:

Name/Service/Rank	Qualification	Military
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Rai Singh	Literate	Naik
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Dharam PalMiddleHawaldar

Gurnam SinghMatricNot ex- serviceman

Surender Pal10+2Not ex- serviceman

Ram Pal10+2Not ex- serviceman

From the details mentioned above, it is clear that petitioners are not eligible at all for promotion. Hence the writ petition deserves to be dismissed on the basis of suppression of facts with regard to non- eligibility of the petitioners for the post of Security Inspector." ]

16. In the circumstances, we are of the opinion that the High Court ought not to have embarked upon an enquiry (at the instance of the writ petitioners who are not qualified to seek the post in question) whether the procedure followed by the third respondent in not advertising the impugned recruitment process in the newspaper is violative of Articles 14 and 16 of the Constitution of India. The conduct of the writ petitioners in suppressing the amended qualifications for the post in question prescribed by the Registrar in his communication dated 5.9.2007 is also another factor disentitling the respondents/writ petitioners from seeking any relief from the Court. The third respondent categorically took a stand in his counter in para 4 that the requisite qualification for the post in question stood amended. [It is important to mention here that earlier the name of the post was Security Jamadar in the semi-skilled grade, but in the revised staff strength of the mill the name of the post was changed to Security Inspector in Clerical-III Grade in place of Security Jamadar. The respondent no.2 vide letter dated 5.9.2007 has revised the qualifications of employees of Cooperative Sugar Mills of various posts including the post of Security Inspector and as per the amended revised qualifications, the qualification for the post of Security Inspector is as under:-

"Security Inspector Asstt. Security Officer/Clerical-IIIDirect RecruitmentEx-serviceman not below the rank of Hawaldar with Matric from the recognized Education Board. Computer Course upto 'O' level.

By Promotion- do -"

17. The High Court simply failed to take note of that fact. The result is enormous wastage of the judicial time. The judgment under appeal for the above reasons is not sustainable. The instant appeal is allowed. The writ petition shall stand dismissed. No order as to costs.