

SUPREME COURT OF INDIA

Director, Printing and Stationary Department, U.P. Government Press

Vs.

Moti Lal

C.A.Nos.3339-3340 of 2014

(H. L.Gokhale and Kurian Joseph JJ.)

07.03.2014

JUDGMENT

KURIAN, J.:

1. Leave granted.
2. Both the appeals arise from the same judgment and hence they are disposed of by a common judgment.
3. The challenge is to the judgment of the High Court of Judicature at Allahabad wherein the Director of Government Press was directed to consider regularization of daily-wage employees in Group-D as per Rules promulgated in December, 2001. The case has a chequered history.
4. The daily-wage Group-D employees were being engaged in the Government Press during 1985-1991. U. P. Group-‘D’ Employees Service Rules, 1985 consists of the following posts - Peon, Messenger, Chowkidar, Mali, Farash, Sweeper, Waterman, Bhisti, Tindal, Thelaman, Record-lifter and every other non-technical post.
5. The writ petitioners before the High Court through their union filed Writ Petition No. 7034 of 1992 titled “Pradeshik Rajkiya Mudralaya Karamchhari Samanwaya Samiti, U.P., Aish Bagh, Lucknow through its Secretary v. State of U.P. and others”, seeking regularization. The said writ petition was disposed of by judgment dated 02.12.1993. The High Court thought it fit to frame a scheme so as

to avoid recurrence of such disputes. That judgment was challenged before this Court. While the matter was pending before this Court, the Government took a decision on 12.11.1997 proposing to regularize them in service, giving them, if required, relaxation in age. For easy reference, we may extract the relevant portion of the decision:

“(1) The numbers of reserved category post is to be calculated on the basis of persons working in Class-IV category in the Government Printing Press, and it has to be seen that how many posts are lying vacant. Whatever steps are taken by the department to fill the vacant said posts, those persons who are working on daily wages basis and are qualified otherwise may be considered for interview and if the successful candidates requires age relaxation, the same shall be considered at the Government level sympathetically. Similarly, the posts reserved for backward class is to be filled up from the backward class candidates working on the daily wages basis as per the conditions mentioned above.”

(Emphasis supplied)

6. The said decision was conveyed to this Court and thus, Civil Appeal No. 6326 of 1994 was disposed of on 26.11.1997. The order reads as follows:

“The appellants have filed an affidavit dated 15th of November, 1997 and have annexed to their affidavit a circular which has been issued by them on 12.11.1997 setting out a scheme for giving regular employment to daily rated workers in the Government Printing Press at Lucknow giving them preference for absorption in regular vacant posts of Class-IV category in the Government Printing Press. The scheme also provides for relaxation of age limit for absorption. In paragraph 1 of the scheme it is stated that relaxation in age limit will, where necessary, be sympathetically considered at the Government level. We take this as willingness on (sic) the part of the Government to grant such age relaxation in all suitable cases wherever required. In view of the scheme which is now being proposed no further orders are required in the appeal. The impugned order of the High Court under which the High Court has provided a scheme is, therefore, set aside and the present appeal is disposed of.”

(Emphasis supplied)

7. It appears, for quite some time, no serious steps were taken. On 02.06.2001, the Secretary to the Government wrote to the Director of Printing and Stationary to take immediate steps in compliance with the judgment of this Court, in the matter of regularization. Being a crucial document, we shall extract the relevant portion of the said communication dated 02.06.2001:

“Industries Deptt. Division-2

Lucknow : dated 2.6.2001

Subject : With regard to give regular appointment in the vacant Group-D post in the Government Press to the present daily wages employees.

Sir,

On the above cited subject, in pursuance of the G.O. No. 2777/PS/18-8-1(1) PS/96 dated 12.11.97 and in compliance of the order dated 26.11.1997 passed by the Hon'ble Supreme Court of India a G.O. No. 620 PS/18-8-20 (31) PS/93 dated 15.4.1998, I have been directed to state that inspite of clear cut instructions of Government for the regular appointment of the present daily wages employees working the Government Press to the extent of available vacancies in the Group-D post, no action has been taken for such a long time is highly objectionable. Non action by you and your subordinate officers, inspite of having clear cut instructions of Government and the order of the Hon'ble Supreme Court of India could have created a difficulty for the government of non compliance of the order of Hon'ble Supreme court and a serious situation could have arisen before the Government.

With regard to above, I have been directed to state that in pursuance of the above G.O. the present daily wages employees working in the Government Press, steps may be taken to given them regular appointments on the Group-D posts in accordance with the applicable service rules.

(2) The proposal of giving age relaxation to the candidates declared successful in the interview may be sent to the government.

(3) To ensure the reservation policy as per the related provisions of Rules, shall be the personal responsibilities of your and officer who would be appointed as Appointing Authority.

(4) The regularization of suitable candidates of Schedule Caste/ Schedule Tribe, Backward Class and General Class shall be made in the proportion and priority to the extent of availability of the vacancies in the said class as has been desired in the above Government Orders.

I have been also directed to State that the above said process may be completed within a month and compliance may be reported to the government.”

(Emphasis supplied)

8. It was clarified subsequently by letter dated 24.09.2001 that the benefit of regularization should be given to daily-wage employees working as on 12.11.1997.

9. It appears, instead of taking steps for filling-up the Group-D posts by the eligible candidates working on daily-wage basis, an attempt was made to fill-up the post of “Gatemen” in the Press in purported compliance of the judgment of this Court. It may be noted that the post of “Gatemen” carried different pay-scale with different educational and other qualifications. To quote from the letter dated 29.10.2001:

“Industries Department, Division-2

Lucknow: Dated 29th October, 2001

Subject : With regard to regular appointment of the daily wages employees against the vacant posts of Gatemen in the Government Printing Press.

Sir,

Please refer to your letter No. Est. 726 dated 30.7.2001 vide which vacant post of Gatemen pay scale 2550-3200 sought to be included for the absorption /regularization of the daily wages employees of the Government Printing Press working on Class-IV post in compliance of the order dated 26.11.1997 passed by the Hon’ble Supreme Court in Civil Appeal 6326 of 1994.

With regard to above, I have been directed to state that in compliance of the Hon’ble Supreme Court’s order and considering the existing circumstances,

government had decided, steps may be taken to expeditiously fill up the vacant posts of the Gatemen by selection/regularizing services of such daily wages Class-IV employees working in the department who fulfill the following criteria of educational qualification and physical standard:

(1) Educational qualification : High School from the Secondary

Educational Council, U.P.

(2) Physical fitness : Physically and mentally fit, certified by the Chief Medical Officer.

(3) The measurement of height and chest to determine the physical standard (sic):

(1) Height : 167 CM

(2) Chest without swelling : 81 CM

(3) Chest getting swelled : 88.3 CM”

(Emphasis supplied)

10. It may be noted in this context that qualification for the Group- D/Class-IV posts as on the date of judgment of this Court or even on the government order dated 02.06.2001 was only pass in class IV examination, as per 1985 Rules. It is also pertinent in this context to note that the post of “Gatemen” was not included in the Group- D/Class-IV posts as on that date.

11. By the time the process for selection to the post of “Gateman” commenced, the State came with a new set of Rules for regularization of daily-wage employees in Group-D/Class-IV, viz., Uttar Pradesh Regularization of Daily Wages Appointments on Group-‘D’ Posts Rules, 2001. Rule 4 of the said Rules, to the extent relevant, reads as follows:

“4. Regularisation of daily wages appointments on Group ‘D’ posts.-(1) Any person who-

(a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these Rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant Service Rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group 'D' post, on the date of commencement of these Rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant Service rules or Orders.”

(Emphasis supplied)

12. The writ petitioners contended that the vacancies in the post of “Gatemen” should be filled-up only as per 2001 Rules. The contention was upheld leading to the impugned judgment. The High Court took the view that when the selection for appointment to the post of “Gatemen” was conducted, the 2001 Rules were in operation and hence, any selection could only be made in accordance with those Rules and not as per the government instructions dated 29.10.2001.

13. Thus aggrieved, the Director of Printing Press and the candidates already selected and appointed to the post of “Gatemen” in terms of the communication dated 29.10.2001 are before this Court.

14. It is the main contention of the appellants that “Gatemen” is not a post born in the cadre of Group-D. It is a separate cadre with different job requirements and hence, the qualification and other requirements are laid down separately. But the writ petitioners, respondents herein contended that “Gatemen” is only a Group-D/Class-IV post and it is interchangeable with other Group-D/Class-IV posts and is actually being interchanged also among other Group-D/Class-IV posts. It is further contended that this Court having been made to understand that the existing vacancies in Group-D/Class-IV posts in the Government Press would be filled-up as per the then existing Rules, after giving age relaxation, it is unjust and unfair to fill- up the post of “Gatemen” on prescribing different qualification.

15. It is seen that some of the respondents herein also participated in the selection. However, they were rejected either on the ground of not possessing the requisite qualification or on account of lacking in the required physical fitness.

16. Be that as it may, the history of the case as we have exposed above would show that the demand of the daily-wage Group-D/ Class-IV employees working in the Government Press during 1991-1992 had been accepted in principle by the Government and the Government had issued appropriate directions to accord relaxation in age. This Court was made to believe that steps in that regard would be taken and thus only the Civil Appeal was disposed of by judgment dated 26.11.1997. We find that no meaningful steps have been taken in that regard. Instead, the vacancies to the post of “Gatemen” have been filled-up with a different qualification. Many of the Group-D/Class-IV employees could not succeed either on account of educational qualification or on account of physical fitness. At the risk of redundancy, we may note that such requirements as prescribed by the order dated 29.10.2011 for the post of “Gatemen” were not there in 1985 Rules ruling the field as on the date of the decision of the Government dated 02.06.2001 for filling-up the vacancies in the Government Press.

17. The categoric stand taken by the Government before this Court is that the post of “Gatemen” does not belong to Group-D and that it was a separate selection. Despite several queries, no satisfactory explanation is forthcoming as to when the post of “Gatemen” was created, how many posts were created and whether the same formed part of the existing Group-D/Class-IV category or not. The Government has taken a very evasive stand before this Court in that regard.

18. Be that as it may, in view of the position as explained above, we are of the view that the interest of justice would be met and complete justice can be done if an appropriate direction is issued to fill-up the posts in Group-D/Class-IV category in the Government Press in the State of Uttar Pradesh from amongst the daily-wage employees in service as on 12.11.1997. The Director of the Printing Press is directed to identify the vacancies between 1991 and 2003 in the Group-D/Class-IV posts other than “Gatemen”. This exercise shall be completed within four months. The vacancies thus identified shall be filled-up on regular basis from amongst the daily-wage Group-D/Class- IV employees in service in the Government Press as on 12.11.1997 and who can work at least for five years as on date, before their superannuation as per Rules. The qualification shall be determined as per the 1985 Rules. This exercise shall be completed within another one month. We make it clear that in the process, none of the existing regular employees including the selected gatemen shall be disturbed. In other words, it will be open to the State to appoint such employees and post them either in the vacancies if available in the Government Press or any other Group-D/Class-IV posts in the State. We further

make it clear that without completing this exercise, there shall be no regular appointment in any Group-D/Class-IV posts in the State of Uttar Pradesh.

19. The judgment under appeal stands modified to the above extent. The appeals are disposed of as above.

20. There is no order as to costs.