

PUNJAB AND HARYANA HIGH COURT

Shri B. S. Bansal Executive Engineer

Vs

The State of Punjab

C. W. P. No. 157 of 1978

(Prem Chand Jain and C.S. Tiwana, JJ.)

18.05.1978

JUDGMENT

Prem Chand Jain, J.

1. This judgement and order of ours will dispose of Civil Writ Petitions Nos. 157, 63, 135, 158, 161, 210 and 280 of 1978, as common questions of law and fact are involved in these petitions. In order to appreciate the contentions, which were advanced before us by the learned counsel for the parties on either side, it would be appropriate to notice certain salient facts, which have been taken from Civil Writ No. 157 of 1978, and read as under.

2. The petitioner joined service in the Public Works Department of the Punjab Government as a direct recruit to the Punjab Service of Engineers, Class II, on December 22, 1970. The promotion to the post of Executive Engineer is governed by the statutory rules, called the Punjab Service of Engineers, Class I, P W. D. (Buildings and Roads Branch) Rules, 1960, (hereinafter referred to as the Rules). According to the Rules, all the eligible Class II officers are considered for promotion to Class I by a Screening Committee constituted under the Rules. The case of the petitioner, along with other eligible officers, was considered by the Screening Committee and the said Committee declared 24 Class II officers, including the petitioner, eligible for promotion to Class I. After declaring 24 Class II officers eligible for promotion to Class I, the Screening Committee selected 14 Class II officers and declared them to be fit for promotion as Executive Engineers. The name of the petitioner was included in the said list of 14 persons. On the basis of that selection, the petitioner, along with 13 other officers, was promoted to the post of Executive Engineer by an order dated July 5, 1975. The appointment was for a period of six months, or till the time the approval of the Punjab Public Service Commission (hereinafter referred to as the Commission) was received under the Rules.

3. It is further stated that the cases of all the 14 officers, who were selected and appointed as Executive Engineers, along with the cases of other officers who were not found fit, were sent to the commission for necessary approval. Since the approval of the Commission was not forthcoming during the first six months of the appointment, the appointment of the petitioner and other officers as Executive Engineers was extended from time to time. It appears that the

Commission did not grant the approval and ultimately sent the whole list back to the Government.

4. From the averments made in the petition, it comes out that the petitioner, along with other 13 officers, was reverted to the post of the Sub-Divisional Engineer, vide order dated December 29, 1977, and by another order of the same date. 21 Class II officers, including 12 those officers who were reverted on the same day, have again been promoted as Executive Engineers. In the said list, the name of the petitioner did not find mention, with the result that the present petitions have been filed for the issuance of an appropriate order or direction quashing the order of respondent No. 1 dated December 29, 1977, reverting the petitioners from the post of Executive Engineer to that of the Sub Divisional Engineer.

5. Separate written statements have been filed on behalf of respondent No. 1 and respondent No. 2 Besides taking a preliminary objection that the promotion of the petitioner being purely on ad hoc basis, no cause of action accrues to him for filing the present petition, respondent No. 1 has controverted the stand of the petitioner on merits, inter alia, on the grounds that the recommendations of the Screening Committee were subject to the final approval of the Commission, that the petitioner become eligible for consideration for promotion to P. S. E. Class I on the basis of the relaxation accorded by the Government in exercise of its power under rule 22, that the recommendations made by the Screening Committee on the basis of the criteria adopted by the Government for making P. S. E. Class II officers eligible for promotion to Class I by invoking its power of relaxation under rule 22 had resulted in large scale supersession of same senior officers, that the commission did not approve of the ad hoc promotions as in its view the criteria adopted by the Government for making Class II officers eligible for promotion was unjust, that the Government considered the whole case afresh and again made relaxation in exercise of its power under rule 22, with the result that 21 persons, including 11 out of those who were reverted, were promoted as Executive Engineers on ad hoc basis, that the petitioner being junior in the list could not be promoted as Executive Engineer for want of vacancy; and that the promotions even now made are on ad hoc basis only as the same, are subject to the approval of the Commission.

6. In the return filed on behalf of the Commission, the stand taken by the Government has been supported. It has also been averred that the Commission performed its duty faithfully and the advice sent by it in the matter was based on the merit of the case and perfectly legal.

7. On the respective contentions of the learned counsel for the parties, the first question that requires determination is whether under rule 22 such relaxation, as has been given by the Government in the instant case, could legally be given ? Rule 22, which gives the power of relaxation, reads as under :-

"22. Power to relax.

(1) Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, It may, by order dispense with or relax the requirements of that rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner.

(2) Notwithstanding anything contained in these rules, it shall be open to Government to recruit a person other than an Indian citizen to the service in which event it shall, in consultation with the Commission pass such orders as it considers appropriate in respect of the qualifications required for appointment and in respect of all other matters which arise in connection with such an appointment."

8. It was contended by Mr. Sibal, learned counsel for the respondents, that under rule 22 power of relaxation could be exercised by the Government in order to remove undue hardship in a particular case'. What was sought to be argued by him was that in the instant case, the petitioner and other officers were not eligible to be promoted to Class I, that the relaxation was made in the provisions of rule 6 (a) & (b), with the result that some of the officers became eligible for promotion; that no undue hardship was being caused to any particular officer by the applicability of rule 6 and that non-availability of eligible officers could never be made a ground for the exercise of the power of relaxation.

9. On the other hand, Mr. Kuldip Singh, learned counsel for the petitioner (whose contention was adapted by the other learned counsel), submitted that under rule 22 the Government had full power to dispense with or relax the requirements of any rule; that in this rule the words "particular case" have not to be construed and interpreted narrowly; that these words have to be given a liberal meaning, and that power of relaxation under this rule could legally be exercised even to meet a particular situation, as has been done in the instant case.

10. After giving my thoughtful consideration to the entire matter. I am of the view that there is considerable force in the contention of Mr. Sibal.

11. Before I deal with the merits of the case, I would like first to advert to the relevant rule giving power to the Government to grant relaxation, which has been reproduced above. Under this rule, power has been given to the government to dispense with or relax the requirements of any of the rules; but this power as would be evident from the reading of the rule cannot be exercised arbitrarily and whimsically as certain guidelines for the exercise of that power have been indicated in the rule itself, which may be summarised as follows:-

(a) that the operation of any of these rules must result into undue hardship;

(b) that the undue hardship must be caused in any particular case; and

(c) that it is necessary to exercise that power in order to deal with the case in a just and equitable manner.

12. It would thus be clear that the existence of the aforesaid condition is a prerequisite for the exercise of the power of relaxation by the Government.

13. Adverting to the facts of the case in hand, I find that in the year 1975, it was noticed that no officer in P.S E. Class II was eligible for promotion and as it was imperative to fill the vacancies immediately in public interest, therefore, the provisions of rule 6 (a) and (b) of the Rules, which provide qualifications necessary for the appointment of a person to the Service, as on January 1, 1975, were relaxed. Consequent upon the applicability of the relaxation, 24 officers became

eligible for promotion to Class I Service. After considering all the 24 eligible officers on the basis of their service record and qualifications, only 14 of them were found fit for promotion. Accordingly, the Governor of Punjab promoted the 14 officers on ad-hoc basis as Executive Engineers (Civil) for a period of six months, or till the final approval of the Commission in regard to the promotion of these P.S.E. Class II officers to P.S.B. Class I Service was received whichever was earlier. The approval of the Commission was not received for sometime, with the result that the promotion and appointment of the aforesaid 14 persons on ad-hoc basis was allowed to be continued on six-months basis till December 29, 1977, when the said persons were ordered to be reverted as the Commission had not approved of their promotions. Simultaneously, another order was issued on that very day. i.e., December 29, 1977, by which the power of relaxation was exercised under rule 22 and the provisions of rule 6 (a) and (b) were ordered to be relaxed as on January 1, 1977, to the extent mentioned in Annexure P 3 and thereafter, 21 officers were promoted as Executive Engineers (Civil) on ad-hoc basis for a period of six months or till the final approval of the Commission was received, whichever was earlier.

14. Thus, it is clear that in the year 1975 as well as in the year 1977, the power of relaxation was exercised in public interest as it was imperative to fill up the vacancies in Class I Service. The question that now requires determination is whether the power of relaxation has been validly exercised by the Government in the instant case? To my mind the answer has to be in the negative, as the ingredients envisaged under rule 22 (1) of the Rules for the exercise of the power of relaxation, are completely missing. In the instant case, the power of relaxation was exercised in public interest, as it had become imperative to fill the vacancies immediately in Class I Service. In the notification, it is nowhere said that the qualifications referred to in rule 6(a) and (b) were causing any undue hardship to any person, and in order to deal with the case in a just and equitable manner the power of relaxation was being exercised. I fail to understand as to how the availability of vacancies in Class I Service could cause undue hardship to such officers in Class II Service who were ineligible to be promoted.

15. Mr. Kuldip Singh, learned counsel, drew our attention to the definition of the word 'case' as a noun which reads as "event or happening, instance, occasion, situation or circumstances, and the like". His contention was that the word 'case' means situation also, and as such to meet a particular situation, the power of relaxation could be exercised, as has been done in the instant case. I am afraid, I am unable to agree with this approach of the learned counsel. The rule has to be read as a whole and its bare reading shows that the intention of the framers of the rule was to vest the Government with the power of relaxation to be exercised only in an individual case and not to meet a general situation. The power is exercisable only to remove any undue hardship caused to an individual and that too, when it is necessary to remove that hardship in a just and equitable manner. If I accept the contention of Mr. Kuldeep Singh that the power of relaxation could be exercised in order to meet a general situation like the one with which we are faced in the instant case, then the whole purpose of the rule would be frustrated and the Government would be left with such an arbitrary power which when exercised in the situation in which it has been exercised in the instant case, would, instead of removing any hardship, result into great hardship. As would be evident from the facts of the case in hand, by the exercise of the power of relaxation great hardship had been caused to some of the senior persons in Class II Service inasmuch as persons junior to them had become eligible for promotion to, Class I Service as a result of the relaxation, The framers of the rule had never intended to give an uncontrolled and unguided power to the Government which could be exercised in a general manner or in order to meet a

particular situation. The intention of the framers of the rule was to give some power to the Government to do justice in an exceptional case when by the applicability of a particular rule some grave injustice was being caused to a particular person.

16. In view of the aforesaid discussion, I hold that the power of relaxation under rule 22 could be exercised by the Government only if the operation of any rule was causing undue hardship to any particular individual and that the Government was satisfied that it was necessary to exercise the power of relaxation in order to deal with that individual in a just and equitable manner. Having arrived at the aforesaid conclusion, I further find that the relaxation given by the Government in the year 1975 was beyond its powers and could not legally be granted.

17. At this stage, it may be observed that during the course of arguments, it was pointed out to Mr. Sibal that in case his contention was accepted that under rule 22 such a blanket relaxation could not be given then it was going to harm the interests of his clients as they too have been promoted on the basis of a similar type of relaxation granted by the Government in December, 1977. The learned counsel very fairly conceded that if the interpretation sought to be put by him is accepted, then even the promotions of the private respondents would not be in accordance with law, and that if the Government changes its view, then his clients would have no grieve.

18. Mr. Sibal, Senior Advocate, learned counsel, had also contended that the power of relaxation could be exercised only in favor of the person who had become member of the Service and not in favor of the persons who were still to be promoted to the Service. The learned counsel submitted that the view taken by *B. S Dhillon J. in Shri Surjit Singh v. Shri Som Dutt and others¹*, wherein it has been held that the power of relaxation could be exercised in favor of the members of the Service as well as new entrants, did not lay down the correct law. In the view I have already taken on the interpretation of rule 22, I do not propose to deal with this contention of the learned counsel, as it is not necessary to do so.

19. It was also contended by Mr. Kuldip Singh that the power of relaxation once exercised could not legally be withdrawn. The precise contention of the learned counsel was that by virtue of the relaxation granted in the year 1975, the petitioners had become eligible to be promoted to Class T Service; that the Commission was required to scrutinise the cases of the persons who had been recommended by the Screening Committee; that the jurisdiction of the Commission was only to consider the suitability and eligibility of the persons recommended by the Screening Committee; that the eligibility of the recommended candidates had to be considered in the light of the relaxation granted by the Government; that the Commission had no jurisdiction to refuse approval on the ground that the relaxation given by the Government in exercise of its power under rule 22 had caused great hardship, as persons senior to the petitioners had been superseded and that the relaxation granted later on by the Government would not result in the supersession of the earlier relaxation. I am afraid, I am unable to agree with these contentions of the learned counsel. The petitioners and some others were promoted to Class I Service vide order dated July 5, 1975, on ad hoc basis for a period of six months, or till the final approval of the Commission in regard to the promotion of these persons to P S. E. Class I was received, whichever was earlier. It appears that the approval of the Commission was not received for someone with the result that the Government went on extending the petitioners appointments on ad hoc basis. While scrutinising the cases, the Commission formed an opinion that the relaxation given by the Government instead of removing any hardship had resulted into undue hardship to a larger

number of senior officers, which was against the principle of relaxation embodied in the above-mentioned rule. As the Commission did not find the relaxation to be fair, it expressed its inability to approve the promotions of the petitioners and others declared suitable by the Screening Committee. When the case was received back from the Commission, the Government seems to have realised its mistake and instead of referring back the case to the Commission to re-consider its opinion, accepted the view expressed by the Commission and thereafter by a notification dated December 29, 1977, made fresh relaxation in rule 6 (a) and (b) and on the basis of that relaxation made promotions to Class I Service. These promotions resulted into the reversion of some of the petitioners.

20. On the basis of the aforesaid contentions the questions which need determination are whether relaxation once granted by the Government could legally be withdrawn without there being any specific order in this respect and whether the Commission could withhold its approval as the relaxation granted by the Government had caused undue hardship ? The contention of Mr. Kuldip Singh, learned counsel, was that the benefit which had accrued to the petitioners on the basis of the relaxation could not legally be withdrawn, as on the basis of that relaxation the petitioners had become eligible to Class I Service. In support of his contention, reliance was placed on *Shri Sudarshan Sood, Sub-Divisional Officer v. The State of Punjab and others*², I am afraid, I am unable to agree with the learned counsel for the petitioners. The relaxation was granted in exercise of the powers under rule 22. The Commission brought it to the notice of the Government that the exercise of the power of relaxation instead of doing good had resulted in great hardship to some of the officers, who were senior to the persons who had been promoted on the basis of the relaxation granted. The Government accepted the advice. I do not find anything wrong in the Government accepting the advice of the Commission. If it is brought to the not of the Government that what had been done by it was not proper or legal, then I fail to understand as to what hurdle would come in the way of the Government in accepting that advice. It is not a case where the petitioners were eligible and had been promoted as a matter of right; rather the case is that they were ineligible and are claiming benefit on the basis of the relaxation given by the Government. The petitioners cannot claim benefit of an exercise of power which from its inception was illegally exercised. The exercise of such a power did not give them any right, nor can they base their claim on such a right.

21. Lot of arguments were advanced for and against the proposition whether the Commission had any power to refuse to accord approval on the ground that the relaxation granted by the Government had resulted into great hardship to some senior officers. The argument of Mr. Kuldip Singh was that no such power vested in the Commission, while Mr. Sibal had contended that such a power could legally be exercised. I do not propose to go into the merits of this aspect of the matter as I have earlier held that the power of relaxation was exercised illegally and the Government had no jurisdiction to grant such a relaxation in exercise of its power under rule 22. This being so, no legal right accrued to the petitioners. The Government could, in these circumstances, refuse to stick to its earlier decision by which relaxation was granted and the petitioners cannot legally claim that they having become eligible would remain eligible to be promoted to Class I Service in preference to those who may be promoted later on on the basis of the subsequent relaxation given in exercise of the power under rule 22.

22. This brings me to the preliminary objection that the petitioners, who are merely ad hoc employees, have no right to approach this Court and claim relief in exercise of the powers under

Article 226 of the Constitution of India. In the circumstances of the case, I find considerable force in this contention of the learned counsel for the respondents. The petitioners were promoted on ad hoc basis, subject to the approval of the Commission which was not received for sometime with the result that the Government went on extending the appointments of the petitioners on ad hoc basis. Finally the Commission refused to give its approval. After the period of the first ad hoc appointment had expired, the Government went on extending the appointments of the petitioners on ad hoc basis. If the Government, after the expiry of the period of six months from the date of initial appointment on ad hoc basis, had not renewed the appointment of the petitioners, then admittedly they would have been reverted back to their substantive post in Class if Service. At that time, they could not have come to this Court and ask for a direction that they should be allowed to continue in the Service till the approval of the Commission was granted. That being so, I fail to understand as to how the petitioners can lay a claim as a matter of right to the post to which they were promoted on ad hoc basis in the circumstances of this case, the petitioners' appointment being purely on ad hoc basis does not entitle them to knock the door of this Court and get relief in exercise of its powers under Articles 226 and 227 of the Constitution.

23. No other point arises for determination.

24. For the reasons recorded above, all these petitions are dismissed, but without any order as to costs;

C. S. Tiwana, J.

25. I agree.

Petition dismissed.

Cases Referred.

11973 (1) S.L.R . 452

21969 S. L. R 715