

Dharam Parkash Vs State Of H.P. And Another

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 2, 2020

Acts Referred: Constitution Of India, 1950 Article 14

Hon'ble Judges: Tarlok Singh Chauhan, J

Bench: Single Bench

Advocate: Manohar Lal Sharma, Desh Raj Thakur, Yudhbir Singh Thakur, Narender Singh Thakur, Dalip K. Sharma

Final Decision: Allowed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for the grant of following substantive reliefs:

i) That the impugned office order No.3-29/71-GS, dated 23.01.2015, Annexure A-5, issued by respondent No.1 may kindly be quashed and set-aside.

ii) That the respondent No. 1 may kindly be directed to consider the case of the applicant for his placement as Peon from the date i.e. 23.01.2015,

when the junior of the applicant, i.e. respondent No.2 has been placed against the post of Peon, with all consequential benefits @ 12% per annum

from the due date.

2. This Court need not to delve into the facts in detail as the same stands duly noted in the order that was passed at the time of hearing of the petition

on 21.12.2019 which reads as under:

"The petitioner was appointed as Beldar on daily wage basis in the month of November, 1993 and his services were regularized after 10 years on

1.10.2003, whereas respondent No.2 was appointed as Beldar on daily wage basis on compassionate ground on 1.12.2009 and shortly thereafter was

ordered to be regularized vide order dated 2.12.2010 i.e. within one year.

What is more surprising is that when respondent No.1 got down to making placement to the post of Peon, respondent No.2, who was junior most

Beldar in the office of Governor's Secretariat, was ordered to be placed as Peon.

Obviously, such a course could not have been adopted by respondent No.1 and prima facie it is a clear case of favouritism, where all rules and

regulations were thrown to the winds.

The Court is not oblivious to the provisions of the rules that have been annexed alongwith reply, which gave His Excellency, The Governor, full

discretion in the matter of selection of household staff, but these rules nowhere give unfettered right to any person, to act contrary to law and the

recruitment and promotion rules.

It is by now well settled that exercise of discretion should be legitimate, fair and without any aversion, malice or affection. Nothing should be done

which may give the impression of favouritism or nepotism.

Therefore, let respondent No.1 file supplementary affidavit justifying its action in first regularizing respondent No.2 within one year of the joining and

thereafter promoting her despite being junior most Beldar vide office order dated 23.1.2015 (Annexure A-5) before the next date of hearing.

List on 28.12.2019.

3. In compliance to the aforesaid order, the respondent No.1 has filed supplementary affidavit, the relevant portion whereof reads as under:

3(a). Since His Excellency the Governor is the authority to select the staff which can be appointed on contract, by direct recruitment or on

promotion or on deputation, the respondent No. 2 was appointed as Beldar on contract on compassionate ground on 1.12.2009 with the approval of the

then Governor, Himachal Pradesh. Her husband Shri Dalwinder Kumar was working as Sweeper in Raj Bhawan and died on 5.10.2009. The copy of

the noting portion of the file is attached as Annexure-1.

(b) Subsequently, His Excellency the then Governor ordered on 16.12.2010 that Smt. Rekha working as Beldar be appointed on regular basis

against the post(s) she is presently working on contract basis. Copy of the order is attached as Annexure-2.

(c) Therefore, the respondent No.2 was appointed as Peon with the approval of the then Hon'ble Governor on 23.01.2015. The copy of the noting

portion is attached as Annexure-3.

4. That the office record shows that the respondent No.2 was appointed first as contractual Beldar and then as regular Beldar with the approval of

H.E. the Governor. Subsequently, she was appointed as Peon, which was fresh appointment, and not a promotion. Therefore, the petitioner's

claim that he was not considered for the post of Peon despite being senior to respondent No.1 in the category of Beldar is not tenable since

appointment of respondent No.2 as Peon was made afresh with the order/approval of the Governor, therefore, her position in the seniority list in the

category of Beldar was not relevant at that point of time.

4. I have heard learned counsel for the parties and have also gone through the material placed on record carefully.

5. In making the appointments or regulating the other service conditions of the staff of the house-hold establishment of the Governor, his Excellency

the Governor exercises an administrative power and while exercising such power can definitely be interfered with on well-known grounds like

discrimination, mala fide or the like(s). Therefore, in order to enable a judicial intervention, it would require only a very strong and convincing argument

to show that this power has been abused. If an authority has exercised his discretion in good faith and not in violation of any law, such exercise of

discretion would normally not be interfered with by the Courts merely on the ground that it could have been exercised differently or even that the

Court would have exercised it differently.

6. It appears that respondent No.1 has failed to take into consideration the fact that this discretion can only be exercised if there is a power to do so

and the same in the given circumstances cannot be contrary to law. The absence of arbitrary power is the first postulate of rule of law upon our whole

constitutional edifice is based. In a system governed by law, discretion when conferred upon an executive authority must be confined within clearly

defined limits. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of rule of law.

Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority

7. It was more than four decades back that the Hon'ble Supreme Court had observed that "it must, therefore, be taken to be the law that

where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting

other forms of largesses, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its

action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the

matter of grant of largesses including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-

discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the

Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on

some valid principle which in itself was not irrational, unreasonable or discriminatory (Refer: Erusian Equipment and Chemicals Ltd. vs. State of West

Bengal, AIR 1975, SC 26).

8. In Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and others 1991 Supp (1) SCC 60,0 the Hon'ble Supreme Court in its majority

decision held that there was need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense

of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life,

liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they

occupy high seats of power and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a

complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History

does not support it and reality does not warrant it. In particular, in a society, pledged to uphold the rule of law, it would be both unwise and impolitic to

leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law. ¶

9. Earlier to that, the Hon'ble Supreme Court in *Ramana Dayaram Shetty vs. International Airport Authority of India and others* (1979) 3 SCC

489 held as under:-

¶ "It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into

contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private

individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant.

The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences etc. must be confined

and structured by national, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any

particular case or cases, the action of the Government would be liable to be struck down. ¶

10. Thus, what can be taken to be well settled is that an unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination.

No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds

supported by acceptable materials and reasons thereof.

11. The concept of equality before law means that among equals the law should be equal and should be equally administered, and that like should be

treated alike. There must not be discrimination among equals unless there is reasonable classification. When something is to be done within the

discretion of the authorities, it must be done according to the whims of the authorities. Article 14 of the Constitution is violated by powers and

procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the

rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the

bounds of reason.

12. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. From a

positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a

republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according

to political logic and constitutional law and it therefore violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and

equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness

pervades Article 14 like a brooding omnipresence.

13. Bearing in mind the aforesaid exposition of law, it would be noticed that the petitioner was appointed on daily wage basis in the month of

November, 1993 and his services were regularized only after he had completed 10 years of services on 1.10.2003, however, an undue favour was

shown by respondent No.1 in regularising the services of respondent No.2, who came to be appointed only on 1.12.2009 and was ordered to be

regularized on 2.12.2010 i.e. within one year. Not only this, even while making placement to the post of Peon, despite respondent No.2, who was

junior most Beldar was ordered to be placed as Peon ignoring the legitimate claim of the petitioner. The mere fact that there was a discretion vested

with the authority would not clothe it with the power to relax the rules, regulations or guidelines and above all, violate the Constitutional provision more

particularly Article 14 thereof.

14. In view of the aforesaid discussion, I find merit in this petition and the same is accordingly allowed and consequently the impugned order dated

23.1.2015 (Annexure A-5) whereby the respondent No.2 was placed against the post of Peon is quashed and set-aside and the petitioner, who is

senior most Beldar is directed to be considered and if found fit and eligible be appointed as Peon from the date i.e. 23.1.2015 with all consequential

benefits.

15. The petition is disposed of in the aforesaid terms, so also the pending application(s) if any.