

(2009) 05 P&H CK 0077

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ashok Chauhan and Others

APPELLANT

Vs

Government/State of Haryana
and Others

RESPONDENT

Date of Decision: May 1, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2009) 156 PLR 193 : (2009) 8 SLR 338

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

All the petitioners, who are Matriculates, joined as Clerks in the Haryana State Co-operative Apex Bank Limited (hereinafter referred to as "the respondent Bank") in the year 1980. The services of the petitioners are governed by the Haryana State Cooperative Bank's Staff Service (Common Cadre) Rules, 1976 (hereinafter referred to as "the Common Cadre Rules"), which have been adopted by the respondent bank. In the year 1992, the petitioners were promoted from Clerks to Junior Accountants. Their next promotional post is Accountant. Before the year 1988, as per Rule 3 of the Common Cadre Rules, a person having three years experience as Junior Accountant/Stenographer in the respondent bank was eligible for promotion to the post of Accountant. Undisputedly, before promotion of the petitioner as Junior Accountant in the year 1992, the said Rule of the Common Cadre Rules was amended on 30.1.1989 to the effect that (i) qualification must be at least Matriculate for the existing employees but graduation for the employees to be recruited/promoted in future; and (ii) 5 years experience as Junior Accountant/Stenographer. In view of the said amendment and keeping in view the fact that the petitioners being Matriculates were only promoted as Junior

Accountants after the amendment, they were not found eligible for promotion on the posts of Accountants when other persons were promoted as Accountants in the year 2007.

2. Feeling aggrieved against the aforesaid action of the respondent-bank, the petitioners after more than 19 years have challenged the above amendment made in the Common Cadre Rules on 30.1.1989 being illegal, arbitrary and discriminatory. It is submitted that the eligibility of the petitioners for promotion to the posts of Accountants could only be determined on the basis of unamended Common Cadre Rules, which were applicable at the time when the petitioners were initially recruited. It has been alleged that the action of the respondents in applying the amended Rule in case of the petitioners for consideration of their eligibility for promotion to the posts of Accountants is totally illegal and arbitrary, and against the ratio of law laid down by the Supreme Court in *P. Mohan Reddy v. E.A.A. Charles and Ors.* 2001(2) R.S.J. 122, wherein it has been held that even though an employee cannot claim to have a vested right to have a particular position in any grade, he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne on the cadre. In the petition it has also been alleged that certain employees, who were promoted as Junior Accountants after the aforesaid amendment and who were Matriculates, as shown in the seniority list, have been further promoted to the posts of Accountants. Therefore, the action of the respondents in denying promotion to the petitioners on the ground that since on the date of amendment they were not working as Junior Accountants, they could not be considered eligible for promotion to the posts of Accountants being Matriculates, is discriminatory. In this regard, the names of V.K. Malhotra and Surinder Singh Bhiyan, who have been shown at serial Nos. 7 and 109 of the seniority list, have been mentioned.

3. In the written statement filed by respondent No. 3 and the subsequent affidavit filed by the Managing Director of the respondent bank, it has been stated that the amendment made in the aforesaid Rule in the year 1988 w.e.f. S.S. 1988 is perfectly valid as it is well within the rights of the employer to prescribe proper qualification for the post in the cadre. Before amendment of the Common Cadre Rules, the qualification for promotion to the post of Accountant was Matriculate with three years' experience as Junior Accountant. At the time of amendment, the petitioners were working as Clerks and not as Junior Accountants. Therefore, they were not eligible for promotion because according to the amendment, the person must be graduate. The amendment made in the Rule requiring the higher qualification for promotion to be made in future cannot be said to be discriminatory. Regarding the alleged discrimination, it has been stated that S/Shri V.K. Malhotra and Surinder Singh Bhiyan were promoted as Junior Accountants prior to the amendment made on 30.1.1989. Therefore, on the date of amendment they were working as Junior Accountants and subsequently, they were promoted as Accountants, though they were Matriculates. It has been specifically averred that after the amendment no

Marticulate person has been promoted to the post of Accountant, who was not working as Junior Accountant on the date of amendment, i.e., 30.1.1989.

4. I have heard the arguments of the learned Counsel for the parties.

5. Learned Counsel for the petitioners argued that the amendment made in the Common Cadre Rules with regard to qualification for promotion to the post of Accountant on 30.1.1989 is illegal and arbitrary, and secondly that this amendment is not applicable on the petitioners, who were inducted into service in the year 1980 as their service conditions are to be governed by the unamended Rules.

6. After hearing the learned Counsel for the parties on the issues, I do not find any merit in the contention of the learned Counsel for the petitioner. The amended Rule provides that the existing employees (who were working on the date of amendment as Junior Accountants and were Matriculates) were eligible for promotion to the post of Accountants provided they have five years" experience. This Rule further creates a second category that the employees to be recruited/promoted in future must be graduate having five years experience as Junior Accountant/Stenographer for making them eligible for promotion to the posts of Accountants. The classification made in the Rule appears to be reasonable which has a nexus with the object sought to be achieved. In 1989, the respondents decided to increase the qualification of a person to be promoted on the post of Accountant. As regards the existing employees, who were working as Junior Accountants, on the date of the amendment, i.e., 30.1.1989, the qualification for promotion was not changed. The said qualification was changed only qua those employees who were to be recruited/promoted in future. Therefore, it cannot be said that the prescribing of that qualification is arbitrary or violative of Article 14 of the Constitution of India.

7. Undisputedly, the petitioners were not working as Junior Assistants on the date the above-said amendment was made. At that time they were working as Clerks. They were only promoted as Junior Accountants in the year 1992. By that time the Rules were already amended. As per amended Rules, for becoming eligible for further promotion to the post of Accountant, the petitioners should be graduate with five years of experience as Junior Accountant/Stenographer. Therefore, in my opinion, the petitioners are not eligible for consideration to be promoted as Accountants until and unless they acquire the degree of graduation. The judgment in P. Mohan Reddy"’s case (supra) cited by the learned Counsel for the petitioners is not applicable in case of amendment of the Rules pertaining to promotion. The said judgment deals with the right of the employee pertaining to his seniority. In that judgment, it has been held that an employee has a right of his seniority being determined in accordance with the Rules which remain in force at the time when he was borne on the cadre. The instant case is not about the amendment made in the seniority clause. It is about the amendment made in the clause prescribing the qualification for promotion from the post of Junior Accountant to Accountant. Therefore, on the basis of the judgment cited, it cannot be held that the petitioners

are to be governed by the unamended Rules and they are eligible for consideration of promotion to the posts of Accountants on the basis of the said Rules only being Matriculates.

8. As far as the alleged discrimination is concerned, it has been specifically stated that after amendment of the Rules, no person, who is Matriculate and was working as a Clerk or Stenographer or was not working as Junior Accountant on 30.1.1989, has been promoted to the post of Accountant. It has been alleged that certain persons who were matriculates and working as Junior Accountants were promoted to the posts of Senior Accountants after the said amendment. In this regard, it has been specifically replied that as far as Matriculate Senior Accountants of Central Cooperative Bank Employees are concerned their services are being governed by separate Rules i.e. Haryana Central Co-operative Bank Staff Services (Common Cadre) Rules, 1975. Therefore, the rule of promotion under the said cadre is different.

9. During the course of hearing, counsel for the petitioners stated that Shri Surinder Singh Bhiyan, who was Matriculate, was promoted as Junior Accountant on 25.8.1988, was further promoted as Accountant on 20.5.2003 in the respondent bank. He submitted that the amendment made in the Rules on 30.1.1989 came into force w.e.f. 5.5.1988. Therefore, the promotion of the said person was contrary to the amended Rules. I do not find any force in this contention of the learned Counsel for the petitioners because undisputedly initially the amendment was made in the Rules in the year 1988 which came into force w.e.f. 5.5.1988. By the said amendment, for promotion to the post of Accountant, five years experience as Junior Accountant/Stenographer was required. Subsequently, on 30.1.1989 again an amendment was made vide which the educational qualification of the employees to be recruited/promoted in future being graduate, was added. Since before the said amendment Shri Surinder Singh Bhiyan was promoted as Junior Accountant, therefore, his case for promotion as Accountant was considered by treating him as an existing employee on the date of amendment of the Rules. Thus the petitioners have no vested right to be promoted on a higher post until and unless they fulfill the qualification prescribed for that post.

10. In view of the above, there is no merit in the petition and the same is hereby dismissed.