

(2011) 01 P&H CK 0424

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No"s. 5016 and 16352 of 2007

Tarjinder Kumar and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 6, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2011) 162 PLR 164

Hon'ble Judges: Ranjan Gangoi, Acting C.J.; Augustine George Masih, J

Bench: Division Bench

Judgement

Ranjan Gogoi, Actg. C.J.

Both the writ petitions being interconnected were heard together and are being disposed of by this common order.

2. The Petitioners in CWP No. 16352 of 2007 are Sub-Divisional Engineers in the Punjab Tubewell Corporation, whereas the Petitioner in CWP No. 5016 of 2007 is holding the post of Draftsman. They seek to challenge the validity of the Punjab Irrigation Department (Group A) Service Rules, 2004, which have been adopted by the Corporation in supersession of the Bye-Laws earlier in force in the Corporation. The Petitioner in CWP No. 5016 of 2007 has been divested of the current duty charge in the post of Sub-Divisional Officer which he was holding. The said order is in an incidental aspect of the challenge made in the second writ petition i.e. CWP No. 5016 of 2007.

3. The facts are long but an attempt must be made to summarize and recite only what is essential. Promotion to the post of Executive Engineer, which is the subject matter of CWP No. 16352 of 2007 and promotion to the post of Sub-Divisional Engineer, which is involved in CWP No. 5016 of 2007, were initially governed by a set of Bye-Laws framed by the Corporation in the year 1977. Appendix "B" of the said Bye-Laws stipulated a degree in Civil/Mechanical/Electrical Engineer and 8 years of

service in the post of Assistant Engineer (Sub-Divisional Engineer) as a condition of eligibility for promotion to the post of Executive Engineer (Divisional Engineer). On the other hand, the post of Assistant Engineer (Sub-Divisional Engineer) is to be filled up by direct recruitment as well as by promotion. The quota of promotion from different sources with the qualifications and minimum service was also stipulated in the aforesaid Appendix "B". It may be specifically noted, at this stage, that for promotion to the post of Sub Divisional Engineer/Assistant Engineer, diploma holders as well as Draftsmen with diploma formed an eligibility category.

4. The Board of Directors of the Corporation took a decision on 22.09.2004 to adopt the Punjab Irrigation Department (Group "A") Service Rules, 2004 (for short the "2004 Rules") in place of the Bye-Laws of the year 1977. Under the 2004 Rules, the post of Executive Engineer is also to be filled up by promotion from amongst Sub-Divisional Engineers who have minimum eight years' service in the feeder post. The stipulation with regard to holding of a degree, as contained in the 1977 Bye-Laws, was conspicuously missing in the 2004 Rules. Under the 2004 Rules, 60% of the posts of Sub-Divisional Engineers are required to be filled up by direct recruitment from degree holders. The remaining 40% of the cadre are promotional posts which are to be filled up from the diploma holder Junior Engineers (25%), degree holder Junior Engineers (13%) and degree holder Draftsmen (2%). The validity of the aforesaid provision of the 2004 Rules with regard to promotions to the post of Executive Engineers and Sub Divisional Engineers has been assailed in the two writ petitions along with the specific order by which the Petitioner in CWP No. 5016 of 2007 was divested of the current duty charge in the post of Sub-Divisional Engineer.

5. Sh. Dhindsa, who has argued the case of the Petitioners in CWP No. 16352 of 2007, has submitted that under the old Bye-Laws, holding of a degree was an essential precondition for appointment to the post of Executive Engineer. The same has been done away with under the 2004 Rules to the prejudice of the degree holders. Further more, according to Sh. Dhindsa, under the 2004 Rules, diploma holders are not entitled to be promoted to the post of Sub-Divisional Engineers. Yet, by doing away with the requirement of the degree qualification for promotion to the post of Executive Engineer, the 2004 Rules have made Sub Divisional Engineers who are diploma holders eligible for promotion to the post of Executive Engineers. It is in the aforesaid manner that learned Counsel has tried to assail the validity of the Rules by asserting that discrimination against the degree holders is writ large as they have been treated unfairly. Learned Counsel, in the alternative, has argued that the 2004 Rules would, at best, be prospective and would not apply retrospectively in respect of posts of Executive Engineers that had fallen vacant prior to 22.09.2004 i.e. date of adoption of 2004 Rules.

6. Arguing the case of the Petitioner in CWP No. 5016 of 2007, Sh. Bal, learned Counsel for the Petitioner, has submitted that under the 1977 Bye-Laws, Draftsmen

with diploma formed an eligible class for promotion to the post of Sub-Divisional Engineers. The percentage of the promotional posts for such Draftsmen was 18%. Under the 2004 Rules, only Draftsmen with degrees have been made eligible for promotion to the post of Sub-Divisional Engineers and that too against 2% of the posts in the cadre. Learned Counsel, therefore, has submitted that the 2004 Rules work injuriously to the Petitioner in CWP No. 5016 of 2007 and the same may be declared as invalid. Adopting the arguments made by Sh. Dhindsa with regard to the prospective operation of the 2004 Rules, learned Counsel has sought to challenge the order by which the Petitioner had been divested of the current duty charge which he had been holding from a date prior to 22.09.2004.

7. Controverting the arguments advanced on behalf of the Petitioners, Mr. Sethi, learned Counsel for the Tubewell Corporation has submitted that the reversal of the position prevailing under the 1977 Bye Laws by adoption of the 2004 Rules is a conscious decision taken in the interest of public service. Learned Counsel has pointed out that it is always open to the employer to adopt new parameters of eligibility and also to alter the channels of promotion including the percentage of posts earmarked for each source from which promotions are to be made. Learned Counsel has further pointed out that it is not the case of the Corporation that the 2004 Rules would have any retrospective effect. In fact, according to the learned Counsel, the vacancies in each cadre of the service occurring prior to 22.09.2004 would be governed by the provisions of the 1977 Bye-Laws.

8. Sh. Puri, learned Counsel for the intervener who is a diploma holder Sub-Divisional Engineer, has adopted the arguments advanced on behalf of the Corporation and urged that the Petitioners would have no locus to maintain the present challenge. Learned Counsel has also pointed out that the intervener, in the meantime, has been promoted to the post of Sub-Divisional Engineer and thereafter, to the post of Executive Engineer.

9. We have considered the submissions advanced on behalf of the contesting parties.

10. The challenge to the validity of a legislation including a subordinate legislation can be made on two principal grounds, namely, that the legislation was beyond the competence of the Authority enacting it and secondly, if such legislation or subordinate legislation transgresses any of the rights guaranteed under Part-III of the Constitution of India.

11. In the present case, a valiant attempt has been made by the learned Counsel for the Petitioners to contend that the 2004 Rules being about an unreasonable classification which has resulted in hostile discrimination against the Petitioners. A statutory provision or a set of statutory Rules, in order to offend Article 14 of the Constitution, must discriminate against a group of persons who are similarly situated to others in the same class. Unequal treatment to similarly situated persons

or equal treatment to differently placed persons is what would amount to unreasonable classification and hostile discrimination. This is what Article 14 prohibits. A mere disadvantage or an advantage to another group of persons who are differently placed will not suffer from the vice of unequal treatment which is the soul of Article 14 of the Constitution.

12. The above apart, while examining a challenge to the validity of a legislation including a subordinate legislation, particularly in a service matter, the Court may not supplant its opinion over that of the employer either with regard to the conditions of eligibility or the channels of promotion and the percentage to be prescribed for each source from which the promotion is to be made. Such decisions are required to be taken by the employer and not by the Courts. The role of the Court will come into play only, when in taking such decisions, Article 14 of the Constitution is violated.

13. Keeping the two cardinal principles of law enunciated above in mind what we have found in the present case is that the 2004 Rules had done away with the requirement of a degree for promotion to the post of Executive Engineer. This is a decision taken by the Rule making authority.

The said decision makes diploma holders eligible for promotion to the post of Executive Engineers. While it is correct that such eligibility may have some effect on a degree holder, merely, because another class has been made eligible the said consequence would not amount to hostile discrimination within the meaning of Article 14 of the Constitution.

14. The further argument of the learned Counsel for the Petitioners is that diploma holders have been made eligible for promotion to the post of Executive Engineers when they are not even eligible to be promoted to the post of Sub-Divisional Engineer. This argument stands belied by the provisions contained in Appendix "B" of the 2004 Rules, as already noticed.

25% of the post of Sub-Divisional Engineers are earmarked for promotion from Junior Engineers who are diploma holders and it is that category of the diploma holders from whom a further channel of promotion to the post of Executive Engineer has been provided by the 2004 Rules.

15. If the above is what has been contemplated by the 2004 Rules, we do not see how the arguments made by Sh. Dhindsa can have the acceptance of the Court. In so far as the argument with regard to the prospective operation of the 2004 Rules is concerned, as the said position has been conceded on behalf of the Tubewell Corporation it will not be necessary for the Court to enter into the said arena of the controversy, except to say, that all the vacancies in the different cadres of the service with which the writ petitions are concerned, prior to adoption of the 2004 Rules, would be governed by the provisions of the 1977 Bye-Laws and the vacancies that have arisen subsequent to 22.09.2004, would be governed by the 2004 Rules.

16. In view of the aforesaid conclusion that has been arrived at as indicated above, the issues arising in CWP No. 5016 of 2007 stand fully answered and would not need any separate discussion or decision.

17. Consequently and in the light of the above, both the writ petitions shall stand answered in terms of the above directions and observations.

Sd/- Augustine George Masih, J.