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Ved Parkash and Others Vs Punjab and Haryana High Court and Others

C.W.P. No. 10395 of 2006

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 26, 2008

Acts Referred:
Constitution of India, 1950 â€" Article 14, 16#Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 â€" Rule 7

Citation: (2009) 1 ILR (P&H) 477

Hon'ble Judges: T.P.S. Mann, J; Nirmal Yadav, J

Bench: Division Bench

Advocate: Surya Parkash, for the Appellant; Balram Gupta Pankaj Sharma, Rajeshwar Singh for Respondent No. 1, Pankaj Katia, for Sanjiv Bansal, for Respondents No. 2, 3, 5, 6, 8 and 9, 2 for Respondent No. 4 and Raj Mohan Singh, for the Respondent

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.
The Petitioners are aggrieved of the order dated 7th July, 2006 passed by Respondent No. 1, whereby Respondents No.

2 to 9, who according to the Petitioners were junior to them, had been promoted to the post of Superintendent (Grade-I) in the Subordinate

Judicial Courts of Haryana and also that the promotion of the Respondents No. 2 to 9 was made in violation of Rule 7 of the Haryana Subordinate

Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997. The Petitioners, thus, sought issuance of a writ of certiorari

for quashing the impugned order of promotion.

2. In the writ petition, it was pleaded that the service conditions of ministerial staff in subordinate Courts in Haryana are governed by Haryana

Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (hereinafter referred to as "the Rules") as per

which the ministerial staff is divided into two branches. In first branch, the initial appointments are made to the post of Clerk, who are later on

promoted to the post of Assistant and thereafter as Superintendent Grade-II. Further that, for promotion to the post of Superintendent Grade-II,

one should have an experience of at least three years on the post of Assistant and the promotion is governed by the principle of seniority-cum-

merit. The other branch consists of Steno-typists, who are promoted to the post of Stenographers/Judgment Writers (Junior Grade) and then to

the post of judgment Writers (Senior Grade). For promotion to the post of judgment Writer (Senior Grade), one should have the experience of at

least three years on the post of Stenographer/Judgment Writer (Junior Grade) and such promotions are again based on seniority-cum-merit. Rule

7(i) provided the mode of appointment and qualifications to the post of Superintendent. This post has to be filled up by the High Court by selection

from amongst graduate Superintendents Grade-II, Judgment Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and

Stenographers, who were not below 40 years of age as on the date on which the applications are invited and preference is to be given to law

graduates.

3. Vide circular/letter dated 17th February, 2006 Respondent No. 1 invited applications for preparation of select-list for appointment as

Superintendents in the offices of District and Sessions Judges in the State of Haryana. The Petitioners and Respondents No. 2 to 9 submitted their

respective applications within the stipulated time. However, the Petitioners kept on waiting for a formal communication to appear before the High

Court for the purposes of selection, but neither any intimation was received by them nor the selection criteria conveyed. Ultimately, the impugned

office order was issued by Respondent No. 1 on 7th July, 2006, wherein it was stated that Respondents No. 2 to 9 have been selected and

consequently the letter/order for their appointment/posting as Superintendents at the respective offices of the District and Sessions Judges in the

State of Haryana had been issued. Pleading that the selection of Respondents No. 2 to 9 had been made in violation of the provisions of Rule 7(i)

and that the Petitioners were not called for joining the selection process, the Petitioners prayed for quashing the impugned office order.

4. In its written statement, Respondent No. 1 stated that the Petitioners participated in the selection process and as they have not been found

suitable for promotion, therefore, they are estopped in law from challenging the selection of Respondents No. 2 to 9. It was also stated that,--vide

instructions dated 9th May, 1985 issued by the State of Haryana, only such official or officials, who had obtained at least 70% or more reports of

good"" or better categories during the last ten years could be considered eligible for promotion to the higher posts. However, the High Court had

framed its own rules for promotion to the ministerial staff in the subordinate Courts in Haryana. Therefore, the service conditions were governed by

the High Court Rules, while the instructions issued by the State of Haryana had not been adopted. Even otherwise, the instructions isssued by the

State of Haryana were only applicable for the purposes of promotion, whereas the appointments of Superintendents in the Subordinate Courts is

by way of selection as per the decision taken by a Full Court of the High Court. The applications were invited through respective District and

Session Judges in the State of Haryana of eligible candidates for the appointment as Superintendents. After the applications were received, the

matter was placed before the Committee of Hon''ble Judges duly constituted by Hon''ble the Chief Justice. After considering the service records of

the candidates, the Committee recommended the names of the candidates for bringing them on the select-list and those names were approved by

Hon''ble Judges in the Full Court meeting held on 25th May, 2006. Accordingly, select-list was prepared and appointments were made from the

same. It was denied that any communication, whatsoever, was to be sent to the Petitioners. On the basis of the applications submitted by all

eligible persons as well as on the basis of the service record, as list of 62 candidates, who had applied was prepared. The list contained the details

regarding the date of entry into service, the qualifications and precis of Annual Confidential Reports/complaints. After the first list, another list of

candidates, who were having qualification of LL.B. was prepared. After the aforesaid exercise, both the lists, along with entire service record of all

the candidates, was put up before the Committee of Hon''ble Judges constituted by the Hon''ble Chief Justice. The Committee considered all the

eligible candidates in view of the parameters laid down in the Rules and also examined their Annual Confidential Reports. On the basis of their

records as well as the academic qualifications, Respondents No. 2 to 9 were recommended in trie order of merit for promotion to the post of

Superintendent to the District and Sessions Judges. Being conscious of the fact regarding further posts of Superintendents, which were likely to all

vacant in the near future, the Committee also kept three more candidates in the select-list for absorption within the next two years. Since the

Petitioners were less meritorious and less qualified than the selected candidates, hence they had been rightly ousted by Respondents No. 2 to 9.

Accordingly, it was prayed that the writ petition be dismissed.

5. The private Respondents also filed their written statements and stated that they have been rightly appointed to the post of Superintendent as per

Rules.

6. We have heard learned Counsel for the parties and also perused the service records of the Petitioners, besides that of Respondents No. 2 to 9.

7. Before proceeding further, it would be relevant to reproduce here-in-below Rule 7, which deals with the mode of appointment and qualifications

to the posts of Superintendent, Judgment Writers (Senior Grade), Superintendent (Grade-II), Judgment Writer (Junior Grade)/ Stenographers,

Assistant, Steno-typists and Clerks:

7. Mode of appointment and Qualifications to the posts:

(i) Superintendent

Post of Superintendent to District and Sessions Judge shall be in State cadre and shall be filled up by the High Court by selection from amongst

graduate Superintendents Grade-II, Judgment Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and Stenographers, who are

not below 40 years of age as on the date on which applications are invited. Preference will, however, be given to Law Graduates:

Provided that the District and Sessions Judge concerned may make an officiating appointment to the post of Superintendent in a leave vacancy or

otherwise for a period not exceeding three months or till regular appointment is made by the High Court subject to confirmation by the Hon"ble

Judges of the High Court.

A select list of candidates for appointment as Superintendent to District and Sessions Judge shall be prepared/maintained by the High Court. This

list shall contain only such number of candidates as can be absorbed within two years.

Before any person is considered for acceptance as a candidate he shall sign a declaration that if appointed as such, he shall be prepared to be

posted anywhere in the State of Haryana and in the event of protest against the transfer he shall be liable to disciplinary action.

CLASS III

(ii) Judgment Writer (Senior Grade)

Judgment Writer (Senior Grade) shall be appointed by promotion from amongst the Stenographers/ Judgment Writers (Junior Grade) with three

years experience on the basis of seniority-cum-merit.

(iii) Superintendent Grade-II

Superintendent Grade-II shall be appointed by promotion from amongst the Assistants with three years experience, on the basis of seniority- cum-

merit.

(iv) Judgment Writer (Junior Grade)/Stenographer

judgment Writer (Junior Grade)/Stenographer shall be appointed by promotion from amongst the Steno-typist with three years experience, on the

basis of seniority-cum-merit.

(v) Assistants

Assistant shall be appointed by promotion from amongst the graduate Clerks already in service (before coming into force of these rules) having five

years experience on the basis of seniority-cum-merit.

(vi) Steno-typists

Appointment to the post of Steno-typist shall be made by direct recruitment from; Candidates who possess a degree of Bachelor of Arts or

Bachelor of Science or equivalent thereto from a recognized university and pass a test at a speed of 80 W.P.M. in English shorthand and 20

W.P.M. in transcription of the same. The select list so prepared on the basis of merit shall remain in force for one year from the date of declaration

of result.

(vii) Clerks

Appointment to the post of Clerk shall be made in the ratio of 90% in case of direct recruitment and 10% by way of promotion.

XXX XXX XXX

XXX XXX XXX

8. As is clear from above, the post of Superintendent is required to be filled up from amongst graduate Superintendents Grade-II, Judgment

Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and Stenographers, who are not below 40 years of age on the date on which

the applications are invited. It is clearly mentioned that the preference will, however, be given to Law Graduates. Any person, who may be holding

any of the posts, i.e., Superintendent Grade-II, Judgment Writer (Senior Grade), Assistant, Judgment Writer (Junior Gadre) and Stenographer

could strainghtway be selected for the post of Superintendent Grade-I. However, he has to be selected by the High Court for the said purpose.

9. An argument was raised by learned Counsel for the Petitioners that while an Assistant could be promoted to the post of Superintendent Grade-

II only after he had three years'' experience as such yet for being promoted as a Superintendent, he may not be having any experience,

whatsoever. Similar requirement is prescribed for promotion to the posts of Superintendent Grade-II, Judgment Write (Senior Grade), Judgment

Writer (Junior Grade)/Stenographer and Assistant. However, it may be seen that wherever the requirement of three years* experience has been

laid, the same was only for the purpose of promotion to the higher post and not for selection as such. The post of Superintendent, as is clear from

the Rules, is only a selection post and not a promotion post. For being selected as Sttperintendent, the service records of the eligible candidates is

required to be scrutinized by a Committee of Hon''ble Judges constituted for the said purpose by Hon''ble the Chief Justice. Therefore, we do not

find any anomaly in the provisions of Rule 7 in so far as they relate to the appointment to the post of Superintendent and prmotion to the other

posts, i.e. of Superintendent Grade-II, Judgment Writer (Senior Grade), Judgment Writer (Junior Grade)/Stenographer and Assistant.

10. The selection process for the post of Superintendent clearly specify that preference will be given to law graduates. It is now to be seen as to

whether it means en bloc preference to the law graduates irrspective of inter se merit and suitability or the preference to be considered only as an

additional qualification, other things being qualitatively and quantitatively equal.

11. In Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, the Hon''ble Supreme Court held that the classification on the basis of

higher educational qualification with a view to achieve improvement in administrative performance was not abhorrent to Articles 14 and 16 of the

Constitution. The Court was seized of the matter where zone of consideration was narrowed by eliminating candidates, who did not succeed in the

qualifying test and out of those, who succeeded in the qualifying test and secured the minimum test marks after interview were considered and

thereafter in the process selection, the preference Rule was applied by first choosing the post-graduates and thereafter the graduates.

12. In The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others, the Hon''ble Supreme Court held that

preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification

would be preferred. It did not imply en bloc preference irrespective of inter se merit and suitability and the additional qualification could not work

as a reservation or complete precedence. However, in the said case, the old rules, on the basis of which preference had been claimed, stood

superseded and replaced by the new Rules which deleted the preference provision. Moreover, even under the old Rules, the preference was to be

given, first to candidates, who possessed the degree in Commerce and a degree in Law, secondly to those, who possessed a degree in Commerce

and thirdly to those, who possessed a degree in Law and therefore, the word ""first"" was to be construed in the context of giving preference only in

the order and manner indicated therein, inter se amongst more than one holding such difference class of degrees in addition and not to be

interpreted visa-vis others, who did not possess such additional qualification so as to exclude them en bloc. The Court relied upon the decision in

Bibhudatta Mohanty Vs. Union of India (UOI) and Others, ; Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and

Others, . The Court, however, did not accept the view taken in P. Dilip Kumar''s case (supra) as according to it, that decision not only turned on

the peculiar scheme and context of the service rules under consideration but also did not proclaim to lay down any general rule of universal

application for all cases.

13. In State of U.P. and Another Vs. Om Prakash and Others, the Hon''ble Supreme Court again held that when selection was made on the basis

of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being

qualitatively and quantitatively equal, those having additional qualification would be preferred. Preference did not mean en bloc preference

irrespective of inter se merit and suitability.

14. In the present case, we are dealing with the appointment to the posts of Superintendents in the offices of District and Sessions Judges. The

very nature of their work would require dealing with law, day in and day out. In such a situation, it would be beneficial to have the services of those

eligible, who were law graduates. Rule 7(i) is clearly in consonance with the requirement expected of a candidate who seeks his selection for the

post of Superintendent Grade-I. However, at the same time it has to be held that the preference would only come into play if all other things

amongst suitable candidates being qualitatively and quantitatively equal.

15. Learned Counsel for Respondent No. 1 had produced a chart detailing therein the qualification of the Petitioners as well as of the private

Respondents, besides their service record and experience. A perusal of the same would show that Petitioner No. 1 was having an excellent record

in the preceding five years, but was administered a warning in connection with a complaint concerning withholding of an application for supply of

copy. In the case of Petitioner No. 2, though there is no adverse report, yet on the basis of pseudonymous complaints, detailed enquiries were

being conducted against him. Penalty of ''Censure'' was imposed upon Petitioner No. 3 on 9th February, 1993, while adverse remarks were

recorded on his work and conduct for the year 1998, which were conveyed. Adverse remarks (""average"") for the year 2001 were conveyed to

Petitioner No. 4. Vide order dated 17th October, 2002 passed by District and Sessions Judge concerned, said Petitioner was treated being

wilfully absent from duty with effect from 24th July, 2001 to 31st August, 2001, from 3rd December, 2001 to 20th December, 2001 and from

22nd December, 2001 to 21st April, 2002. Coming to the case of Petitioner No. 5, he was censured for misbehaviour,--vide order dated 21st

December, 2006 passed by District and Sessions Judge concerned. A fine of Rs. 10 was imposed upon him on 23rd September, 1980 for not

consigning one case file. On 22nd July, 1988, a fine of one month''s salary was imposed for a serious lapse, which fine was thereafter replaced

with warning. Petitioner No. 6 was imposed a fine of Rs. 400 on 8th September, 1998 on account of negligence in discharge of her duties. Even

earlier on 3rd December, 1993, she was found absent from duty and she went inside the retiring-room of the District and Sessions Judge and

marked her presence in the attendance register at the time when the Officer was holding Court. In the aforementioned background of the

Petitioners referred to by Respondent No. 1 in the chart supplied, to our mind they were rightly not selected for being posted as Superintendents

Grade-I.

16. In contract to the Petitioners, the private Respondents have excellent service record. There is no negative remark in respect of Respondents

No. 2. 3, 4, 6 and 8. However, it may be mentioned here that one increment of Respondent No. 5 without cumulative effect was stopped on 16th

February, 1995 and he was warned to be very carefully in future in dealing with the official record but his appeal was partly accepted and the

stoppage of one increment without cumulative effect was converted to that of warning. In the case of Respondent No. 7, he was conveyed adverse

remarks by District and Sessions Judge concerned on 29th January, 1976 that one oral complaint had been received regarding his integrity and he

was accordingly warned, whereas Respondent No. 9 was imposed of punishment of warning on 7th December, 2002 for not showing the record

to the Audit party at the time of audit. It is, thus, clear that five of the private Respondents have unblemished service record, while the remaining

private Respondents were only found to have faultered insignificantly from which it cannot be said that they were not suitable for being appointed

as Superintendents.

17. Considering the case of the Petitioners on the one hand and Respondents No. 2 to 9 on the other, especially in regard to the preferential

qualification of graduation in law, it is also clear that other than Petitioners No. 1 and 2, the rest are all Law graduates. However, as the service

record of Petitioners No. 3 to 6 is not found to be upto the mark and so also that of Petitioners No. 1 and 2 viz-a-viz Respondents No. 2 to 9,

they have been rightly found to be not suitable for being appointed as Superintendent Grade-I.

18. In view of the above, no case is made out for quashing the impugned office order (Annexure P.4) whereby Respondents No. 2 to 9 have been

selected for being appointed as Superintendents in the offices of District and Sessions Judges in the State of Haryana.

19. The present writ petition is without any merit and, therefore, dismissed.

20. Before parting with the judgment, we may observe that the Petitioners could not make it this time on account of their merit which was found to

be at a level, lower than that of Respondents No. 2 to 9. They would, however, be considered for being appointed as Superintendent Grade-I in

future, if they fulfil the criteria and are placed at a higher rank on the basis of merit viz-a-viz their competitOrs.