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(2016) 08 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 1714 of 2015 (O&M).

Ashok Kumar - Appellants @HASH State of Punjab and Others — APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 10, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14, Article 16

Citation: (2017) 1 SCT 165

Hon'ble Judges: Mahesh Grover and Dr. Shekher Dhawan, JJ.

Bench: Division Bench

Advocate: S.K. Rattan, Advocate, for the Appellant; Manoj Bajaj, Addl. AG, Punjab, for the Respondent; C.L. Premy, Advocate, for the Respondent No. 5 and 6

Final Decision: Dismissed

Judgement

Mahesh Grover, J. - The appellant questions the judgment of the learned Single Judge dated 17.9.2015. To briefly note the facts he was appointed as a Clerk in the year 1995. Rules of 1965 which were prevalent envisaged that for a post belonging to a clerical cadre a person is to be a matriculate if he was to be considered for direct recruitment to the post.

2. Learned Single Judge has mis-read the Appendix A by observing as follows:-

"Appendix `A" of the 1965 Rules prescribes the method of recruitment of the post of Head Clerk [post of Clerk is not enumerated]. The essential qualifications for the post of Head Clerk in direct recruitment under the 1965 Rules are as follows:-

"(i) Graduate of a recognised university A Degree in Commerce or with Mathematics, or experience of accounts work in a Government office or in the office of a Local Authority

will be preferred ; or

(ii) Intermediate or its equivalent with 2 years" clerical experience in a Government office or in the office of a Local Authority ; or

(iii) Matriculate with 4 years" clerical experience in a Government office or in the office of a Local Authority."

We are thus of the opinion that the finding on the educational qualifications being a hurdle in the way of the appellant for appointment to the post of Clerk may not be sustainable. We may extract the relevant rule for ready reference:-

Appendix A

Sr. No.	Category of post	Scale of pay	Method of recruitment	Qualification
5	Clerical Establishment	60-4-80/ 5-120/5-175	By direct recruitment	Matriculate

3. However, we cannot persuade ourselves to disagree with the findings recorded by the learned Single Judge that appointment of the appellant was a back door entry and not in accordance with the recognised mode of public appointment, thereby, dis-entitling him to the benefit of reentry into service or regularisation in terms of Uma Devi"s case as also the subsequent judgment in **Maharashtra State Road Transport Corporation & Anr. v. Casteribe Rajya Parivahan Karmchari Sanghatana reported as (2009) 8 SCC 556**

4. A perusal of Annexure P-1 on which strong reliance has been placed by the learned counsel for the appellant, further strengthens our opinion that it is a case of sheer nepotism which granted employment to the appellant. The application was given clandestinely to an officer who recommended it on a `special ground". In public employment the process of employment has to be transparent and fair. In the case of appellant, the employment was in sheer violation of the acknowledged modes of public employment and therefore, we are of the opinion that the order of the learned Single Judge need not to be interfered as far as this aspect is concerned. Resultantly, the appellant cannot be taken back in service even if eligible as per rules. Consequently, instant appeal being devoid of any merit is hereby dismissed.