

Before Tejinder Singh Dhindsa, J.

GURCHARAN KAUR & OTHERS—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 2990 of 2003

October 5, 2012

Constitution of India, 1950 - Art. 14 - Punjab Civil Services (General & Common Conditions of Service) Rules, 1994 - Petitioners claiming promotion to Class III post in Education department - Provision made for filling up 10% posts from Class IV employees who are matriculate (with Punjabi) and have minimum five years' experience - Circular envisaged as a pre-condition of passing the qualifying test in Punjabi typewriting to be eligible for promotion - Circular amended and quota increased to 15 % but condition of qualifying Punjabi typewriting test was retained - Challenge that the typewriting test was a requirement in terms of the 1994 Rules for direct recruitment to Class III post and was not required for promotion from Class IV to Class III - Petition dismissed holding that such typewriting test is a manifest criteria for promotion from Class IV to Class III - Plea of discrimination also repelled.

Held, that the issue as regards the requirement of passing a typewriting test in Punjabi as a pre-requisite for promotion from Class IV to Class III post in the Punjab State Government services is no longer res-integra. (Refer to order of Hon'ble Apex Court in Civil Appeal No.2897 of 2006 State of Punjab and others v. Jagdish Kaur, decided on 26.8.2011)

(Para 4)

Further held, that as such, the claim of the petitioners to be considered for promotion to a Class III post without qualifying the Punjabi typewriting test cannot be accepted.

(Para 5)

Further held, that merely on account of the fact that certain employees who were not eligible have been promoted or have been granted benefit of promotion erroneously would not vest a right with the present petitioners

to claim promotion to a Class III post without even adhering to the conditions stipulated in the Government circulars holding the field. The plea of discrimination cannot be raised to perpetuate an illegality. Article 14 of the Constitution of India envisages a positive concept and does not contemplate negative equality.

(Para 7)

Petition dismissed.

SB Nagpal, Advocate, *for the petitioners.*

Suvir Sehgal, Additional Advocate General, Punjab.

TEJINDER SINGH DHINDSA, J.

(1) Learned counsel for the parties have been heard at length.

(2) All the petitioners, who were holding Class IV posts in the respondent-Education/Department, had filed the present petition claiming promotion to Class III post. The State Government issued a circular dated 24.8.1983 on the subject of scrutiny of avenues of promotions for Class IV employees. In terms of such circular, a provision was made for filling up 10% of Class III posts by promotion from amongst Class IV employees who possess a minimum educational qualification of Matriculation (with Punjabi) and have a minimum of five years' experience as such. Still further, the circular of the year 1983 envisaged a provision for a qualifying test in Punjabi typewriting and it was made a pre-condition to pass such test before a Class IV employee is considered eligible for promotion. The aforementioned circular was amended in terms of issuance of a subsequent government circular dated 27.10.1998 whereby the quota for promotion was increased from 10% to 15%, but the condition of qualifying the Punjabi typewriting test was retained.

(3) Reliance has been placed upon the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter to be referred as 'the 1994 Rules') to contend that the requirement of qualifying the typewriting test in Punjabi with a minimum speed of 30 w.p.m. was for direct recruitment to the Class III post and there was no

such requirement as regards promotion from Class IV to Class III post. The contention raised on behalf of the petitioners is to the effect that in terms of the Government circular issued on 24.8.1983 and subsequent circular dated 27.10.1998, a condition as regards qualifying the Punjabi typewriting test, which was alien to the 1994 Rules was being imposed upon the petitioners. That apart, reliance was placed by the petitioners upon a judgment rendered by this Court in **Jagdish Kaur versus State of Punjab and others (CWP No.11758 of 2003)** decided on 22.2.2004. It was contended that in Jagdish Kaur's case (supra), the action of the respondent authorities in requiring members of Class IV service to qualify the Punjabi typewriting test as a pre-condition for promotion to the post of Clerk had been held to be illegal.

(4) The issue as regards the requirement of passing a typewriting test in Punjabi as a pre-requisite for promotion from Class IV to Class III post in the Punjab State Government services is no longer res-integra. The Hon'ble Apex Court in Civil Appeal No.2897 of 2006 (**State of Punjab and others versus Jagdish Kaur**) decided on 26.8.2011 having considered the scope of 1994 Rules as also the Government circulars dated 24.8.1983 as also 27.10.1998 has categorically held in the following terms:

"11. It is well-settled that in the absence of statutory rules on any subject, the relevant Government Orders would hold the field. (See. Sant Ram Sharma v. State of Rajasthan & Anr., AIR 1967 SC 1910, Ashok Kumar Shrivastava & Ors. v. Ram Lal & Ors., (2008) 3 SCC 148, Shiba Shankar Mohapatra & Ors. v. State of Orissa & Ors. (2010) 12 SCC 471).

12. In the light of the above, the requirement of qualifying the test in Punjabi typewriting at the speed of 30 w.p.m. is manifestly a criteria for promotion from class-IV to class-III post. We are, therefore, clearly of the view that the orders passed by the high court are untenable and we are constrained to set aside those orders."

(5) As such, the claim of the petitioners to be considered for promotion to a Class III post without qualifying the Punjabi typewriting test cannot be accepted.

(6) At this stage, learned counsel appearing for the petitioners has also raised the plea of discrimination inasmuch as he has referred to the categorical averments raised in the petition citing instances of certain Class IV employees who have been promoted as Clerks (Class III employees) and such employees having not even qualified the Punjabi typewriting test. The State Government in its reply has not denied such assertion and rather has taken a plea that such promotions had been issued at the hands of the District Education Officers who were not even competent to promote Class IV employees.

(7) Merely on account of the fact that certain employees who were not eligible have been promoted or have been granted benefit of promotion erroneously would not vest a right with the present petitioners to claim promotion to a Class III post without even adhering to the conditions stipulated in the Government circulars holding the field. The plea of discrimination cannot be raised to perpetuate an illegality. Article 14 of the Constitution of India envisages a positive concept and does not contemplate negative equality. In taking such view, I would draw support from the following observations of the Hon'ble Supreme Court in *State of Orissa & Anr. versus Mamata Mohanty (1)* :

"It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr v. Jagjit Singh & Anr., AIR 1995 SC 705; Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., AIR 2003 SC 1241; M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v.

State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh (supra); and Union of India & Anr. v. Kartick Chandra Mondal & Anr., AIR 2010 SC 3455).

*This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in **Hotel Balaji & Ors. v. State of A.P. & Ors., AIR 1993 SC 1048** observed as under:*

*"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in **Pierce v. Delameter** (A.M.Y. at page 18: a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors").*

*(See also re: **Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, (1995) 3 SCC 619; Nirmal Jeet Kaur v. State of M.P. & Anr., (2004) 7 SCC 558; and Mayuram Subramanian Srinivasan v. CBI, AIR 2006 SC 2449).***"

(8) For the reasons recorded above, the claim of the petitioners seeking promotion to Class III post without even qualifying the Punjabi typewriting test is without merit.

(9) The writ petition is, accordingly, dismissed.