

Before Prem Chand Jain and D. S. Tewatia, JJ.

O. P. BHATIA and another,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 4689 of 1978.

August 10, 1979.

*Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964—Rule 6(a) and (b)—Constitution of India, 1950—Articles 14 and 16—Qualification of a degree prescribed under Rule 6(a)—Whether meant for all appointees to Class I Service—Rule 6(a)—Whether violative of Articles 14 and 16.*

Held, that Rule 6(a) of the Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964, when read as a whole does not leave any manner of doubt that the qualification prescribed in clause (a) has also to be fulfilled by a promotee and that possessing of a degree or other qualification prescribed in Appendix B is not meant only for the direct recruits. The opening part of the rule provides that no person shall be appointed to the Service unless he possesses one of the University degrees or other qualifications prescribed in Appendix B. The deletion of the word 'directly' in rule 6 of the 1964 Rules also indicates that the intention of the Legislature was to apply the provision of clause (a) to all the appointees and not only to the direct recruits. Again Class I being the highest service, efficient persons are needed to man the same and in order to achieve that object possession of a University degree or other qualifications has been provided for as an essential pre-requisite before appointment to Class I Service. The framers of the rules did not wish those persons who did not possess the educational qualification as provided in Appendix B to be appointed to Class I Service. They did not want an unqualified Engineer to become a Superintending Engineer or a Chief Engineer. The proviso to rule 9 also makes it abundantly clear that clause (a) of rule 6 is not only applicable to direct recruits but would govern the cases of all members to be appointed to Class I Service and it is an essential condition to be fulfilled before any person claims eligibility for appointment to Class I Service. Thus, before a person would be eligible to be appointed to Class I Service he has to possess the qualifications prescribed in rule 6(a) of the Rules,

(Paras 10 and 11)

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Held, that the provision of rule 6(a) prescribing the University Degree for appointment to the Service does not amount to denial of right to be considered for promotion to Class I Service and as such the said provision cannot be termed as arbitrary, illegal or violative of Articles 14 and 16 of the Constitution of India, 1950.

(Para 12)

*Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—*

- (a) *Summon the records of the case from the respondents ;*
- (b) *Any appropriate writ, order or direction quashing the provisions of Rule 6(a) of PSE Class I Rules, be issued being ultra-vires to the provisions of Constitution ;*
- (c) *The provisions of Rule 6(b) be held to be in alternate to the provisions of Rule 6(a) ;*
- (d) *A Writ of Mandamus be issued directing the respondents to prepare and publish a seniority list in accordance with Rule 9 of HSE Class II Service and fixing the seniority of the petitioners viz-a-viz the direct recruits.*
- (e) *To direct the respondents to consider the case of the petitioners for promotion to Class I service on the basis of their seniority ;*
- (f) *Any other appropriate relief which this Hon'ble Court may deem fit and proper in the circumstances of the case, be granted to the petitioners ;*
- (g) *Petitioners may be exempted to serve advance notice of motion on the respondents ;*
- (h) *Costs of the petitioner may also be awarded to the petitioners.*

Kuldip Singh, Bar-at-Law with R. S. Mongia, Advocate, for the Petitioners.

Naubat Singh, Sr. D.A.G. (H), for Respondents No. 1 and 2.

J. L. Gupta, Advocate, for Respondents No. 3 and 4.

## JUDGMENT

*Prem Chand Jain, J.*

(1) This judgment of ours will dispose of Civil Writ Petitions Nos. 4689 of 1978, and 1702 of 1973 and L.P.A. No. 670 of 1973, as common questions of law arise in all these cases.

(2) The interpretation and constitutional validity of rule 6 of the Punjab Service of Engineers Class I, P.W.D. (Irrigation Branch) Rules, 1964 (hereinafter referred to as the Rules) are the main subject-matters which require determination.

(3) In order to decide the aforesaid questions reference may be made to certain facts from C.W.P. 4689 of 1978. Although a very lengthy petition has been drafted yet for the purpose of the decision of the above matters it is not at all necessary to reproduce the detailed facts given in the petition and it would serve our purpose if only a few relevant facts are noticed, which read as under) —

(4) O. P. Bhatia, petitioner No. 1, was recruited as Sectional Officer in the Punjab Public Works Department, Irrigation Branch, on February 23, 1947, while Balbir Bahadur Singh, petitioner No. 2, was recruited as Sectional Officer on October 6, 1949. The petitioners were confirmed as Sectional Officers with effect from April 10, 1959 and March 1, 1960, respectively. Petitioner No. 1 was promoted as officiating Sub-Divisional Officer on November 21, 1960 and petitioner No. 2 was promoted as officiating Sub-Divisional Officer on March 28, 1969. On re-organisation of the State of Punjab, the petitioners' services were allocated to the State of Haryana. In the petition the petitioners claimed themselves to be the members of Class II Service and their grouse is that they are not being considered for appointment to Class I Service in view of the wrong interpretation which is being put on rule 6 of the Rules. That is how the petitioners have filed this petition praying that the official respondents be directed to consider the case of the petitioners for promotion to Class I Service.

(5) Rule 6 of the Rules, on the interpretation of which the whole case of the petitioners depends, reads as under:—

*"6. Qualification.—No person shall be appointed to the Service unless he—*

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix B of these rules;

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provided that Government may waive this qualification in the case of a particular officer belonging to Class II service;

(b) In case of an appointment by promotion from Class II service, has completed in that class of Service for a period of ten years from the commencement of these rules, six years service and after that period eight years service :

Provided that if it appears to be necessary to promote an officer in the public interest, the Government may, for reasons to be recorded in writing, either generally or in any individual case reduce the period of six or eight years to such extent as it may deem proper in consultation with the Finance Department.

*Explanation.*—For the purposes of this clause in computing the period of six or eight years any service rendered as a temporary Engineer shall be taken into account.

(c) being a person to be recruited to the Service by direct appointment obtains from the Standing Medical Board a certificate of mental and physical fitness after being examined in accordance with the regulations prescribed in appendix C and is considered by the Medical Authority to be fit in all respects for active outdoor duties;

(d) is a person with a satisfactory character and antecedents, verification in respect of which shall be arranged through appropriate Government agency except in cases where such verification may have already been made at the time of his entry into Government service;

(e) has not more than one wife living or, in the case of a woman, is not married to a person already having a wife living :

Provided that Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this condition."

(6) On the question of interpretation of Rule 6 it was submitted by Mr. Kuldip Singh, learned counsel for the petitioners, that clause (a) of rule 6 applies to the cases of direct recruits only, while clause (b) applies to the cases of promotees only and that the said two clauses are independent of each other.

(7) On the other hand, it was submitted by Mr. Naubat Singh, Senior Deputy Advocate-General that there is no ambiguity in the rule and that the plain reading of the same would show that before a person can be appointed to Class I Service, he has to possess one of the University Degrees or other qualifications prescribed in Appendix B. According to him, the rule has been framed with the object of maintaining efficiency in the Service. Similar was the contention of Mr. J. L. Gupta, learned counsel for the private respondents.

(8) After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of the learned counsel for the respondents.

(9) It may be observed at the outset that but for the amendment made in the Rules through the Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch) Haryana Fifth Amendment Rules, 1975, the petitioners were not eligible to be appointed to Class I Service as they were not members of Class II Service. Through the aforesaid amendment clause (5) of rule 2 was substituted by the following clause:—

“(5) ‘Class II Service’ shall, for the purpose of promotion to the Service comprise of members of the Haryana Service of Engineers, Class II (Irrigation Branch); Temporary Engineers, officiating Sub-Divisional Officers and officiating ‘Assistant Design Engineers; Except those promoted in excess of the quota fixed under rule 6 of the Haryana Service of Engineers Class II, Public Works Department (Irrigation Branch) Rules, 1970”.

It is on the basis of this amendment that the petitioners who were officiating Sub-Divisional Officers, were made eligible for promotion to Class I Service. In other words, it was on December 5, 1975, when this amendment came into force, that the petitioners got a

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right of appointment to Class I Service. If this amendment had not come into being, then irrespective of the fact that the petitioners were officiating as Sub-Divisional Officers they were not members of Class II Service and would not have been eligible to be appointed to Class I Service.

(10) Now, the question on the respective contentions of the learned counsel for the parties that arises for consideration is whether possessing of the qualification of a degree as prescribed under clause (a) is meant only for direct recruits or applies to all appointees to Class I Service. In my view, the rule, when read as a whole, does not leave any manner of doubt that the qualification prescribed in clause (a) has also to be fulfilled by a promotee and that possessing of a degree or other qualification prescribed in Appendix B is not meant only for the direct recruits. The opening part of the rule provides that no person shall be appointed to the Service unless he possesses one of the University degrees or other qualifications prescribed in Appendix B. If the contention of Mr. Kuldeep Singh is accepted, then we shall have to add in the opening part of the rule, after the words "no person shall be appointed" the word "directly". This would not legally be permissible especially when the rule does not suffer from any ambiguity. It would be pertinent to observe that in the rules of the year 1956, which were in force immediately before the promulgation of the Rules in 1964, section 7 prescribed qualifications for appointment and the opening part of that section reads as under:—

"No person shall be appointed directly to the service unless he possesses one of the University degrees or other qualifications prescribed in Appendix B to these Rules".

By making reference to the 1956 Rules, we want to bring out that the word "directly" had been specifically used in the opening part of rule 7 while now in rule 6 of 1964 Rules, this word has been deleted. This deletion would also indicate that the intention of the Legislature was to apply the provision of clause (a) to all the appointees and not only to the direct recruits; otherwise the word "directly" would have been used as was used in the earlier rules.

(11) We agree with Mr. Naubat Singh, that Class I being the highest service, efficient persons are needed to man the same and in

order to achieve that object possessing of a University degree or other qualifications has been provided for as an essential pre-requisite before appointment to Class I Service. The framers of the Rules did not wish those persons, who did not possess the educational qualification as provided in Appendix B to the Rules to be appointed to Class I Service. They did not want an unqualified Engineer to become a Superintending Engineer or a Chief Engineer. This intention of the framers of the Rules is evident from the proviso to rule 9 which talks of promotion within Service, which reads as under:—

“9. Promotion within Service: (1) Subject to the provisions of sub-rules (2) and (3) members of the Service shall be eligible for promotion to any of the posts in the Service namely, Executive Engineers, Superintending Engineers and Chief Engineers:

Provided that a member of the Service, in whose case the qualifications mentioned in clause (a) of rule 6 have been waived, shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the necessary qualification.

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The bare reading of the proviso shows that a member of the Service would not be eligible for promotion to the post of Superintending Engineer or above till he has acquired the necessary qualification as provided in clause (a) of rule 6. The framers of the Rules have made their intention clear that in an individual case where at the time of appointment to Class I Service the condition of clause (a) of rule 6 is waived, then also the appointee before claiming promotion to a higher post, i.e., of Superintending Engineer or above, will have to acquire the necessary qualification. This provision makes it abundantly clear that clause (a) is not only applicable to direct recruits but would govern the cases of all members of Service to be appointed to Class I Service and it is an essential condition to be fulfilled before any person claims eligibility for appointment to Class I Service. Clause (a) of rule 6 deals with all the cases in general, while clause (b) applies to a particular class of cases, i.e., the promotees for whom additional qualification to be satisfied by

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them, is provided. Thus, I hold that before a person would be eligible to be appointed to Class I Service, he has to possess the qualifications prescribed in rule 6(a) of the Rules.

(12) The only other argument advanced by Mr. Kuldip Singh, learned counsel, was that the provision of rule 6(a) prescribing the University Degree for appointment to the Service amounts to denial of right to be considered for promotion to Class I Service to the petitioners' category, who are promotees from Class II Service and as such the said provision is arbitrary and illegal and is violative of Articles 14 and 16 of the Constitution. This contention of the learned counsel is liable to be rejected straightaway on the basis of the judgment of the Supreme Court in *The State of Jammu and Kashmir v. Triloki Nath Khosa, etc.* (1), wherein on a similar question which was agitated before their Lordships, it was observed thus:—

“On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering Graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trial of a higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunity to those possessing higher educational qualifications and we are concerned with the reasonableness of the classification not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the



American Constitution only if it is 'purely arbitrary, oppressive or capricious' *Joseph Radice v. People of the State of New York* (2), *American Sugar Ref. Co. v. Louisiana* (3) and the inequality produced in order to encounter the challenge of the Constitution must be 'actually and palpably unreasonable and arbitrary' *Arkansas Natural Gas Co. v. Rail Road Commission* (4). We need not go that far as the differences between the two classes—graduates and diploma-holders—furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification. In *State of Mysore v. P. Narasingh Rao* (5), where the cadre of Tracers was reorganised into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that Articles 14 and 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Gurdas Ram v. Union of India* (6), it was observed that :

"The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments".

In the *Union of India v. Dr. (Mrs.) S. B. Kohli* (7), a Central Health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in the particular speciality was upheld on the ground that the classification

(2) (1923) 68 Law Ed. 690, 695.

(3) (1900) 45 Law Ed. 102, 103.

(4) (1923) 67 Law Ed. 705, 710.

(5) (1968) 1 S.C.R. 407.

(6) (1970) 3 S.C.R. 481, at page 488.

(7) A.I.R. 1973 S.C. 811 (818).

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made on the basis of such a requirement was not 'without reference to the objectives sought to be achieved and there can be no question of discrimination'. The argument that a degree qualification was not the only criterion of suitability was answered laconically as 'strange.'

(13) Mr. Kuldeep Singh, learned counsel for the petitioners, relied on the judgments of the Supreme Court in *Roshan Lal Tandon v. Union of India and another*, (8) and *Mohammad Shujat Ali and others v. Union of India and others*, (9). From the bare perusal of the aforesaid two judgments it would be evident that the same do not apply to the case in hand as the facts of those cases are entirely different and distinguishable.

(14) Before parting with the judgment it may be observed that Mr. Naubat Singh, learned Senior Deputy Advocate-General, very fairly stated at the bar that the petitioners were found ineligible only because they did not satisfy the condition laid down in clause (a) of rule 6 and that as and when they satisfy this condition, then their past experience as officiating Sub-Divisional Officers would be taken into consideration and their eligibility to Class I Service would be considered in accordance with law. In view of this statement made by Mr. Naubat Singh, Mr. Kuldeep Singh did not press his contention against the vires of Explanation to rule 6.

(15) No other point was urged.

(16) For the reasons recorded above, this petition as well as C.W.P. No. 1702 of 1973 and L.P.A. No. 670 of 1973 fail and are dismissed, but in the circumstances of the case we make no order as to costs.

**H.S.B.**

(8) AIR 1967 S.C. 1889.

(9) 1974(2) S.L.R. 508.