

Ravi Parkash v. State of Haryana (Amarjeet Chaudhary, J.)

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noticed above, should have been taken notice of and opportunity should have been granted to the guardians to sign the partnership deed on behalf of the minors. Since this procedure was not followed, and Income Tax Officer could not refuse registration.

(5) In the result, we are of the opinion that no question of law arises and the application of the Revenue is dismissed with no order as to costs.

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R.C.G.

*Before Amarjeet Chaudhary, J.*

RAVI PARKASH,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Civil Writ Petition No. 6039 of 1986*

December 16, 1988.

*Constitution of India, 1950—Arts. 14 and 226—Right to promotion—Ex-serviceman appointed Clerk from quota reserved for ex-servicemen—Benefit of emergency concession rules given—Ex-serviceman also member of Scheduled Caste—Further promotion—Ex-serviceman not clubbed with other Clerks belonging to Scheduled Castes for further promotion—Ex-serviceman—Whether entitled to claim benefits of being both ex-serviceman and Scheduled Caste.*

*Held*, that the reservation of posts for Scheduled Caste candidate being statutory, denial of this benefit to a Scheduled Caste employe at the time of promotion on the plea that he was initially selected as a general category candidate against a post reserved for Ex-serviceman, cannot be sustained in law. Hence it has to be held that an Ex-serviceman is entitled to claim twin benefits i.e. one being Ex-serviceman and other by virtue of belonging to Scheduled Caste and therefore, the promotion against the quota reserved for Scheduled Caste candidates should be given to him.

(Paras 5, 7).

*Civil Writ Petition under Article 226 of the Constitution of India praying that :*

(i) records of the case may be called for :

- (ii) *service of advance notices on the respondent may be dispensed with ;*
- (iii) *filing of certified copies of annexures be dispensed with ;*
- (iv) *a writ in the nature of certiorari be issued to quash the impugned order annexure P/6 ;*
- (v) *a writ in the nature of mandamus be issued to respondent to grant the benefit of Scheduled Caste to the petitioner and grant all consequential reliefs that arise therefrom ;*
- (vi) *that this Hon'ble Court may pass any order which this Hon'ble Court may deem fit under the peculiar circumstances of this case ;*
- (vii) *Costs of this writ petition be awarded to the petitioner*

R. K. Malik, Advocate, for the petitioner.

J. B. Tacoria, for A.G. Haryana, for the respondent.

#### JUDGMENT

*Amarjeet Chaudhary, J.*

(1) The petitioner belongs to a Scheduled Caste. On his release from the Army, he was appointed as Clerk in the Office of the Financial Commissioner, Haryana, in the quota reserved for Ex-serviceman and the minimum qualifications prescribed for the post was relaxed in view of the instructions of the Haryana Government. The Government of Haryana had granted the benefit of Emergency Concession Rules to the petitioner to the extent he rendered service in the Military. After granting the Emergency Concession Rules benefit to the Ex-servicemen, the seniority list was published in which the petitioner was shown at No. 14. The petitioner was due for promotion both as a general category candidate as well as a reserved category candidate since he belongs to a Scheduled Caste, as per Government instructions dated February 9, 1979. The petitioner was promoted from Clerk to Assistant against the seat reserved for Scheduled Castes in May 1979. The deemed date of promotion of the petitioner, after granting benefit of Emergency Concession Rules, was fixed October 29, 1975,—*vide* order Annexure P. 3, but the petitioner was not clubbed with other Clerks/Assistants belonging to the Scheduled Castes for further promotion as Deputy

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Superintendent/Superintendent on that basis. The petitioner was not treated at par with order Scheduled Caste employees, namely, Sarvshri Dalip Singh, Kali Ram, Zile Singh and Sube Singh. On the basis of instructions issued by the Government of Haryana, dated July 18, 1984 (copy Annexure P.4), which envisage that an Ex-serviceman who is also a SC/BC will be entitled to the benefit given subsequently to both Ex-serviceman and SC/BC personnel, the petitioner represented to the Government that since he belongs to Ex-serviceman category and was also a Scheduled Caste, he may be granted the benefit of reservation for Scheduled Caste category, but, —vide order dated September 17, 1986 (copy Annexure P. 6), the petitioner was informed that he could be treated as Ex-serviceman only and as such he could not be given the benefits as Scheduled Caste employee. The petitioner was further informed that he had already been given the benefits as Ex-serviceman towards seniority, pay etc. Aggrieved with this action of the respondent-State, the petitioner has filed the present writ petition praying for quashing the impugned order (copy Annexure P. 6).

(2) Learned counsel for the petitioner contends that a person belonging to Scheduled Caste, though appointed against the quota reserved for Ex-serviceman, cannot be deprived of the benefit of Scheduled Caste. The petitioner can claim benefits given to a Scheduled Caste as well as Ex-serviceman quota. Mr. R. K. Malik, learned counsel for the petitioner, further contends that the Government had issued instructions that if a person is appointed against the Ex-serviceman quota and he also belongs to the category of S.C./S.T., he is entitled to the benefit of S.C./S.T. also and the denial of the same to the petitioner is contrary to the instructions.

(3) Mr. J. B. Tacoria, learned State counsel, contends that the petitioner was appointed against a general category post reserved for Ex-serviceman by giving him relaxation in academic qualification which was available only to Ex-serviceman and not to Scheduled Caste candidates. He cannot be given the benefit of Scheduled Caste quota. The petitioner was entitled to get benefit of being Ex-serviceman only. No benefit can be given to him on the basis of Scheduled Caste quota in view of the Government instructions dated January 12, 1973. It was further contended that instructions dated July 18, 1984 (copy Annexure R. 1) are not applicable in the case of the petitioner because the instructions have no retrospective effect. The impugned order has been passed keeping in view the instructions dated January 12, 1973 which are applicable in the case of the petitioner per advice of the Chief Secretary.

(4) I have considered the arguments of the learned counsel for the parties and gone through the relevant instructions on the subject.

(5) The short question for consideration is whether the petitioner is entitled to claim twin benefits, i.e. one being an Ex-serviceman and the other by virtue of belonging to the Scheduled Caste. The petitioner was initially appointed as a Clerk against a vacancy reserved for Ex-serviceman by relaxation of qualifications. At the time of his appointment there was no relaxation in qualifications for the Scheduled Caste candidates and it was in view of the instructions of the Government dated 12th January, 1973, that he was treated as an Ex-serviceman only. According to the said instructions an Ex-serviceman belonging to any other category for which also there is reservation in service/post should be treated either as an Ex-serviceman or one belonging to any other category for which also reservation has been provided, whichever is more beneficial, and he should be given reservation and other benefits accordingly. The Government re-examined the matter and decided that it would be appropriate to count the selection and appointment of an Ex-serviceman who is also S.C./B.C., against the quota of the choice of the appointing authority. The said employee will be entitled to the benefits given subsequently to both Ex-servicemen and S.C./B.C. personnel. I am of the view that the reservation of posts for Scheduled Caste candidates being statutory, denial of this benefit to a S.C. employee on the plea that he was initially selected as a general category candidate against a post reserved for Ex-serviceman, cannot be sustained in law. The decision contained in Government letter dated July 18, 1984 rectifies the legal lacuna in the earlier instructions dated January 12, 1973. Otherwise too, the letter dated July 18, 1984 does not say that the instructions contained therein shall not apply to those who are already in service or that these will have prospective effect only.

(6) The other point argued on behalf of the respondent-State about relaxation of qualification granted to the petitioner because of being an Ex-serviceman is not material to the real issue of consideration of petitioner for promotion to higher post against the quota reserved for S.C. because the petitioner had been promoted as Assistant as far back as in 1979 in spite of the fact that at the time of initial selection as Clerk he had been granted relaxation in qualifications. I have not been shown any law or a provision in the service Rules which debars such employee from promotion to higher post.

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(7) In view of what has been observed above, this petition is allowed and it is directed that the benefit of promotion against the quota reserved for Scheduled Caste candidates, to which the petitioner belongs, be also given to him. There will be no order as to costs.

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R.N.R.

Before V. Ramaswami, CJ and G. R. Majithia, J.

V.S.R.K. PARMA HANSA,—Appellant.

versus

INDIAN OIL CORPORATION AND OTHERS,—Respondents.

Letters Patent Appeal No. 830 of 1985.

January 12, 1989.

*Letters Patent, 1919—Cl. 10—Petitioner a regular Clerk selected as typist by another organisation—Relieving order providing that he continue to hold lien for two years—New employer wanting the lien to be terminated with previous employer—Previous employer not terminating lien due to pendency of disciplinary proceedings against the petitioner—Termination of petitioner by new-employer—Validity of such order.*

*Held, that the action of respondent No. 1 to compel the appellant to get his lien terminated before the expiry of the above period is wholly unjustified. Respondent No. 1 could not terminate the services of the appellant merely on the ground that he had failed to get his lien terminated, which was retained by his previous employer more particularly when it had acquiesced with it when they allowed the appellant to join service. On the facts of the instant case we find that respondent No. 1 has treated the appellant unfairly.*

(Para 8).

*Held, that it is only as assumption that respondent No. 3 did not terminate the lien of the appellant on the ground that some disciplinary proceedings were initiated against him or were in-offing.*

(Para 6).