

Om Parkash v. The State of Haryana and others
(Jawahar Lal Gupta, J.)

is undoubtedly some delay on the part of the petitioner in approaching this Court but he cannot be non-suited on this short ground as clause 6 which has been impugned in the present writ petition has been specifically struck down by this Court in a number of cases and yet the State Government persisted in re-introducing the said clause for admission in the 1991 Post Graduate Courses.

(9) Keeping in view the facts and circumstances of the case, we are of the view that the petitioner and respondent No. 5 should be given admission in M.D. Psychiatry Course forthwith and, whereas, the petitioner will be adjusted against the seat that has been kept reserved, the authorities concerned will ensure the creation of an additional seat against which respondent No. 5 will be adjusted.

(10) In view of the observations made above, the present writ petition is allowed but with no order as to costs.

R.N.R.

Before I. S. Tiwana, A.C.J. & Jawahar Lal Gupta, J.

OM PARKASH,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS.—Respondents.

Letters Patent Appeal No. 260 of 1991.

26th August, 1991.

Punjab Police Rules, 1934—Rls. 13.7 & 19.22—Eligibility to be deputed for Lower School Course—Completion of three years' period of deputation is necessary for being considered for admission to the Lower School Course—Appellant not fulfilling this condition—Claim for being deputed to Lower School Course cannot be based solely on date of appointment or length of service.

Held, that we are of the view that this rule contains an enabling provision. It authorises the Principal to admit Drill and Physical Training Instructors working in the institution to the Lower School Course after they have completed three years' period of deputation. This is subject to the condition that the Principal finds that they are sufficiently educated and their service at the college had been satisfactory. (Para 3)

Held further, that the appellant and respondents No. 5 and 6 being posted in different districts do not, as such, have any inter-se

seniority. In any event, the appellant having been deputed to the Police Training College, Madhuban in August, 1988 had not completed the requisite service of three years as required under rule 19.22 and was thus not eligible to be deputed for the Lower School Course when respondents No. 5 and 6 had been sent. The claims have to be considered in accordance with the rules. This was done and the appellant had failed only on account of the fact that he had not completed the requisite period of service at the Police Training College, Madhuban. (Para 4)

I. S. Balhara, Advocate, for the Petitioner.

D. D. Vasudeva, Dy. Advocate-General, Haryana, for the Respondents.

JUDGMENT

Jawahar Lal Gupta, J.

(1) The appellant, an Instructor, at the Police Training College, Madhuban approached this Court with a grievance that persons junior to him viz. respondents Nos. 5 and 6 had been wrongly deputed for the Lower School Course and that his claim had been illegally ignored. Finding that the action of the department was in strict conformity with the rules, the learned Single Judge dismissed the writ petition. Aggrieved by the order, the appellant has come up in this appeal.

(2) The appellant was recruited as a Constable on October 22, 1979. He was allocated to district Jind. Respondent No. 5 was recruited as a Constable on October 26, 1979 and posted in district Narnaul. On February 4, 1985 respondent No. 5 was posted as Instructor at Police Training College, Madhuban. Similarly, respondent No. 6 was posted at Madhuban on September 15, 1981. As against this, the appellant was posted as Instructor at Police Training College, Madhuban in August, 1988. While working as Instructors at Madhuban, respondent Nos. 5 and 6 were deputed for the Lower School Course in the term which commenced on November 15, 1990. The appellant claims that he is senior to respondents Nos. 5 and 6 and had a right to be deputed for this Course before them. The claim to seniority is based on the fact that the appellant had joined service on October 22, 1979 while the respondents had joined a few days later on October 26 and October 30, 1979 respectively. On this basis, Mr. I. S. Balhara, learned counsel for the appellant has contended that the appellant had a right to be deputed for the Course prior to respondents Nos. 5 and 6. It has also been contended that rule 19.22 of the Police Rules had no application.

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(3) The procedure for selecting and deputing constables for the Lower School Course from different districts is laid down in rule 13.7 of the Police Rules. Neither the appellant nor respondents Nos. 5 and 6 were posted in any of the districts at the relevant time. They did not compete and were not selected under Police Rule 13.7. All the three of them were posted at the Police Training College, Madhuban. Their claim could be considered only under the provisions of rule 19.22. The relevant rule is extracted below:—

“19.22 Drill and Physical training at the Police Training School.

- (1) The Principal, Police Training School, may retain for service at the school any head constable or constable deputed from districts for training under rules 19.20. Without the approval of the Inspector-General no drill and physical training instructor may be retained for service at the school for more than three years at a time, there being an interval of at least one year before he is again so employed. The Principal, Police Training School, Phillaur, is empowered to enter Police Training School, Drill and Physical Training Instructors directly into the lower School Course after their three years period of deputation, provided that they are sufficiently educated and their service at the Police Training School has been satisfactory.”
(Emphasis supplied).

We are of the view that this rule contains an enabling provision. It authorises the Principal to admit Drill and Physical Training Instructors working in the institution to the Lower School Course after they have completed three years' period of deputation. This is subject to the condition that the Principal finds that they are sufficiently educated and their service at the college had been satisfactory. It was in exercise of the power under this rule that the Principal had admitted respondents Nos. 5 and 6 the Lower School Course which commenced in November, 1990. They had completed three years of service in February, 1988 and September, 1984 respectively. At the relevant time, the appellant had not completed the requisite period of service. Consequently, he was not eligible. As such, we find no infirmity in the action of the Principal in not selecting the appellant. The view taken by the learned Single Judge is unassailable.

(4) Mr. Balhara contends that the appellant was senior to respondents Nos. 5 and 6. This claim is based solely on the date of

continuous appointment. The appellant and respondents Nos. 5 and 6 are posted in different districts. They do not as such, have any *inter se* seniority. In any event, the appellant having been deputed to the Police Training College, Madhuban in August, 1988 had not completed the requisite service of three years as required under rule 19.22 and was thus not eligible to be deputed for the Lower School Course when respondents Nos. 5 and 6 had been sent. The claims have to be considered in accordance with the rules. This was done and the appellant had failed only on account of the fact that he had not completed the requisite period of service at the Police Training College, Madhuban.

(5) Mr. Balhara also contends that rule 19.22 has no application. This contention is based on the ground that the rule uses the expression "school" while in Haryana, there is only a Police Training College. Admittedly, there is only one institution in the whole State of Haryana where the training for the Lower School Course is imparted. This institution, whether named as a college or a school, is the only one to which the provisions of rule 19.22 apply. We, therefore, find no basis for the contention that the provision of the rule is not attracted. Even if we were to assume that the provisions of rule 19.22 are not attracted, the appellant's interest would not be promoted in any manner whatsoever. In that situation, he will not be entitled to be considered or deputed under any provision.

(6) We thus find no merit in this appeal which is dismissed. However, in the circumstances of the case, we leave the parties to bear their own costs.

R.N.R.

Before Jai Singh Sekhon, J.

ANIL K. MEHRA AND OTHERS,—*Petitioners.*

versus

HANS RAJ,—*Respondent.*

Criminal Misc. No. 13631-M of 1990.

29th August, 1991.

Negotiable Instruments Act, 1881 as substituted by Act 66 of 1988 with effect from 1st April, 1989—Ss. 138 & 142—Cheque dishonoured with the remarks "exceeds arrangements" i.e. on account of lack of insufficient funds—After the coming into force of substituted S. 138 with effect from 1st April, 1989 complaint filed after