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R.N.R.

*Before Permod Kohli, J.*

**AMRIT PAL SINGH AND ANOTHER—Petitioners**

*versus*

**STATE OF HARYANA—Respondents**

**CWP No. 9773 of 2009**

3rd August, 2010

*Constitution of India, 1950—Art. 226—Haryana Education (College Cadre) Group 'A' Service Rules, 1986—Rls. 3, 7 & 9—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—Section 47—Appointment of two blind persons as Lecturers—Promotion to the post of Principal on the basis of seniority—Conversion of 8 posts of physically handicapped lecturers (blind) into Principal (Academic)—Petitioners posted against converted posts though without reducing their emoluments—Amounts to reversion—No post of Principal Academic existing in 1986 Rules—Government filling up posts of Principals from reserved category of blinds—Plea of inability of blind persons to perform their duties as Principals—Impermissible to deny benefit of appointment on post of Principal—To create a different kind of post for disabled persons it is essential to issue a statutory notification under proviso to Section 33 or to amend recruitment rules—No such notification issued by respondents—Petitioners cannot be discriminated against other promotee Principals merely on account of their disability without following prescribed procedure in law—Petition allowed, reversion orders quashed.*

*Held*, that administrative intructions cannot over ride or supplant the statutory provisions. If, the Govenment had the intention to bring these posts out of the purview of Section 33 to create even a different kind of post for the disabled person, it was appropriate to have issued a statutory notification under proviso to Section 33 or the rules of recruitment should have been amended. However, the respondents in violation of the law merely issued administrative instructions to convert the posts. Such a recourse is not warranted by law. The impugned communications are, thus, liable to be set aside on this count as well.

(Paras 11)

*Further held*, that Section 47 of the Act prohibits discrimination against the disabled persons in Government employment. Sub-section 2 of Section 47 clearly provides that no promotion can be denied to a person merely on ground of his disability. Even if, for any particular post in an establishment the disabled person is to be denied promotion merely on account of disability, it can only be by way of statutory notification by granting exemption to the establishment from the provisions of Section 47. As a matter of fact the same procedure is to be followed as prescribed under proviso to Section 33. No such notification has been issued under this section as well. The petitioners cannot be discriminated against the other promotee Principals merely on account of their disability without following the prescribed procedure in law.

(Para 12)

K.L. Arora, Advocate, *for the petitioners*.

R.S. Kundu, Addl. A.G., Haryana.

**PERMOD KOHLI, J. (ORAL) :**

(1) Both the petitioners are blind. On acquiring the qualification of B.A. and M.A. in Music, they were appointed as Lecturers initially on *ad hoc* basis and thereafter regularized and confirmed in service. On completion of more than 25 years of service as Lecturer and on the basis of their seniority and merit they were promoted as Principals,—*vide* the order dated 30th December, 2008 along with a number of other lecturers. Their promotion was against the sanctioned available vacancies. On their promotion, petitioners joined their respective places of posting. Petitioner No. 1 joined as Principal on 2nd January, 2009, whereas petitioner

No. 2 joined on 1st January, 2009. While the petitioners were working as Principals at the place of their posting, the State Government,—*vide* its memo dated 2nd June, 2009 ordered conversion of 8 posts of Physically Handicapped Lecturers (blind) into Principal, Academic in the Principal grade of Rs. 16,400—22,400. These posts include the posts which were held by the petitioners as Lecturers. Consequent upon the conversion of these posts, the petitioners were re-transferred against the newly converted posts to their original place of posting against the vacant post of Lecturers (upgraded) *vide* Annexure P-5 *vide* order dated 24th June, 2009 (Annexure-P.6). Against 8 vacancies of Principals in the sanctioned strength of the cadre, further promotions have been made *vide* another order dated 24th June, 2009 (Annexure-P.7). The petitioners have challenged the orders (Annexure-P.5 & P.6), whereby 8 posts of the Lecturers (Blind) have been converted into Principal, Academic and petitioners have been posted against two of the converted posts. The main challenges in the petition are as under :—

- (1) The post of Principal, Academic does not exist in the rules.
- (2) The posting of the petitioners against the converted posts amounts to reversion.
- (3) Further chances of promotions are taken away.
- (4) Juniors made to sit over Head of seniors as Principal.
- (5) Discrimination on account of physical infirmity.

(2) Mr. Arora, learned counsel for the petitioners submits that the post of Principal is post borne on the cadre of service under the statutory rules namely Haryana Education (College Cadre) Group-A, Service Rules, 1986. Rule 3 deals with the number and character of post, Rule 7 with the qualifications, whereas Rule 9 deals with the method of recruitment. The relevant extract of these rules are reproduced hereunder :—

**“3. Number and character of posts.**—The service shall comprise the posts shown in Appendix A to these rules:

Provided that nothing in these rules shall affect the inherent right of the Government to make additions or reduction in the number of such post or to create new posts with different designation and scales of pay, either permanently or temporarily.

7. **Qualifications.**—(1) No person shall be appointed to the service unless he is in possession of the qualifications and experience specified in column 3 of the Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid appendix in the case of appointment other than by direct recruitment.

(2) Every member of the service shall pass the Departmental Examination and for this purpose shall be governed by the Haryana Government Educational Departmental Examination Rules, 1976.

9. **Method of recruitment.**—(1) Recruitment to the service shall be made :—

(a) in the case of Joint Director (Colleges) by promotion from amongst the Deputy Director Colleges/Principals :

(b) in case of Deputy Director Colleges/Principals—

(i) 25% by direct recruitment : and

(ii) 75% by promotion from amongst the College Lecturers ;

or

(c) in the case of Professors by direct recruitment :

Provided that the Government may, in case suitable candidates are not available by direct recruitment or by promotion, to fill in any post by transfer or deputation from the Government of India or any other State Government or the university.

(2) All appointments to the posts by promotion shall be made on the basis of seniority-cum-merit and no person shall have any right for promotion merely on the basis of seniority.”

(3) It is argued on behalf of the petitioners that in terms of Rule 3 the number of Character of posts is specified under Appendix 1. The designation of the post is Deputy Director, Colleges/Principals and the

number of posts specified in 35. No other post under the name Principal, Academic Development exists and by converting 8 more post of Lecturers, the number of cadre posts has been increased beyond 35 as specified under the Appendix. According to Mr. Arora only 35 sanctioned posts of Principals are available under the rules and without amending the rules both in respect to the designation and the number of posts the Government is not entitled to either increase the cadre strength or provide another designation for the post. His further contention is that petitioners fulfill the qualification for promotion under Rule 7 and their appointment is within the prescribed quota of 75% under Rule 9 and if the vacancies are allowed to be increased and renamed, it amounts to violate the quota prescribed under Rule 9. According to him 75% of the sanctioned posts i.e. 35% can only be filled up by promotion and by virtue of the impugned orders the quota of promotees gets increased which is also a contravention of the statutory rules.

(4) It is contended on behalf of the petitioners that the petitioners after having been promoted to the post of Principals now again have been reverted to the post of Lecturers and posted on the same posts to perform the same job of teaching which amounts to reversion. It is also contended that further promotional chances of the petitioners to the post of Deputy Director, Colleges and then Joint Director, Colleges have been marred by their reversion. It is further contended that by posting the petitioners on the posts of Lecturers, they are made to work under their juniors as Principals. It is lastly contended that the petitioners have been given hostile and discriminatory treatment as against all those promotee Principals.

(5) The State in its reply has justified its action. It is stated that post of Lecturer is a Class-II post, whereas the post of Principal is a Class-I post. Neither the status nor the emoluments of the petitioners have been reduced. It is contended on behalf of the respondents that Principal of college has to carry out varied nature of duties. They have to perform the administrative functions and to manage day to day activities of the college besides the handling of financial matters, where the figures, numbers and bills etc. are to be checked very cautiously. The Principal is a Drawing and Disbursing Officer and heavy responsibility to carry out financial and other administrative functions is cast upon him and on account of physical infirmity the petitioners are incapable of performing all these functions. It

is also stated that Principal is also required to deal with the confidential matters to maintain the secrecy and confidentiality of examinations and other issues besides to keep a strict vigil over the students. He needs to identify the students as well which is difficult for the petitioners to perform.

(6) I have heard learned Counsel for the parties at length.

(7) The Parliament has enacted. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called as Act) with a view to grant various protections and facilities to the disabled persons. Chapter 6 of the Act deals with the employment. Section 32 empowers the appropriate Government to identify the posts in the establishments to be reserved for persons with disabilities. Section 33 provides for reservation of 3% for persons suffering with disabilities. This section specifies following three kinds of disabilities :—

- (i) Blindness or low vision ;
- (ii) Hearing impairment ;
- (iii) locomotor disability or cerebral palsy.

(8) 1% reservation is prescribed for each disability. Proviso to Section 33, however, permits the appropriate Government to exempt any establishment from the provisions of this section having regard to the type of work carried in any department or establishment. Such exemption can only be by a notification. Section 39 of the Act imposes an obligation upon the Government educational institutions and other educational institutions receiving aid from the Government to reserve not less than 3% seats for persons with disabilities. A conjoint reading of all these three sections leads to one inference that it is the statutory obligation of the appropriate Government to identify the post to be reserved for the persons suffering from disabilities and make reservation for such posts. Section 39 particularly obligates the State Government to make reservation in all educational institutions and may be more than 3%. Proviso to Section 33, however, permits the Government to exempt any establishment from the obligation of reservation by a notification, keeping in view the nature of duties to be performed. Admittedly, the State Government reserved the vacancies of Principals for visually (blind) disabled persons. This reservation is in accordance with provisions of Sections 32, 33 and 39. There is no statutory notification under proviso to section 33 exempting this category of post in

any establishment from the operation of Section 33. To the contrary the posts of Principals have been filled up from the reserved category of blinds in the educational institutions. After having made such reservation, it is impermissible to deny the benefit of appointment on the post in question on the plea of inability of blind persons to perform their duties. To make reservation of blind persons for the post of Principal is in consonance with Section 33. If, in the wisdom of the Government such blind persons are unable to perform the duties, then it was essential to have issued a statutory notification under proviso to Section 33. No such notificaton has been issued. A similar controversy has been decided by this Court in case of **Balwinder Singh versus State of Punjab and others (1)**, wherein following observations have been made :—

“5. Having considered the arguments addressed at the bar, we are satisfied that the claim of the petitioners is fully justified. Instructions dated 2nd March, 2001 are clearly contrary to the mandate of Section 33 of the Act of 1995. An exemption from the provisions of the Act of 1995 can only be made by a notification at the hands of the Government. No such notification is stated to have been issued as per pleadings filed in the instant case. Since in terms of the provisions of Section 33 of the Act of 1995, the State Government had issued an advertisement dated 9th March, 2001 expressly indicating that the vacancies will be filled from amongst handicapped candidates, *inter alia* lower vision/blind candidate, it is not permissible now for the respondent—State to deny appointment to the peitioner in accordance with the merit obtained by the petitioner in the process of selection.”

(9) Apart from the legal propositions referred to above, it is also noticed that as Principal petitioners have to perform different kinds of duties and mostly administrative. They are hardly require to teach. *Vide* Annexure-P.5 and P.6 the petitioners have been deprived of their right to act as Principals and have been again assigned the job of teaching which they were doing as Lecturers. Even though, their emoluments have not been reduced by their status definitely gets changed and reduced particulary when they are require to work under the Principal for all administrative purposes. Even a junior to them can be appointed as a Principal and they

will be subjected to his administrative control which is impermissible in law. It may not be reversion in the technical sense by protecting the emoluments and retaining the designation of Principal but in fact amounts to depriving the petitioners of various functions and duties enjoined upon the post of Principal. Under the statutory rules the designation of the post is Principal. There is no Principal, Academic Development or Principal, Administration or any other kind of Principal. To create such fiction to circumvent the rule is inappropriate.

(10) As a matter of fact the Principal is being subjected to the administrative control of another Principal of equal status and may be a person junior to the petitioners is appointed Principal in the college. This will be an embarrassing situation for the petitioners. The action of the respondents, thus, amounts to reversion. Otherwise also, the post of Principal, Academic Development does not exist in the rules. However, I do not agree with the contention of Mr. Arora regarding the change in quota of the post as prescribed under rule 10 read with Appendix A. Proviso to Rule 3 do permit the Government to make additions or deductions in the number of posts or to create new posts even with different designations. The power to do so has been conferred upon the Government but this power has to be exercised in accordance with law i.e. by a statutory notification by the competent authority in the Government in accordance with the rules of business of the Government. Definitely, the Government has the power and authority to create new posts with different designations and even increase and decrease the number of existing posts but it has to be done in accordance with law by amending the rules. No such procedure has been adopted. Annexure-P.5 is only an office memo i.e. in the nature of administrative communication. It cannot attain the status of a rule or statute.

(11) It is settled law that administrative instructions cannot override or supplant the statutory provisions. If the Government had the intention to bring these posts out of the purview of Section 33 to create even a different kind of post for the disabled persons, it was appropriate to have issued a statutory notification under proviso to Section 33 or the rules of recruitment should have been amended. However, the respondents in violation of the law merely issues administrative instructions to convert the post. Such a recourse is not warranted by law. The impugned communications (Annexures-P.5 and P.6) are, thus, liable to be set aside on this count as well.



(Ajai Lamba, J.)

(12) Section 47 of the Act prohibits discrimination against the disabled persons in Government employment. Sub-section 2 of Section 47 clearly provides that no promotion can be denied to a person merely on ground of his disability. Even if, for any particular post in an establishment the disabled person is to be denied promotion merely on account of disability, it can only be by way of statutory notification by granting exemption to the establishment from the provisions of Section 47. As a matter of fact the same procedure is to be followed as prescribed under proviso to Section 33. No such notification has been issued under this Section as well. The petitioners cannot be discriminated against the other promotee Principals merely on account of their disability without following the prescribed procedure in law.

(13) However, I am unable to accept the contention of the petitioners that their further chances of promotion are jeopardized. How the further promotional chances are jeopardized, is not specified in the writ petition nor argued convincingly before the Court. Thus, there is no substance in this contention.

(14) In view of the totality of the circumstances, the impugned orders (Annexures-P.5 & P.6) are hereby quashed. Such quashment shall not prevent the Government from exempting the establishment in terms of Sections 33 or Section 47 of the Disabilities Act.

(15) Petition allowed in above manner.

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