

Before J. M. Tandon, J.

RAVINDER SHARMA AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1331 of 1977

September 8, 1983.

Punjab Public Service Commission (State Service Class III) Regulations, 1967—Regulations 7 and 17—Persons appointed as Clerks—Such persons not possessing minimum qualifications for appointment—Appointing Authority aware at the time of appointment that such qualifications were not possessed—Appointing Authority—Whether could terminate the services of such employees—Initial appointments not in accordance with the Regulation 7—Employees—Whether could claim right to continue in service.

Held, that the employees were appointed to the service although they did not fulfil the requirements of Regulation 7 of the Punjab Public Service Commission (State Service Class III) Regulations, 1967 and the mere fact that at the time of their appointments the appointing authority was aware that such qualifications were not fulfilled, would not cure the defect in the initial appointments nor validate the appointments which were otherwise not in conformity with the aforesaid Regulation. As such, the initial appointment of the petitioners in the Commission being invalid and contrary to the Regulation, would not confer any right on them to continue in service.

(Para 8)

Petition under Articles 226/227 of the Constitution of India praying that :

- (a) a writ in the nature of Certiorari quashing the orders of Respondent No. 2, dated the 26th of April, 1977 (Annexures P. 16 and P. 17) be issued;
- (b) a writ in the nature of Mandamus directing the Respondents to consider the petitioners to have been initially legally appointed in the service of the Commission be issued;
- (c) any other writ, order or direction as this Hon'ble Court may deem fit under the circumstances of this case, be issued;

Ravinder Sharma and others v. The State of Punjab and others
(J. M. Tandon, J.)

(d) costs of the petition be also awarded to the petitioners.

It is further prayed that during the pendency of the writ petition, the operation of the impugned orders annexures P. 16 and P. 17 be stayed ;

It is further prayed that the condition of issuing notices to the respondents before-hand be dispensed with.

Kuldip Singh with Virinder Singh and M. M. Kumar, Advocates,
for the Petitioner.

S. S. Shergil, A.A.G., Punjab, for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) Smt. Ravinder Sharma (petitioner No. 1) was appointed a Clerk in the Punjab Public Service Commission (hereinafter the Commission) through the Employment Exchange on June 8, 1967. She is a Matriculate III Class. She qualified from the Subordinate Services Selection Board (hereafter the Board) and was appointed as a Clerk on regular basis on August 28, 1968. She was promoted as an Assistant on February 1, 1974. Surjit Singh (petitioner No. 2) was appointed a Clerk in the Commission through the Employment Exchange on June 8, 1967. He had passed Higher Secondary in III Division. After qualifying from the Board he was appointed a Clerk on regular basis on August 28, 1968, and further promoted as Assistant on June 26, 1974. Sohan Lal Pandey (petitioner No. 3) was appointed a Clerk in the Commission through the Employment Exchange,—vide order, dated January 30, 1967, and he joined on February 4, 1967. After qualifying from the Board he was appointed on regular basis on March 3, 1969. He was a Matriculate II Class at the time of his appointment. He passed B.A. examination in September, 1974. Devinder Kumar (petitioner No. 4) was appointed a Clerk on *ad hoc* basis against a vacancy reserved for Ex-Servicemen on January 6, 1969. He passed the Higher Secondary in II Division. After qualifying from the Board he was appointed a Clerk on regular basis on August 2, 1971. Jagdev Singh (petitioner No. 5) was working as a Steno-typist in the office of the Circle Education Officer, Nabha, when he applied to the Commission for the post of Junior Scale Stenographer. He had passed Intermediate in III Division. He was selected and appointed as a Junior Scale

Stenographer in the office of the Commission on March 29, 1969. After qualifying from the Board he was appointed on regular basis with effect from September 1, 1970. He was promoted as Senior Scale Stenographer on October 6, 1976. He passed B.A. examination in April, 1976.

Regulation 7 of the Punjab Public Service Commission (State Services Class III) Regulations, 1967 (hereafter the Regulations), deals with the recruitment to the service and qualification. The relevant part of this Regulation reads:

"7. Recruitment to the service shall be made—

- (a) * * * * *
- (b) * * * * *
- (c) * * * * *
- (d) * * * * *

(e) in the case of Junior Scale Steno-grapher—

- (i) * * * *
- (ii) * * * *

(iii) by direct appointment of a person who is a Graduate or Intermediate Second Class or a Matriculate First Class of a recognised University and qualifies such tests as may be prescribed by the Establishment Member.

(f) in the case of clerks—

- (i) * * * *
- (ii) * * * *

(iii) by direct appointment of a person, who is a Graduate or Intermediate Second Class or Matriculate First

Ravinder Sharma and others v. The State of Punjab and others
(J. M. Tandon, J.)

Class of a recognised University and has passed a
qualifying examination conducted by the Board.

* * * *

(2) The petitioners were recruited as Clerks/Junior Scale Stenographers in the Commission by way of direct appointment. They were eligible to be appointed if they possessed the qualification of B.A., or Intermediate II Class or Matriculate 1st Class. None of the petitioners possessed the requisite qualification at the time of their appointment in the Commission.

(3) The Commission recommended to the Government that the relevant provision in the regulation 7 regarding qualification be relaxed in the case of the petitioners under regulation 17 of the Regulations. The Government declined the recommendation of the Commission. The Commission consequently issued orders P. 16 and P. 17 both dated April 26, 1977. The order P. 16 adversely affects Sohan Lal (petitioner No. 3) and Jagdev Singh (petitioner No. 5), though it has been issued in the name of Jagdev Singh (petitioner No. 5) only. Similarly, the order P. 17, though issued in the name of Devinder Kumar petitioner No. 4 adversely affects Smt. Ravinder Sharma and Surjit Singh (petitioners Nos. 1 & 2).

The operative part of order P. 16 reads:

"Your case for regularisation of your service by relaxing the relevant provisions has again been sent to the Chief Secretary (General Services Branch). The Government has again rejected the proposal. Since at the time of your initial appointment, you did not fulfil the condition of educational qualifications of Matric 1st Class or Intermediate II Class or B.A. in accordance with Regulation 7 of the Punjab Public Service Commission (State Service Class III) Regulations, 1967, as such your appointment as Junior Scale Stenographer in the Commission from 1st September, 1970 cannot be taken as the date of appointment. However, the Government may at the most consider you as Junior Scale Stenographer in the Commission on regular basis from the date of your having qualified the B.A. examination. If you are willing to accept

this condition of appointing you afresh, you should give your consent in writing to the effect that you are willing to accept the post of a Clerk afresh on regular basis from the date of qualifying the B.A. examination. You may also intimate the date when you have qualified the B.A. examination, and attach copy of the degree, duly attested by a Gazetted Officer in its support.

In case you are not willing to be considered on the conditions mentioned above in the Commission, you can also be considered for appointment/adjustment in some other office/department. For this, you may give an application addressed to the Chief Secretary to Government, Punjab, indicating your experience etc. etc. If you are aware about the posts having fallen vacant in some other offices/departments, you may mention about the same in your application."

The relevant part of order P. 17 reads:

"Keeping in view your representation sent in reply to the memorandum mentioned above, your case for regularisation of your services by relaxing the relevant provisions was referred to the Punjab Government in the General Services Branch. The Government has again rejected the proposal, because you did not fulfil the qualifications of Matric 1st Class or Intermediate II Class or B.A. laid down in Regulation 7 of the Punjab Public Service Commission (State Service Class III) Regulations, 1967, at the time of your initial appointment nor you fulfil the condition at the present moment. As such your initial appointment as Clerk in the Commission was not in accordance with the above mentioned Regulations.

Under the circumstances, it is clear that your continuance as Clerk in the Commission without fulfilling the initial qualifications cannot be allowed. The Government have informed that they can at the most consider your appointing/adjusting in some other Department as a fresh candidate keeping in view your merit and in accordance with rules. It can only be done if you

Ravinder Sharma and others v. The State of Punjab and others
(J. M. Tandon, J.)

submit an application giving full details of your educational qualifications, experience etc. addressed to the Chief Secretary to Government, Punjab. In case you are aware about the vacancies lying vacant in some departments, you can mention the same in your application."

(4) The petitioners have assailed the orders P. 16 and P. 17 in the present writ.

(5) The learned counsel for the petitioners has argued that the petitioners made no concealment about their qualification when they were initially appointed in the Commission through the Employment Exchange and subsequently as a result of their having qualified from the Board. The Commission was in the know of the fact throughout that they were not holding the requisite qualification in terms of regulation 7 of the Regulations. The petitioners are holding appointments in the Commission since 1968/1969. Under these circumstances, it is unjust to consider the services of Sohan Lal Pandey (Petitioner No. 3) and Jagdev Singh (Petitioner No. 5) in the Commission with effect from the date they passed B.A. examination and further to terminate the link of the remaining petitioners with the Commission and to appoint/adjust them in some other offices. Reliance has been placed on a decision in *Smt. Tripta Dhir v. The State of Punjab and others*, (1).

(6) In *Smt. Tripta Dhir's case* (supra) the petitioner did not possess the requisite qualification at the time she made application for appointment to the Subordinate Services Selection Board. She did not conceal anything about her qualification. The Subordinate Services Selection Board was abolished and the application of the petitioner was screened by the Departmental Selection Committee. The petitioner was called for interview. She, however, acquired the requisite qualification by the time she was called for interview by the Departmental Selection Committee. She was selected and on the recommendations of the Departmental Selection Committee was appointed as J.B.T. Teacher on July 15, 1970. On May 29, 1973, her services were terminated on the ground that she did not possess the requisite qualification on the date she applied to the Subordinate Services Selection Board. She assailed that order in C.W.P. No. 1924

(1) C.W.P. 1924/73 decided on 19-2-1982.

of 1974. The learned Judge accepted the writ petition and set aside the impugned order. It was observed:

“I have considered it proper and equitable to quash the impugned order terminating the services of the petitioner. Mostly I am influenced by the efflux of time and the sustenance of the stay order granted by this Court whereunder the petitioner has continued for a little less than a decade in Government service and spent nearly half of her working life. Additionally, it is not a case of concealment of any material particular which gave an occasion to the petitioner to obtain employment. Plainly, every thing was crystal clear to the Departmental Selection Committee, as also to the office of the Subordinate Services Selection Board, whereto the application for appointment had been sent by the petitioner. Seemingly, the Departmental Selection Committee, as also the Government acted on the assumption that when the petitioner was being offered the appointment, she had the requisite qualifications to man the job of a J.B.T. teacher. And on the entertainment of such assumption, if some error has been committed in offering the employment to the petitioner, that cannot be allowed to be rectified at such a late stage when it would work gross injustice to the petitioner.”

It is obvious that the facts of the case under consideration are not identical to the facts of *Smt. Tripta Dhir's case* (supra). In the instant case, the petitioners had not acquired the requisite qualification before their appointment. This apart, the impugned orders envisage the regularisation of the services of Sohan Lal Pandey (petitioner No. 3) and Jagdev Singh (petitioner No. 5) with effect from the date they acquired the requisite qualification by passing B.A. examination and further to appoint/adjust the remaining petitioners in some other departments where they can be accommodated according to rules. The petitioners, therefore, cannot justifiably press the ratio of *Smt. Tripta Dhir's case* (supra) to their advantage.

(8) It is not disputed that the petitioners did not conceal their qualification at any time. The fact, however, remains that keeping in view regulation 7 of the Regulations reproduced above the petitioners could not be legally appointed in the Commission. The

Ravinder Sharma and others v. The State of Punjab and others
(J. M. Tandon, J.)

fact that the petitioners did not conceal their qualification *per se* would not validate their appointment in the Commission which otherwise is not in conformity with regulation 7. It is evident that the Commission itself was conscious that the petitioners cannot be appointed because they did not possess the requisite qualification. It is in this background that the Commission recommended to the Government for relaxing the qualification in the cases of the petitioners under regulation 17 of the Regulations. The Government did not agree with the recommendation of the Commission. Under these circumstances, the initial appointment of the petitioners in the Commission continues to be invalid being contrary to the Regulations..

(9) The learned counsel for the petitioners has argued that the case of Sohan Lal Pandey (petitioner No. 3) can be distinguished inasmuch as he was appointed as Clerk in the office of the Commission on February 4, 1967, through the Employment Exchange and the Regulations came into force on March 10, 1967. The argument proceeds that since petitioner No. 3 had been appointed earlier to the coming into force of the Regulations the provision contained in regulation 7 regarding qualification cannot be invoked against him. The contention is without merit. The appointment of Sohan Lal Pandey (Petitioner No. 3) in February, 1967, through the Employment Exchange was *ad hoc*. He qualified from the Board and then was appointed on regular basis on March 3, 1969, when the Regulations had already come into force. The petitioner No. 3, therefore, cannot claim exemption from the application of the provisions regarding qualification contained in regulation 7.

(10) In the result, the writ petition fails and is dismissed with no order as to costs.

N.K.S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

AMAR SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 441 of 1981.

September 13, 1983.

Punjab Food and Supplies Department (State Service Class III) Rules, 1968—Rules 4 and 11—'Ad-hoc' employee—Meaning of—Recruitment on ad-hoc basis—When to be made—Persons initially