
Before J.S. Khehar & M.M. Kumar, JJ

PREM SARUP,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 1477 of 2003

29th January, 2004

Constitution of India, 1950—Arts. 14, 16(1) & 226—Punjab Social Security and Development of Women & Children (Class I) Service Rules, 2000—Promotion to the post of Superintendent Grade-I from Superintendent Grade-II—Amendment in rules providing 20% quota for promotion from amongst the category of Personal Assistants—Whether violates Articles 14 & 16(1) of the Constitution—Held, no—Amended rules prescribe a minimum period of 5 years experience as Personal Assistant for promotion to Superintendent Grade-I as compared to one year experience prescribed for Superintendent Grade-II—Quota of 80% allocated to Superintendent Grade-II for promotion also have reasonable rationale basis—No illegality in the amended rules—Petition liable to be dismissed.

Held, that the quota of 80% allocated to Superintendent Grade-II appears to have a rationale basis because the cadre of Superintendent Grade-II is far bigger than the cadre of Personal Assistants. It is well settled that no mathematical formula can ever be laid down for allocating the quota to a particular category. However, a reasonable rationale basis would always be sufficient to provide justification for grant of promotional avenues.

(Para 7)

Further held, that the experience gained by the Personal Assistants admittedly involve the clerical work of typing and dictation. The category of Personal Assistants would not have acquired the experience of typing and dictation to the extent the Senior Scale Stenographer or Superintendent Grade-II would acquire. However, the same has been taken care of by providing for more experience for the Personal Assistants as compared to Superintendent Grade-II. In case of Personal Assistant five years experience has been provided as

compared to one year experience for the post of Superintendent Grade-II. It is also clear that provision for more experience for the Personal Assistants in comparison to the Superintendent Grade-II would result in availability faster promotion avenues to the Superintendent Grade-II than to the Personal Assistants. Therefore, it cannot be concluded that the rule violates the principles of equality enshrined by Articles 14 and 16(1) of the Constitution.

(Para 8)

Further held, that no mathematical perfect formula could be devised for weighing the two categories for promotion to a common cadre because such an ideal situation is a Utopian dream. The framers of the Rules, however, have accorded greater significance to the cadre of Superintendent Grade-II by keeping their experience only for one year as compared to the experience of Personal Assistant who is required to have experience of minimum period of five years. This would also ensure faster chances of promotion for persons working as Superintendent Grade-II as compared to the chances available for a Personal Assistant. Therefore, we do not find any illegality in the Rules which may warrant a conclusion that the principles of equality enshrined in Articles 14 & 16(1) of the Constitution have been violated.

(Para 9)

J.K. Sibal, Sr. Advocate with Sapan Dhir, Advocate, *for the petitioner.*

JUDGMENT

M.M. KUMAR, J.

(1) Challenge in this petition filed under Article 226 of the Constitution of India is to the notification dated 18th December, 2002 (Annexure P. 7). The notification has incorporated amendment in the rules known as Punjab Social Security and Development of Women and Children (Class-I) Service Rules, 2000 (for brevity, 'the Rules'). The amendment also prescribed 80% quota for promotion for Superintendent Grade-II to which category the petitioner belongs and 20 per cent quota for promotion to the post of Superintendent Grade-I from amongst the Personal Assistants. It has been prayed that the order dated 15th December, 2003 be quashed,—*vide* which promotion has been granted to respondent No. 3 from the cadre of Personal Assistants to the post of Superintendent Grade-I.

(2) Brief facts necessary for disposal of this petition are that the petitioner was appointed to the post of Clerk on 8th October, 1974 in the Department of Social Security and Development of Women and Children. He was promoted as Assistant on 18th June, 1979. The post of Assistant was later redesignated as Senior Assistant. He was further promoted as Superintendent Grade-II on 6th April, 2000.

(3) Respondent No. 3 who has been granted promotion on 15th December, 2003 on the post of Superintendent Grade-I was appointed as Junior Scale Stenographer on 8th February, 1987 and was further promoted to the post of Senior Scale Stenographer in 1990. He was still further promoted to the post of Personal Assistant on 30th October, 1994.

(4) The service conditions of the petitioner as well as of Respondent No. 3 are regulated by the Rules. There was no provision for grant of promotion to the cadre of Personal Assistants to the post of Superintendent Grade-I. On 18th December, 2002, an amendment was made in the rules providing quota of 20 per cent for promotion to the post of Superintendent Grade-I from amongst the Personal Assistant working under the control of the Director who have an experience of working as such for a minimum period of five years. On the aforementioned basis, Respondent No. 3 has been promoted on 15th December, 2003,—*vide* Annexure P. 8 to the post of Superintendent Grade-I. Feeling aggrieved, the petitioner who has been working on the post of Superintendent Grade-II has challenged the amendment in the Rules made on 18th December, 2002 and the order dated 15th December, 2003 giving promotion to respondent No. 3.

(5) Shri J.K. Sibal, learned counsel for the petitioner has argued that there is well known difference between the ministerial establishment/supervisory staff on the one hand and the other staff on the other hand. According to the learned counsel the well known channel of promotion for the ministerial staff has always been from the post of Clerk to Assistant/Senior Assistant and then to the post of Superintendent Grade-II whereas the channel of promotion provided for the Stenotypists is to the post of Senior Scale

Stenographer and Personal Assistant. According to the learned counsel the experience of Personal Assistant is wholly irrelevant for a post meant for ministerial supervisor like the Superintendent Grade-I. The learned counsel has maintained that the main work of the Personal Assistant is to take dictation, do typing work, attend the telephone calls and the personal works of the concerned officer etc. He does not acquire any experience which is acquired by the Ministerial Supervisory Staff while working on the post of Senior Assistant and further on the post of Superintendent Grade-II. Learned counsel has further argued that unjust benefit has been conferred on the class of Personal Assistant because much more experienced persons like the petitioner would be deprived of promotion and far less experienced persons like Personal Assistants would be promoted. Another argument advanced by the learned counsel is that in any case, the quota of 20 per cent is excessive because there are only two Personal Assistants working in the office of the Director and there are 29 officials working in the office of the Ministerial Supervisory Staff like Superintendent Grade-II. He has maintained that allocating 20 per cent quota for feeder cadre of two posts of Personal Assistant is highly excessive and, therefore, the amendment made in the rules is violative of Articles 14 and 16(1) of the Constitution. Consequently the order of promotion of respondent No. 3, dated 15th December, 2003 has also been assailed.

(6) We have thoughtfully considered the submissions made by the learned counsel and do not feel persuaded to accept the same because the post of Superintendent Grade-I was added to Appendix 'A' at Serial No. 8 by an amendment made on 18th December, 2003. Five posts in the pay scale of Rs. 7,220—11,660 have been sanctioned. According to the addition made in the (Appendix 'B') the post of Superintendent Grade-I is required to be filled up 100 per cent by promotion and a quota of 80 per cent has been provided for Superintendent Grade-II working under the control of the Director who have experience of working as such for a period of one year and 20 per cent from amongst the Personal Assistants working under the control of the Director and who have an experience of working as such for a minimum period of five

years. Rules 3 and 5 of the Rules alongwith Appendix "A" and "B" in so far as relevant to the controversy raised in this case read as under :—

"3. Number and character of posts.—The Service shall comprise of the posts specified in Appendix "A" :

Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or to create new posts with different designations and scale of pay whether permanently or temporarily."

"5. Method of appointment and qualifications.—(1) Appointment to the service shall be made in the manner specified in Appendix B:

Provided that if no suitable candidate is available for appointment by promotion, then appointment to the Service shall be made by transfer of a person holding a similar or identical post under a State Government or Government of India :

Provided further that the post of Deputy Controller (Finance and Accounts) shall be filled up from amongst the persons holding similar and identical posts in the Department of Finance.

(2) No person shall be appointed to a post in the Service unless he possesses the qualifications and experience specified against that post in Appendix "B".

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit but no person shall have any right to claim promotion on the basis of seniority alone."

Appendix "A"

S. No.	Designation of post	No. of posts			Scale of pay
		Per.	Tem.	Total	
1 to 7	XX	XX	XX		
8	Superintendent Grade-I	5	5	Rs. 7,220—11,660"	

Appendix "B"

S. No.	Designation of the post	Percentage of appointment by promotion	Qualifications and experience for appointment by promotion
1 to 6	XX	XX XX	
7	Superintendent	Hundred per cent	(a) Eighty per cent from amongst the Supdt. Grade-II working under the control of the Director and who have an experience of working as such for a period of one year; and (b) Twenty per cent from amongst the Personal Assistants working under the control of the Director or and who have an experience of working as such for a minimum period of five years."

(7) A perusal of the afore mentioned rules shows that by the newly added amendment five posts of Superintendent Grade-I have been created in the pay scale of Rs. 7,220—11,660 and promotional avenues have been provided to the category of Superintendent Grade-II, to which the petitioner belongs, by allocating 80 per cent quota to them and the category of Personal Assistants, to which respondent No. 3 belongs, by allocating 20 per cent quota to them. Out of the five posts only one post would fall to the share of Personal Assistants and four posts would fall to the share of Superintendent Grade-II. The quota of 80 per cent allocated to Superintendent Grade-II appears to have a rationale basis because the cadre of Superintendent Grade-II is far bigger than the cadre of Personal Assistants. It is well settled that no mathematical formula can ever be laid down for allocating the quota to a particular category. However, a reasonable rationale basis would always be sufficient to provide justification for grant of promotional avenues.

(8) We are further of the view that the experience gained by the Personal Assistants admittedly involve the clerical work of typing and dictation. The category of Personal Assistants would not have acquired the experience of typing and dictation to the extent the Senior Scale Stenographer or Superintendent Grade-II would acquire. However, the same has been taken care of by providing for more experience for the Personal Assistants as compared to Superintendent Grade-II. In case of Personal Assistant five years experience has been provided as compared to one year experience for the post of Superintendent Grade-II. It is also clear that provision for more experience for the Personal Assistants in comparison to the Superintendent Grade-II would result in availability faster promotion avenues to the Superintendent Grade-II than to the Personal Assistants. Therefore, it cannot be concluded that the rule violates the principles of equality enshrined by Articles 14 and 16(1) of the Constitution.

(9) We have also not felt impressed with the argument that the petitioner is a far more experienced than respondent No. 3 merely because he was inducted into service as a Clerk in 1974 as compared to respondent No. 3 who joined as Jr. Scale Stenographer in 1987. As has already been observed in the preceding para that no mathematical perfect formula could be devised for weighing the two categories for promotion to a common cadre because such an ideal situation is a Utopian dream. The framers of the Rules, however, have accorded greater significance to the cadre of Superintendent Grade-II by keeping their experience only for one year as compared to the experience of Personal Assistant who is required to have experience of minimum period of five years. This would also ensure faster chances of promotion for persons working as Superintendent Grade-II as compared to the chances available for a Personal Assistant. Therefore, we do not find any illegality in the Rules which may warrant a conclusion that the principles of equality enshrined in Articles 14 and 16(1) of the Constitution have been violated.

(10) The rule prescribing different length of experience for two different cadres was considered by the Supreme Court in the case

of **Roop Chand Adlakha and others, versus Delhi Development Authority and others, (1)**. After detail analysis of various judgments, their Lordships upheld the rule and observed as under :—

“.....Here, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma-Holders of course on the justification of the job requirements and in the interest of maintaining a certain quality of technical expertise in the cadre could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only two choices, namely, either to consider them “eligible” or “not eligible”. State, consistent with the requirements of the promotional-posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma-holders conditioning it by other requirements which may, as here, include certain quantum of service-experience. In the present case, eligibility-determination was made by a cumulative-criterion of a certain educational qualification plus a particular quantum of service experience. It cannot, in our opinion, be said, as postulated by the High Court, that the choice of the State was either to recognise or wholly exclude them as “not-eligible”. If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the superimposition of further conditions such as a particular period of service, selectively, on the Diploma-Holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. It is stated that on the basis of the “Vaish-Committee” report, the authorities considered the infusion of higher academic and technical quality

in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one judicial-restraint. The prescriptions may be somewhat cumbersome or produce some * * * hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion was not justified in striking down the Rules as violative of Arts, 14 and 16."
(Emphasis added)

In the case of **State of Gujrat versus A.C. Shah (2)** the Supreme Court reiterated this view and while remanding the case to the High Court observed as under :—

“On these circumstances, we are left with no option but to upset the judgment of the High Court and remand the matter back to it for reconsideration. In doing so we may set at rest the controversy regarding difference of length of qualifying service, from both sources. The controversy does not survive in view of **Roop Chand Adlakha versus Delhi Development Authority**. The High Court need not advert now to the disparity in length of qualifying service from the channels of promotion...”

(11) If the facts of the instant case are examined in the light of the principles laid down above it becomes evident that the argument of the learned counsel for the petitioner is liable to be rejected. On the basis of precedents and principles the petition is liable to be dismissed.

(12) For the reasons recorded above, this petition fails and the same is dismissed.

R.N.R.