

Before R. N. Mittal, J.

B. S. JAIN and another,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 234 of 1979.

October 8, 1980.

*Constitution of India 1950—Articles 14 and 16—Haryana Service of Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970—Punjab Service of Engineers Class I Public Works Department (Irrigation Branch) Rules, 1964—Rules 2(5), 6 and 8—Persons appointed as temporary engineers under class II Rules—Such Service—Whether to be taken into account in determining eligibility for promotion to Class I Post—Letters of appointment as temporary Engineers stipulate that appointees would not be entitled to claim benefit of temporary service for purposes of Rule 6—Such stipulation—Whether violative of Articles 14 and 16.*

*Held*, that Class II Service has been defined in clause 5 of Rule 2 of the Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules 1964 as amended. Rule 6 of the aforesaid rules relates to the qualifications for appointment to Class I Service. Rule 8 of the said Rules provides for the method of appointment by promotion to Class I Service. Rule 6 provides further that a person who possesses a degree or other qualifications prescribed in Appendix B of the rules shall be entitled to be promoted to Class I Service. It further provides that in the case of an appointment from Class II Service by promotion, other persons who have completed in that service, for a period of 10 years from the commencement of the rules, 6 years service and after that period 8 years service. An explanation has been added to Clause (b) of the said rule laying down the principle as to how the period of 8 years is to be computed. It is provided there that service rendered as temporary Engineer shall be taken into account for that purpose. Thus it is evident that for promotion to Class I service, the service of Class II Officers rendered by them as temporary engineers under the Haryana Service of Engineers Class II P.W.D. (Irrigation Branch), Rules, 1970 shall be taken into consideration for the purposes of computing the period of service under clause (b) of Rule 6.

(Para 5).

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*Held*, that if the State imposes any condition on any person while taking him into service that he will not claim benefit of the statutory rules, that will offend his fundamental right under Articles 14 and 16 of the Constitution of India 1950. (Para 7).

*Petition under articles 226/227 of the Constitution of India praying that :—*

- (i) *a writ in the nature of certiorari quashing the order Annexure P-2, so far it relates to respondents 3 to 28, be issued ;*
- (ii) *A writ in the nature of mandamus directing the respondents 1 and 2 to consider and promote the petitioners to the posts of Executive Engineers, with effect from 20th of October, 1978, when persons who were not eligible for promotion, were promoted on the basis of the impugned order Annexure 'P-2'.*
- (iii) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued ;*
- (iv) *the record of the case be ordered to be sent for ;*
- (v) *the cost of the petition be awarded to the petitioners, as the petitioners have un-necessarily been ignored from promotion to the posts of Executive Engineers ;*

Kuldip Singh, Advocate, for the Petitioner.

R. L. Verma, D.A.G., Haryana, for the Respondents.

**JUDGMENT**

*Rajendra Nath Mittal, J.*

(1) This judgment will dispose of Civil Writ petition Nos. 234 of 1979 and 172 of 1980 which involve same questions of law. The facts in the judgment are being given from C.W.P. No. 234 of 1979.

(2) The petitioners joined service as temporary Engineers in the Irrigation Branch in the State of Haryana, on *ad hoc* basis on

January 2, 1971 and May 19, 1969, respectively. They were appointed as Assistant Engineers on regular basis by an order dated April 21, 1975 (copy Annexure P. 1). They were governed by the statutory rules called the Haryana Service of Engineers Class II, Public Works Department (Irrigation Branch) Rules, 1970 (hereinafter referred to as Class II Rules). The next promotion from the post of Assistant Engineer is to that of Executive Engineer which is governed by the Rules known as the Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964 (hereinafter referred to as Class I Rules). After 1974, the members of Class II Service became eligible for consideration for promotion to Class I service if they had completed 8 years of service. It is averred that the petitioners had completed 8 years service as Assistant Engineers/Temporary Engineers and they had passed the departmental and professional examinations. They, therefore, became eligible for promotion to the post of Executive Engineer. The State of Haryana, respondent No. 1 have by an order dated December 20, 1978 (copy Annexure P. 2) promoted a number of Class II Officers including respondent Nos. 3 to 28 as Executive Engineers in spite of the fact that they were not eligible for promotion, as respondent Nos. 3 to 14 had not completed 8 years of service as Assistant Engineers and respondent Nos. 15 to 28 had not passed the departmental and professional examination as required under the Rules. It is further averred that it has not considered the case of the petitioners, who were eligible for promotion under Class I Rules.

(3) The case of the petitioners further is that the order Annexure P. 2 shows that the respondents who had not passed the departmental, professional and revenue examinations had been given relaxation under Class I, Rules. But the said relaxation is illegal. They have consequently prayed that the order dated December 20, 1978 (copy Annexure P. 2.) be quashed and respondents No. 1 and 2 be directed to consider and promote the petitioners to the post of Executive Engineer with effect from December 20, 1978, when the respondents were promoted.

(4) The writ petition has been contested by the respondents who have *inter alia* pleaded that the petitioners were appointed as Assistant Engineers in 1975 and thus they had only about 3½ years

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service to their credit when the respondents were promoted. Prior to their appointment as Assistant Engineers, they were appointed as Temporary Engineers and according to the appointment orders, they were not entitled to any seniority or other benefit under the Service Rules, which were in force at that time. It was further stated that the period of service would not count towards increment in the time scale. It was also stated that respondent Nos. 3 to 28 were senior to the petitioners and were promoted as Executive Engineers in relaxation of the Rules for which there was provision in Rule 6 of Class I Rules. The petitioners were not promoted as they were junior to the respondents.

(5) The first contention of Mr. Kuldip Singh is that petitioners' service as temporary Engineers should be counted towards eligibility for appointment to Class I post as mentioned in explanation to Rule 6(b) of Class I Rules. In order to determine the question it will be necessary to make a reference to the relevant Rules. In class I, Rules as amended in 1975 the words 'Class II Service' has been defined in clause (5) of Rule 2 as follows:—

“(5) 'Class II Service' shall for the purposes of promotion to the service, comprise of members of the Haryana Service of Engineers, Class II (Irrigation Branch), Temporary Engineers, Officiating S.D.Os., Officiating Assistant Design Engineers, except those promoted in excess of the quota fixed under Rule 6 of the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970”.

Rules 6 relates to qualifications etc. for appointment to Class I. The said rule reads as follows:—

“6. No person shall be appointed to the Service unless he,—

(a) Possesses one of the University Degree or other qualifications prescribed in appendix B of these Rules :

Provided that Government may waive this qualification in the case of particular Officer belonging to Class II Service.

(b) In case of an appointment by promotion from Class II Service has completed in that class of service for a period of ten years from the commencement of these rules, six years service and after that period eight years service :

Provided that if it appears to be necessary to provide an officer in the public interest, the Government may for reasons to be recorded in writing, either generally or in any individual case reduce the period of six or eight years to such extent as it may deem proper in consultation with Finance Department.

*Explanation.*—For the purpose of this clause in computing the period of six or eight years any service rendered as a Temporary Engineer shall be taken into account.”

The method of appointment by promotion is laid down in Rule 8 of Class I Rules. It was first amended in 1969 and then in 1975. It *inter alia* provides that the Government shall prepare a list of eligible and suitable persons for promotion in order of their seniority in Class II Service which shall be reckoned in the case of member of the Haryana Service of Engineers, Class II (Irrigation Branch) from the date of his continuous officiation as Sub-Divisional Officer or Assistant Design Engineer or appointment as Temporary Engineer, as the case may be; in the case of a Temporary Engineer from the date of his appointment as such; and in the case of an officiating Sub-Divisional Officer or an Assistant Design Engineer, from the date of his continuous officiation as such. From a reading of the definition of Class II Service, it is clear that for promoting to Class I Service, Class II Service will be deemed to comprise of members of Class II Service, Temporary Engineers, Officiating Sub-Divisional Officers, and Officiating Assistant Design Engineers. Rule 6 provides that a person who possesses a degree from a University or other qualifications prescribed in appendix B of the Rules shall be entitled to be promoted to Class I Service. It further provides that in the case of an appointment by promotion from Class II Service, he should have completed in that service, for a period of 10 years from the commencement of the Rules, 6 years service and after that period 8 years service. In the present case, the promotions are being made after 10 years from the commencement of Class I Rules. Therefore, the petitioners are required to complete 8 years service.

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(6) An explanation is added to clause (b) laying down the principle as to how period of 8 years is to be computed. It is provided there that service rendered as Temporary Engineer shall be taken into account for that purpose. Thus it is evident that for promotion to Class I service, the service of Class II Officer rendered by him as a Temporary Engineer before entering Class II Service, shall be taken into consideration for the purposes of counting his service under clause (b) of Rule 6. It is not disputed that the petitioners have worked as Temporary Engineers in the Irrigation Branch on *ad hoc* basis before their entry into Class II Service. Thus according to the explanation, their service rendered as Temporary Engineers has to be taken into consideration for the purposes of their experience under clause (b) of Rule 6 for promotion to Class I Service.

(7) The case of the State is that when the petitioners were given temporary appointments, it was provided in the letter of appointment that they would not be entitled to any seniority or any other benefit under the Service Rules in force at that time. It has been said that in view of that clause the petitioners are not entitled to count the period for which they worked as Temporary Engineers for the purposes of Rule 6. I do not find merit in this stand. If the State imposes any condition on a person while taking him into service that he will not claim the benefit of any statutory Rules, that will offend his fundamental right under Articles 14 and 16 of the Constitution of India. It will also be relevant to point out that the petitioners in C.W.P. No. 172 of 1980 have been given the benefit of such service for the purpose of fixation of pay, in spite of the said clause. It has been observed in *Basheshar Nath v. Commissioner of Income Tax, Delhi and Rajasthan and another* (1), that Article 14 is, in form, an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other Articles, e.g. Article 19 do. The obligation thus imposed on the State, no doubt; ensures for the benefit of all persons for, as a necessary result of the operation of this Article, they all enjoy equality before the law. That is, however, the indirect, though necessary and inevitable, result of the mandate. The command of the Article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right

(1) A.I.R. 1959 S.C. 149.

which every person within the territory of India is to enjoy. Article 14 is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. Therefore, it is clear from the language of Article 14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every Welfare State, such as India, is by her Constitution expected to do and no person can, by any act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. It is further held that whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the State. Mr. Kuldeep Singh made reference to *Baleshwar Das, etc. v. State of Uttar Pradesh etc.* (2), decided by the Supreme Court. The following observations of the Supreme Court are relevant:—

“.. If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time honoured classification, can it be that his long officiation turns to ashes like a dead sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations.”

The counsel for the respondents has placed reliance on *Lashkar Singh and others v. Municipal Corporation of Delhi* (3). Suffice it to any that the case is distinguishable and the counsel cannot derive any benefit from it. In the circumstances, the clause in the appointment letter is of no help to the respondents.

(8) For the aforesaid reasons, I am of the opinion that the petitioners are entitled to the benefit of the service rendered by them as Temporary Engineers for the purpose of promotion to Class I under Rule 6 of Class I Rules.

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(2) C.A. 1317-18 of 1976 decided on 19th August, 1980.

(3) 1979 (1) S.L.R. 233.

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(9) Mr. J. L. Gupta, in addition to the above-said arguments raised three other arguments. Firstly, that respondent Nos. 4 to 9 were not eligible to be considered for promotion to Class I Service as they had not completed 8 years service in Class II as required by clause (b) of Rule 6 and that they were not given relaxation according to the said clause. Secondly, that respondent Nos. 10 to 12 did not possess the University degrees or other qualifications such as A.M.I.E. prescribed in Appendix 'B' as required by clause (a) of Rule 6 and that they were not given relaxation according to the said clause. Thirdly, that some of the respondents had not passed the departmental examination as laid down under Rule 15 of Class I Rules and, therefore, they were not entitled to promotion. He further argues that the Government had not granted relaxation as required by Rule 22. The counsel for the State has replied that due relaxations had been obtained by the State regarding experience, educational qualifications and departmental examinations.

(10) The first question that arises for decision is as to whether the relaxation has been given by the Government regarding experience under proviso to clause (b) of Rule 6. The rule has already been reproduced above. The proviso to the clause says that if it appears to be necessary to promote an Officer in the public interest, the Government may for reasons to be recorded in writing either generally or in any individual case reduce the period of 6 or 8 years to such an extent as it may deem proper in consultation with the Finance Department. The counsel for the State has produced the file of the Government. I have gone through the orders and it is evident, therefrom, that the action had been taken by it under the above proviso and the Rule regarding experience has been relaxed. It also contains the reasons for doing so. The sanction of the Finance Department has also been taken.

(11) The Second question that arises for determination is as to whether the relaxation has been given regarding clause (a) of Rule 6 relating to qualifications. The proviso to the said clause authorises the Government to waive qualification in case of an Officer belonging to Class II service. The respondents in the present case belong to Class II service. The qualifications mentioned in the clause have



also been relaxed by the Government by the order referred to above. Though it was not necessary for the Government to consult the Finance Department for relaxing the qualification clause, but that had also been done. Therefore, there is no merit in these points of Mr. Gupta.

(12) The third question that arises for determination is as to whether the Government had granted relaxation regarding passing of departmental examinations. There is no proviso added to Rule 15 of Class I Rules, which authorises the Government to give exemption. Rule 22 however, confers general powers on the Government to relax the rules. The said Rule reads as follows:—

“22. *Power to relax*—(1) Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may, by order dispense with or relax the requirements of that rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that if relaxation of any rule involves financial implications prior concurrence of the F. D. shall be obtained.

(2) \* \* \* \* \*

A Division Bench of this Court in *Shri B. S. Bansal, Executive Engineer v. The State of Punjab and another* (4), while interpreting the Rule has observed that the Rule has to be read as a whole, and its bare reading shows that the intention of the framers of the rule was to vest the Government with the power of relaxation to be exercised only in an individual case and not to meet a general situation. The power is exercisable only to remove any undue hardship caused to an individual and that too, when it is necessary to remove that hardship in a just and equitable manner. If the contention that the power of relaxation could be exercised in order to meet a general situation, is accepted, then whole purpose of the Rule would be frustrated and the Government would be left with such an arbitrary power which may instead of removing any hardship result into great hardship. The framers of the rule had never intended to give an uncontrolled and unguided power to the

(4) 1978 (2) S.L.R. 553.

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Government which could be exercised in a general manner or in order to meet a particular situation. It is further observed that the intention of the framers of the rule was to give some power to the Government to do justice in an exceptional case when by the applicability of a particular rule some grave injustice was being caused to a particular person. From the above observations it is evident that under the aforesaid rule the power of relaxation can be exercised in any particular case to reduce hardship and not generally. The State counsel has referred to the order by which relaxation was given regarding departmental revenue examinations. It is said there that in view of the non-availability of the candidates, the condition for departmental revenue examinations would be relaxed. It appears that the order has been passed in general terms and not in accordance with the said clause. Therefore, the part of the order granting the relaxation regarding departmental examinations to respondent Nos. 10 to 12 is not good.

(13) For the aforesaid reasons, I accept both the writ petitions with costs, quash the impugned orders so far as these relate to the respondents and direct the State Government to decide the matter afresh after taking into consideration the observations made above. Counsel fee Rs. 200 in each case.

H. S. B.

Before B. S. Dhillon [and M. R. Sharma, JJ.

KHOSLA FANS (INDIA) PRIVATE LTD. (IN LIQUIDATION),  
Petitioner.

versus

RAMESH KHOSLA and others,—Respondents.

C. P. No .220 of 1976.

November 26, 1980.

*Companies Act (1 of 1956)—Sections 2(11), 10, 446, 454 (5A) and 538—Companies (Court) Rules 1959—Rule 9—Company ordered to be wound up—Officers of the liquidated Company failing to*