

Before P. C. Jain, C.J. and S. S. Kang, J.

SARLA SHARMA,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 440 of 1986

July 30, 1986.

Constitution of India 1950—Article 14—Government instructions providing for categorisation of annual confidential reports of each teacher on the basis of result of the subjects taught by them—ACRs. however continued to be written as before—Such categorisation taken into account only at the time of promotion of the teachers or retention in service beyond 55 years—Instructions aforesaid—Whether arbitrary and liable to be struck down as being violative of Article 14 of the Constitution.

Held, that it is only at a stage when the case of teacher is to be taken up for promotion or retention in service beyond the age of 55 years that the ACRs are categorised in the light of the instructions. The overall grading recorded by some of the reporting officers in a casual and even cavalier fashion resulted in presenting a totally distorted picture about the ability, capacity and industry of a teacher leading to the promotion or retention in service of un-deserving persons. It cannot be plausibly argued that the assessment of a teacher, *inter alia* on the basis of the results of the subjects taught is arbitrary, whimsical and extraneous to the object to be achieved. The results of the students taught by a teacher vividly reflect the ability, capacity and industry of the teacher. As such the impugned instructions of categorising the ACRs. on the basis of the results on the subject taught by the teachers are not in any way arbitrary or discriminatory and not liable to be struck down as being violative of Article 14 of the Constitution of India, 1950.

(Paras 9, 13 and 17)

Civil Writ Petition under Article 226 of the Constitution of India praying that :

- (i) *record of the case may be called for ;*
- (ii) *services of advance notices upon the respondents may be dispensed with ;*

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- (iii) *filing of the certified copies of the annexures may be dispensed with ;*
- (iv) *that a writ in the nature of mandamus be issued to consider the petitioner for promotion on H.E.S. Class II Post from the date juniors to the petitioner were promoted and petitioner be given all service benefits from that date;*
- (v) *that a writ in the nature of certiorari be issued to quash the promotion order in which the petitioner has been superseded;*
- (vi) *that a writ in the nature of certiorari be issued to quash the instructions attached as annexure P/4 being violative of Article 14 and 16 of the Constitution of India;*
- (vii) *that this Hon'ble Court may also pass any order which this Hon'ble Court deems fit in the peculiar circumstances of the case;*
- (viii) *cost of the petition be awarded to the petitioner.*

R. K. Malik, Advocate, for the petitioner.

H. S. Chahr, Advocate, for A. G. (Hy.) for the Respondent.

JUDGMENT

Sukhdev Singh Kang, J.

(1) In this bunch of writ petition (C.W.P. No. 440, 871, 1185, 1552 and 1820 of 1986) the petitioners question the legality, validity and constitutionality of the Government instructions dated August, 10, 1981 providing for categorisation of Annual Confidential Reports (ACRs) of the employees of the Education Department on the teaching side, on the basis of the results of all the subjects taught by them. Equally at issue are the orders superseding petitioners Smt. Sarla Sharma (C.W.P. No. 440 of 1986) and Narender Nath Gaur (C.W.P. No. 1820 of 1986) by their juniors for promotion to next higher posts, and notices dated December 10, 1985, December 19, 1985 and January 1, 1986 (copy Annexure P. 2 in all the cases) effecting premature retirement of petitioners Banarsi Datt (CWP No. 871 of 1986), Kewal Singh Rathi (C.W.P. No. 1185 of 1986) and Nawal Singh (C.W.P. No. 1552 of 1986) respectively on the attainment of 55 years, age on the basis of categorisation of their ACRs in accordance with the above instructions.

(2) A broad-brush factual backdrop will help illumine the contours of forensic controversy cropping up in these writ petitions.

(3) Smt. Sarla Sharma, petitioner, was working as a Lecturer in English in Government Girls Senior Secondary School, Hissar. She had been posted at Hissar since 1974. In February, 1985, the Director of School Education, Haryana, enquired of the petitioner as to whether she was willing to be promoted in Class II Service by joining in the State of Haryana wherever posted. The purpose of this communication was to ascertain from the prospective candidates, who were due for promotion, whether or not they were willing to be posted anywhere in the State of Haryana because most of the lady officials do not join their places of posting on promotion and some of them even forgo their promotions to avoid their dislocation from their present places of posting. Such options were asked for from other eligible lecturers also. The petitioner replied that she was willing to avail of that promotion. In July 1985, some promotions were made to Class II Service from amongst the lecturers. However, the petitioner was superseded and some junior lady lecturers were promoted to Class II Service. Smt. Kamla Sikri, who was admittedly junior to the petitioner and was so shown in the seniority list of January 1980, was promoted by ignoring the claims of the petitioner. The petitioner represented against her supersession but with no result. The petitioner then learnt that she had been superseded in pursuance of the instructions dated August 10, 1981 (copy Annexure P.4) on the basis of the results of the subjects taught by her. She has averred that her ACRs. for the last ten years were either good or very good and she had not been conveyed any adverse remarks. She has challenged that the prescription of the categorisation of the ACRs on the basis of the results is arbitrary and discriminatory.

(4) Narender Nath Gaur, petitioner, was working as a Social Studies Master in Government High School, Raipur Rani, Tehsil Naraingarh, District Ambala. His case for promotion to the post of Lecturer in History was sent to the Director, Public Instructions, Haryana. However, the petitioner's claim was ignored and some persons who were junior to the petitioner were promoted as Lecturer in History, on the ground that he did not have 10 per cent good reports to his credit for the period of past ten years and in the face of the Government instructions dated August 10, 1981 (copy Annexure P-3) he could not be promoted.

(5) Banarsi Datt, Kewal Singh Rathi and Nawal Singh, petitioners, who were working as teachers, have been served with

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notices under rule 3.26(b) of the Punjab Civil Services Rules, Vol. I, Part I, read with rule 5.32 (A) and note thereunder of the Punjab Civil Service Rules, Vol. II (as applicable to the State of Haryana) for prematurely retiring them on their attaining the age of 55 years on the basis of their ACRs categorised and down-graded in accordance with the impugned Government instructions.

(6) The respondents have contested the writ petitions and have justified the promulgation of the impugned instructions and the action taken on the basis of categorisation of the ACRs of the petitioners in accordance with the criteria and categorisation postulated by these instructions. Because of the similarity of facts and identity of the legal issues, the writ petitions were heard together and are being disposed of by a common judgment.

(7) Shri Ram Kumar Malik, learned counsel for the petitioners, has contended that the Government had prescribed a *pro forma* for recording of the ACRs for the overall assessment and evaluation of a teacher/lecturer. Resultantly the reporting officer has to assess the teacher concerned with reference to punctuality, performance, integrity, results of the subjects taught (and if the results are negative to what extent a teacher is responsible), performance of duties outside the class, cooperation and relations with the headmaster/other teachers. So while indicating the overall gradation, the reporting officer has already taken into account the results of the subjects taught by the teacher. All the facts and aspects of a teacher's personality and performance are objectively assessed and reflected in the ACR. If there are any adverse reports, they are communicated to the teacher concerned. Even remarks in the nature of advice are conveyed so that the teacher concerned can benefit from that assessment and try to improve. The categorisation of the ACRs on the basis of the results of the subjects taught by a teacher is wholly arbitrary, whimsical and extraneous to the object to be achieved, i.e., the assessment of the real worth and capabilities of a teacher. The result of a teacher has already entered the conclusions culminating in the overall gradation of the teacher. This one factor relevant for judging the worth of a teacher cannot be given undue importance and taken into account twice — first at the time of recording the ACRs and then at the time of categorising the ACRs. The result of a class in a subject is not solely dependent on the ability, capacity and industry of the teacher. Many other factors like the background of the students, and their psychology play a major and sometimes a decisive role in the final result of the class.

So, the assessment and evaluation of a teacher, solely and even mainly on the basis of the results of the subjects taught cannot be termed to be fair and reasonable. It is patently arbitrary and discriminatory and offends Article 14 of the Constitution. He further contended that in certain cases, the ACRs after their categorisation in accordance with the instructions dated August 10, 1981, become adverse reports. They are taken into account while promoting teachers/Lecturers to the next higher post and for the purpose of judging the suitability of the teachers for their retention in service after attaining the age of 55 years. Yet these reports are not communicated to the teachers concerned. This procedure is wholly arbitrary, discriminatory and violative of the principles of natural justice and has been frowned upon by the Highest Court in the land in various decisions. Lastly, it was contended that the previous method of compiling the ACRs on the basis of the result of the subject taught by the teacher was more rational.

(8) The contentions raised by Shri Malik have not impressed us. It may be mentioned at the very outset that the impugned instructions dated August 10, 1981 have been issued on the subject of promotion of Class III employees to Haryana Education Service Class II (School and Inspection Side). The petitioners in C.W.P. Nos. 871, 1185 and 1552 of 1986 have not pleaded in specific terms that the impugned instructions dated August 10, 1981 were not applicable to their cases for determining their suitability for retention in service on their attaining the age of 55 years, nor any such plea has been raised before us.

(9) Generally speaking, the guidelines incorporated in the *pro forma* for recording the ACRs help reflect the personality, achievements and overall performance of a teacher. They also help in highlighting the shortcomings, drawbacks and other deficiencies in the methods of teaching, general performances and output of the teacher concerned. However, on the basis of the experience acquired over the years, it was felt that in many cases the remarks regarding the overall grading of a teacher/Lecturer did not represent a balanced assimilation of the assessment regarding the various facets of the teacher's personality and his/her performance and output as noticed and recorded by the reporting officer. The overall grading of the ACRs recorded by many of the reporting officers did not truly reflect the evaluation made by that very officer in relation to each of the items contained in the *proforma*. It was, therefore, decided that the ACRs should be categorised by giving greater

weightage to the results of the subject/subjects taught by the teacher. Therefore, the impugned instructions dated August 10, 1981 were issued. It was directed that the ACRs should be evaluated on the basis of the results of all the subjects taught by the teachers/Lecturers. It was illustrated that in case there were four results of a teacher during the year and out of them, there were two results in the plus and two in the minus, then the grading of the ACRs was not to be changed and in case three results were in the plus and one was in minus, then the grading of the ACR would be up-graded considering each result as satisfactory. In case three results were in minus and one in plus, then the ACR has to be down-graded considering the results as unsatisfactory. The new method of categorisation of the ACRs does not in any manner detract from the prime importance of the ACRs. No directions have been issued for changing the method of recording the ACRs. Those continued to be written as before. It is only at a stage when the case of a teacher/Lecturer is to be taken up for his/her promotion to the next higher post or for retention in service beyond the age of 55 years, that the ACRs are categorised in the light of the impugned instructions. The method has been devised to remove the shortcomings noticed in the recording of the ACRs. The overall grading recorded by some of the reporting officers in a casual and even cavalier fashion resulted in presenting a totally distorted picture about the ability/capacity and industry of a teacher leading to the promotion or retention in service of undeserving persons.

In order to select the best persons for the higher posts and to weed out the dead wood from the service a rational method for categorisation of the ACRs on the basis of the results was introduced. It cannot be plausibly argued that the assessment of a teacher, *inter alia*, on the basis of the results of the subjects taught by him/her to the students is arbitrary, whimsical and extraneous to the object to be achieved. The results of the students taught by a teacher vividly reflect his ability, capacity and industry.

(10) The petitioners have not placed on record any reliable material or data, to establish in any particular case, that the results of the subjects taught by any of the petitioners were poor because of the psychological make-up or the social, economic and educational background of the students and their families. Apart from some vague generalisations recited in the writ petitions there is nothing on the record from which it may reasonably be deduced that the poor result was not because of the poor instructions imparted by the teacher concerned. The ACRs for ten long years are categorised.

The results in a single year are not the determining factor. Only if the results are negative for three years and the ACRs of a teacher are not good or of a better category, a teacher is down-graded to an extent that he/she may not be promoted or retained in service, if he/she is 55 years old.

(11) Every section or class in a school is a fairly representative amalgam of students coming from various social and economic backgrounds. It is difficult to concede that all or most of the students in a class or section taught by a particular teacher for a particular year can be nit-wits un-receptive to or incapable of learning anything. A reasonably gifted teacher is bound to produce good results if he/she diligently imparts instructions to his/her class or section of the students. The students in the schools have impressionable minds which can be moulded and developed and improved by the inspiring instructions imparted by the teachers. It cannot be accepted, as contended by Shri Malik, that there are in every class at least some students who happen to come from homes where the parents are illiterate or are leading unhappy marital lives or belong to economically weaker sections, who are not good at studies and do not take interest in their studies or are incapable of learning what is taught to them. If a large number of students of a class or section fail in a subject, then the teacher cannot escape the blame. Moreover, reports are down-graded only if the pass percentage is even less than the pass percentage in the examination conducted by the Examining Body. So even a teacher whose result is equivalent to the average results of the examination is not visited with any adverse consequences. It is only in the case of a teacher whose results are even below average for three years out of the past ten years that his reports, are down-graded. Even then only the teacher, who had just a good or average overall grading for that particular year when the result was below average, will suffer in real sense. If the overall grading was very good or outstanding, then even down-grading by one step will not prejudicially affect the teacher.

(12) Smt. Sarla Sharma, petitioner, had remained posted as a teacher/Lecturer in English at Hissar, which is a District Head-quarter. It cannot, therefore, be said that she had to teach sub-standard students coming from illiterate and neo-literate families wholly innocent of English language.

(13) We are fully convinced that the categorisation of the ACRs on the basis of the results is a rational method of judging the capacity/ability and industry of a teacher for promotion to a higher post or retention in service beyond the age of 55 years.

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(14) The respondents have appended with their written statement the summary of the Annual Confidential Reports of Smt. Sarla Sharma, petitioner, for the past ten years showing the grading, the results and the overall grading on the basis of the results. These clearly establish that the method devised for categorisation of the ACRs is fair and reasonable. For the year 1976-77 and 1977-78 the Reporting Officer had categorised her as 'A' and '+A'. Her results in one subject were plus and minus in the other. Her overall grading, therefore, remained 'Very Good' and 'Outstanding'. But from 1978-79 to 1982-83 she had consistently given negative results. Even then for the year 1980-81, her grading had been reduced from 'A Plus' to 'Very Good'. However, her overall grading had been down-graded from 'B Plus' to 'Average' for the years 1978-79, 1981-82 and 1982-83, because her results in all the subjects were negative. Again, in 1983-84, though the grading in the ACR had not been recorded and signed, yet on the basis of her plus pass percentage in three subjects and minus percentage in one subject, she was evaluated as 'Good'. This clearly demonstrates that the method of categorisation of the ACRs on the basis of the results of the subjects taught by a teacher is not at all arbitrary, whimsical or discriminatory.

(15) The petitioners have not filed copies of any previous instructions so as to enable us to compare them with the impugned instructions and to decide as to whether they were more rational and subserved the object better. In the absence of those instructions, we cannot comment upon them and their comparative worth. Surely, in the absence of any such instructions, the impugned instructions cannot be termed to be harsher towards the teachers.

(16) The contention of Shri Malik that the ACRs down-graded on the basis of the results become adverse reports stems from a misconception of the real import of the impugned instructions. The ACRs as such are not tampered with. Only for the purpose of promotion to a higher rank or for the purpose of determining the suitability of a teacher for retention in service beyond the age of 55 years the ACRs are categorised on the basis of the results. The results are already known to the teachers. The reports, if they are not otherwise adverse, have not to be communicated. So, the non-communication of the categorisation does not in any way prejudice the teacher concerned.

(17) In the sum, we are of the firm view that the impugned instructions for categorising the ACRs on the basis of the results

of the subjects taught by a teacher are not in any way arbitrary or discriminatory and they do not offend the provisions of Article 14 of the Constitution. Mr. Malik has not advanced any argument to show that the impugned action/orders of the respondents in not promoting Smt. Sarla Sharma and Narender Nath Gaur, petitioners, or taking steps for prematurely retiring Banarsi Datt, Kewal Singh Rathi and Nawal Singh, petitioners, suffer from any legal infirmity or flaw.

(18) For the foregoing reasons we find no merit in these petitions and dismiss the same but with no order as to costs.

H.S.B.