

(5) The facts of this case are almost similar to the one that were present in *M/s Janki Saran's case* (supra) and there is no quarrel with the proposition laid down by R. N. Mittal, J., which is totally in accord with the view taken by their lordships of the Supreme Court, ratio whereof has been identified by Desai, J. in the latter judgment.

(6) Mr. K. G. Chaudhry, appearing for the petitioner, however, emphasised the fact that an application under Order 33, rule I, Civil Procedure Code, is part of the suit and does not constitute interlocutory proceedings or proceedings ancillary to the main suit, and sought support for his submission from a decision in *Vijay Partap Singh v. Dukh Haran Nath Singh and another* (4). The question in this case that fell for consideration was as to when is the suit said to be instituted in the context of an application under Order 1, rule 10, Civil Procedure Code, and in that context their lordships held that the suit commenced from the date of the presenting of the plaint along with an application under Order 33, rule I, Civil Procedure Code.

(7) There could be no quarrel with that view, but so far as the main dispute between the parties is concerned, the proceedings in the application under Order 33, rule I, Civil Procedure Code, remains ancillary and interlocutory and therefore a request for adjournment to file reply to the application under Order 33, rule I, Civil Procedure Code, would not exhibit an unequivocal intention on the part of the defendants to waive their right of having the dispute resolved by the arbitrator and thus would not constitute any step in the proceedings in terms of section 34 of the Act.

(8) For the reasons aforementioned, we find no merit in this petition and dismiss the same, but with no order as to costs.

**S.C.K.**

*Before D. S. Tewatia and S. S. Sodhi, JJ.*

**AJAY THIND,—Petitioner**

*versus*

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

*Civil Writ Petition No. 707 of 1987.*

September 8, 1987.

*Constitution of India, 1950—Article 226—Advertisement inviting applications for employment—Knowledge of Punjabi one of*

(4) AIR, 1962 SC 941.

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*the essential qualifications—Advertisement providing for relaxation of said qualification—Withdrawal of relaxation clause by issuing corrigendum—Effect of such withdrawal.*

*Held, that a perusal of the instructions would show that this concession of relaxation had been granted in terms of the instructions issued by the Government's Circular letter of May 7, 1970. This relaxation was specifically withdrawn by these instructions namely those of October 9, 1986. That being so, no exception can be taken to the corrigendum issued by the Punjab Public Service Commissioner, bringing its advertisement in line with the latest Government instructions. In other words, knowledge of Punjabi cannot, but be taken as an essential qualification for the post and the petitioner admittedly not possessing it, was rightly held to be not eligible to be called for interview. (Para 6).*

*Petition under articles 226/227 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable writ, directions or order be issued, directing the respondents:—*

- (i) to produce the complete record of the case;
- (ii) it be declared that the petitioner is eligible to appear in the interview;
- (iii) a Writ of Mandamus be issued directing the respondents to interview the petitioner for the post of temporary Engineer (Mechanical);
- (iv) the corrigendum at Annexure 'P-4' be quashed in so far as it mixes the qualification of Punjabi language up to the Matric-level a pre-requisite for consideration for the post of temporary Engineer (Mechanical);
- (v) that order at Annexure 'P-3/A' vide which the petitioner has been declared to be ineligible for consideration for the post of temporary Engineer (Mechanical) be quashed;
- (vi) this Hon'ble Court may also pass any other order which it may deem just and fit in the peculiar circumstances of the case and grant all such other benefits to which the petitioner may be found entitled to;
- (vii) the petitioner be exempted from filing the originals of Annexures 'P-1' to 'P-5';
- (viii) the petitioner be exempted from filing the copies of the Writ Petition for service on the Respondents at this stage;

(ix) the petitioner be exempted from serving the five days notice as required under the High Court Rules and Orders Volume 5;

(x) the cost of this petition may also be awarded to the petitioner.

J. S. Khehar, Advocate, for the Petitioner.

H. S. Riar, D.A.G. (Pb.), for the Respondent.

#### JUDGMENT

S. S. Sodhi, J.—

(1) The rejection of the candidature of the petitioner — Ajay Thind, for the post of Mechanical Engineer by the Punjab Public Service Commission (hereinafter referred to as 'the Commission') is what is sought to be challenged in writ proceedings here.

(2) On October 18, 1986, the Commission issued an advertisement inviting applications for 100 temporary posts of Engineers for appointment in the Punjab Public Works Department (Irrigation Branch), including 10 posts of Engineers in the speciality of Mechanical Engineer. As per this advertisement, one of the essential qualifications for these posts was knowledge of Punjabi of Matric or equivalent standard. It was, however, also mentioned therein "one who does not possess the said qualification in Punjabi, shall have to acquire such qualification within six months of his/her joining service failing which his/her services shall be liable to be terminated".

(3) It was in response to this advertisement that the petitioner — Ajay Thind, had applied for one of the posts of Mechanical Engineers. Admittedly, the petitioner did not, at that time, fulfil the requisite qualification regarding knowledge of Punjabi, but he applied for the post believing himself to be eligible in view of the proviso to the effect that if selected, he could acquire this qualification within six months of joining service.

(4) This proviso, however, came to be deleted by the Corrigendum, annexure P/4, issued by the Commission on December 20, 1986, whereby, it was specifically informed that knowledge of Punjabi of Matric or its equivalent standard had been made an

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essential qualification for recruitment to both technical and non-technical posts. As a consequence of this, the petitioner was informed by the Commission, by its letter of January 22, 1987, annexure P/3, that he had not been selected for interview for the post in question as he did not possess the requisite qualification in Punjabi. It is this order that is now sought to be challenged.

(5) Mr. J. S. Khehar, counsel for the petitioner sought to contend that having once issued an advertisement, the Commission was barred from changing the terms thereof as it purported to do in the present case by the corrigendum, annexure P/4, prescribing knowledge of Punjabi as an essential qualification for recruitment to the post.

(6) The fallacy in the contention raised would be apparent on a reading of the advertisement, annexure P/1, issued by the Commission on October 18, 1986, where it was clearly provided that knowledge of Punjabi was an essential qualification. The concession of permitting those not possessing this qualification to acquire it within six months of their joining service, was no-doubt mentioned therein, but as would be seen from a reading of the instructions of Government, annexure P/5, issued on October 9, 1986, that is before the advertisement, annexure P/1, it was incorporated in the advertisement, clearly in error. A perusal of the instructions, annexure P/5, would show that this concession or relaxation had been granted in terms of the instructions issued by the Government's Circular letter of May 7, 1970. This relaxation was specifically withdrawn by these instructions, namely, those of October 9, 1986. This being so, no exception can be taken to the corrigendum issued by the Punjab Public Service Commission, (annexure P/4), bringing its advertisement in line with the latest Government instructions. In other words, knowledge of Punjabi cannot, but be taken as an essential qualification for the post and the petitioner admittedly not possessing it, was rightly held to be not eligible to be called for interview.

(7) Faced with this situation, counsel for the petitioner sought to contend that withdrawal of the concession regarding knowledge of Punjabi, namely: that it could be acquired after joining service, could not operate in respect of vacancies which had arisen before the date of such withdrawal. Counsel sought to cite here as a precedent, the judgment of this Court in *Krishan Lal Bhatia v. The State of Punjab*, (1). A reading of this judgment would however, show that it cannot be construed as affording any support to

the proposition canvassed. The matter there concerned *inter se* dispute between promotees and direct recruits for appointment to the post of Block Development and Panchayats Officers. According to the relevant service rules, which came into effect from January 1974, there was a 50 per cent quota fixed for each source, that is, direct recruits and promotees. Prior to these rules, executive instructions governed the matter, in terms of which the quota for direct recruits was 55 per cent and that of promotees 30 per cent and 15 per cent for others. At the time when the rules came to effect, there was a short-fall of 21 posts in the quota of direct recruits. The question arose whether this short-fall could be made good after the enforcement of the rules. Following the observations of the Supreme Court in *Y. V. Rangiah and others vs. J. Sreenivasa Rao and others*, (2), it was held that vacancies that arose prior to the enforcement of the rules, would be governed by the executive instructions in force, when they occurred. This decision is clearly on wholly different premises and cannot therefore, by any means be construed to bar the appointing authority from prescribing fresh or different qualifications for existing vacancies. This being so, the withdrawal of the concession regarding Punjabi, cannot be imputed with any legal infirmity or illegality.

(8) In the circumstances, therefore, there are no grounds to grant to the petitioner the relief sought. This petition is accordingly hereby dismissed. There will, however, be no order as to costs.

S.C.K.

Before R. N. Mittal, J.

MAGHAR MAL AND SONS,—Petitioners.

versus

THE NATIONAL FERTILIZERS LTD.,—Respondent.

Civil Revision No. 728 of 1983

September 25, 1988.

*Code of Civil Procedure (V of 1908)—Order XXII, Rules 3 and 9. Order XLIII, Rule 1(k)—Application for impleading legal representatives—Said application beyond limitation—Dismissal of said*

(2) A.I.R. 1983 S.C. 852.