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Court : Andhra Pradesh

Decided On : Jul-27-1999

Reported in : 1999(5)ALD567; 1999(5)ALT517

Judge : M.S. Liberhan, CJ. and ;Goda Raghuram, J.

Acts : Draft Regulations, 1982

Appeal No. : WA No. 231 of 1999

Appellant : T. Jayakumar and Others

Respondent : Government of India, New Delhi and Others

Advocate for Def. : Mr. B. Adinarayana Rao, SC and ;Mr. S. Venkat Reddy, SC for Central Government Tobacco Board

Advocate for Pet/Ap. : Mr. J. Jayanand, Adv.

Judgement :
ORDER

Goda Raghuram, J.

1. Theappellants filed Writ Petition No. 1473 of 1992 seeking mandamus for a declaration that the Tobacco Board (Recruitment) Regulations, 1989, published on 22-9-1989 in so far as they fail to provide a channel of promotion to the category of

Field Officers including a quota and rota as between the direct recruits and promotees is arbitrary and illegal and alternatively for declaration that the petitioners are to be considered for direct recruitment in August, 1984, along with the 24 direct recruitees to the category of Field Officers, with consequential seniority benefits.

2. The factual and legal environment:

(a) Respondents 24 to 39 (all Science Graduates) were appointed as Field Assistants in the service of the Tobacco Board, in January, 1978.

(b) All the Field Assistants including the above respondents were promoted as Junior Field officers during November, 1982. As per the draft recruitment regulations (not approved by the Government of India as required by the provisions of the Central Act 4 of 1975) the post of Junior Field officer is to be filled up by promotion/direct recruitment. The prescribed qualifications for direct recruitment is B.Sc.(Ag) and for promotion three years experience in the post of Field Assistant.

(c) The writ petitioners were directly recruited as Junior Field Officers in October, 1983.

(d) As there were no qualified Junior Field officers, in accordance with the Draft Regulations of 1982 (which have been followed by the Board in the absence of approved Regulations) respondents 3 to 23 were appointed as Field officers by direct recruitment in August, 1984. These respondents possess B.Sc. (Ag) qualification.Petitioners 1, 3 and 4 also applied for the post and while the 1st petitioner did not attend the interview, 4th petitioner was not selected and the 3rd petitioner was included in the selected list, but could not be appointed as he got lower marks.

(e) In December, 1984, respondents 24 to 39 and petitioners 1, 2, 4 and 5 were promoted as Field officers. The 3rd petitioner could not be so promoted as he was un-authorisedly absent. The aforesaid promotions were made after exemption having been granted by the Chairman of the Board exercising the powers under

Draft Regulations. This exemption was necessitated as neither the petitioners nor the respondents 24 to 39 were qualified. Respondents 24 to 39 did not possess the graduation in Agriculture, while the petitioners did not have the prescribed experience qualifications. In exigencies of administration exemptions were granted and promotions made. In fixing the inter se seniority on such promotion between the petitioner and the respondents 24 to 39 the total service rendered in the service of the Board was taken into account. Thus respondents 24 to 39 were placed above the petitioners.

(f) On an evaluation of administrative needs, the post of Junior Field officer was abolished in August, 1985.

(g) On 2-12-1985 a seniority list was prepared which was challenged by some ofthe persons directly recruited as Field Officers in August, 1984, and some of the promotees promoted in December, 1984, in separate writ petitions. By the judgment date 6-4-1987 these writ petitions were disposed of directing the Board to submit the Draft Regulations to Government of India and directing the Government to finalise the same within a period of 4 months and till framing of such regulations directing the Board to follow the principle of continuous officiation with further libertyaccorded to the Board to make ad hoc promotions that could be reviewed in the light of the regulations.

(h) On 7-7-1987 the 3rd petitioner was promoted as Field officer consequent on regularisation of his unauthorisedabsence.

(i) The Recruitment Regulations were approved by the Government of India on 22-9-1989. As per the said Regulations, the post of Field Officer is to be filled only by direct recruitment with no channel of promotion available. The post of Junior Field Officer was omitted and power to grant relaxation was granted only to the qualification regarding age.

(j) A seniority list was prepared on 7-8-1989.

(k) On 2-8-1996 an amendment was introduced to the 1989 Regulations. Regulation 4-A thus introduced, ordained that all persons holding the posts

specified in the schedule to this Regulation, on regular basis, on the date of commencement of these Regulations, shall be treated to have been appointed under these Regulations and continuous service rendered by them so far, shall be counted for the purpose of seniority in the respective grade. In short, the pre-regulation appointments to the posts in the Board's service were protected from the operation of the provisions of the approved Regulations.

3, At the hearing of the writ petition the petitioners contended that the direct recruitment to the post of Field Officers in August, 1984, where in respondents 3 to 23 were appointed, was arbitrary and productive of detriment to the career of the petitioners in the matter of their seniority. It was also contended that the promotion of the respondents 24 to 39 as Field officers along with the petitioners in December 1984, together with the action of placing the said respondents above the petitioners was anarbitrary and illegal act for the reason that the said respondents not being graduates in Agriculture were not qualified under the Draft Regulations for appointment as Junior Field Officers. The petitioners however, contended that their appointments in December, 1984, as Field officers albeit not having the requisite experience prescribed under the Draft Regulations, was valid since they belong to the reserved categories who were entitled to be promoted without such qualification. The petitioners also contended that the non-provision of a channel of promotion to the post of Field Officers in the 1989 approved Regulations together with the prescription of quota and rota to regulate the seniority as between the direct recruits and promotees is arbitrary and illegal.

4. The learned single Judge rejected all the above contentions of the petitioners and by the judgment date 26-10-1998 dismissed the writ petition. Against the judgment the present appeal is directed and Sri Vedanta Rao, learned senior Counsel for the appellants reiterates the self-same submissions as were urged in the writ petition. In addition thereto it is submitted that since the petitioners belong to the reserved category and are entitled to the protective discrimination and affirmative action under the Constitution, their promotions as Field officers in December, 1984, despite lacking the experience under the draft Regulations, should be treated as valid in the light of the exemption granted, the promotion of respondents 24 to 39, however, should be treated as invalid as the official

respondents were not entitled in law for relaxation or exemption of essential qualification of Graduation in Agriculture, prescribed under the draft regulations. On the above premise and in the light of the fact that the direct recruitment made in August, 1984, of respondents 3 to 23 as Field Officers, being arbitrary, the petitioners should be treated as seniors to all the party respondents. It is also contended that in theabsence of any further promotional avenues under the approved Regulations of 1989, the petitioners would stagnate in the same post till retirement, which could not be countenanced from an instrumentality of the State.

5. In support of the above contentions the appellants relied on the following decisions:

Sardara Singh v. State of Punjab, : AIR 1991 SC2248 ; Ravinder Sharma (SMT) v. Stale of Punjab, : (1995)IILLJ589SC ; M. Venkateswarlu v. Government of A.P., 1996 (2) SLR 871; State of M.P. and others v. Dharam Bir, : [1998]3SCR511 .

6. Till coming into force of the approved Regulations w.e.f. 22-9-1989, the conditions of service in Tobacco Board were being conditioned by reference to the unapproved draft Regulations of 1982 and 1985. As per the 1982 Regulations. The hierarchy of posts relevant to the case on hand was:

Field Assistant - Junior Field Officer Field Officer.

7. The basic qualification required for the Field Assistant was graduation in Science; for Junior Field officer the qualification prescribed was B.Sc. (Ag) for direct recruitment and for promotion 3 years experience. The post of Junior Field Officer could be filled up either by promotion or by direct recruitment. The post of Field Officer could be filled up either by promotion or by direct recruitment and while the education qualification prescribed was B.Sc.(Ag), for promotion 5 years experience in the grade of Junior Field Officer was prescribed.

8. In the above scenario, in August, 1984, when an administrative need was felt for filling up the post of Field officer, the respondent-Board noticed that there were no qualified Junior Field Officers inaccordance with the draft Regulations of 1982. In the circumstance direct recruitment was resorted to and respondents 3 to 23 were

appointed as Field Officers by direct recruitment in August, 1984. We see no arbitrariness in the respondent-Board resorting to direct recruitment. The grievance of the appellants that such direct recruitment prejudiced them and has affected their seniority prospects, is a grievance that has no legal foundation.

9. Even in December, 1984, neither the petitioners nor respondents 24 to 39, all belonging to the cadre of Junior Field Officers by then, were qualified for promotion as Field Officers. While the petitioners did not possess the experience qualification, respondents 24 to 39 did not have the educational qualification. In the circumstances, responding to an urgent administrative need to make recruitment to the category of Field Officers, the Chairman of the respondent - Board, in exercise of his powers under the draft Regulations accorded exemption to the petitioners and the respondents 24 to 39 and promoted them as Field Officers. The exemption was granted in response to the aforementioned administrative need and there is nothing on record or in the submissions made at the Bar in support of the contention of the appellants that the exemption was accorded to them having regard to the fact that they belonged to the reserved category. The petitioners and the respondents were alike considered as unqulaified Junior Field Officers for the purpose of consideration for promotion as Field Officers and exemption was granted to enable them to hold the post of Field Officers. In this factual back ground, we are unable to countenance the argument of the appellants that the Court should make a distinction between the exemptions in their favour vis-a-vis the exemption in favour of respondents 24 to 39. The appellants' contention that the essential qualification cannot be relaxed, is unexceptionable as a principle simplicitor. However, it is to beseen that the respondent - Board in the exigencies of the administration made a choice between the various administrative compulsions at that point of time in December, 1984. From the facts it is apparent that the Board could have resorted to another tranche of direct recruitment for filling up the posts of Field Officers. Had it done so, it would have been saddled with the petitioners and respondents 24 to 39 unhappy resulting a vitiation of the work atmosphere. In the totality of the circumstances, the respondent-Board made a policy choice responding to the felt necessities of the time and granted exemption to the category of unqualified Junior Field Officers, In any view of the matter, having been the beneficiaries of the exemption

themselves, the appellants cannot be heard to contend that grant of exemption in respect of respondents 24 to 39 is either arbitrary of illegal. Between the requirement of service experience and educational qualifications both of which have been prescribed by the Draft regulations, no evaluation can be made in judicial review that one is an essential qualification and the other not. In the circumstances, we reject the contention that the educational qualification of B.Sc.(Ag) is an essential qualification not susceptible to grant of exemption or the contention that the exemption from experience qualification accorded in favour of the appellants is not in respect of an essential qualification and therefore the exemption in their favour is valid.

10. We decline to countenance the contention for yet another reason. The appointment of respondents 3 to 23 by direct recruitment was made in August, 1984 and the promotions of the appellants and respondents 24 to 39 were accorded in December, 1984. The writ petition has been filed in 1992, about 8 years subsequent to the event. This efflux of time, in our considered view, disentitles relief to the appellants.

11. There is yet another reason for rejecting the contentions of the appellants. Till coming into force of the approved Regulations w.e.f. 22-9-1989, the respondent-Board did not have the ordained statutory frame work for making appointments. They were, however, following the draft Regulations of 1982 during the interrugnum and direct recruitment and promotions were made under that regime. The 1989 Regulations did away with promotions to the category of Field Officers and even earlier thereto in August, 1985 the posts of Junior Field Officers were abolished. 1989 approved Regulations were amended w.e.f. 2-8-1996 and Clause 4A was introduced into the said Regulations. Clause 4A reads as follows:

'4A. Initial constitution: All the persons holding the posts specified in the schedule to these regulations, on regular basis, on the date of commencement of these regulations, shall be treated to have been appointed under these regulations and the continuous service rendered by them so far, shall be counted for the purpose of seniority in the respective grades.'

This statutory provision deems all persons regularly appointed as on the date of commencement of 1989 Regulations as having been appointed under the said Regulations and the continuous service rendered by them is to be reckoned for the purpose of seniority in the respective grades. This provision, in our view, puts the appointment of respondents 3 to 23, the petitioners and the respondent 24 to 39 beyond the pale of challenge as being inconsistant with 1989 regulations. We have already held that the appointments of party respondents are otherwise valid and the appellants' challenge thereto is barred by laches of delay. In the context of Clause 4A of 1989 Regulations, the appointment of the appellants and the party respondents can not thus be disturbed.

12. The other contention of the appellants that the placing of respondents 24 to 39 above the petitioners enblock, in the category of Filed Officers, although the petitioners and the said respondents have been promoted in December, 1984 simultaneously, is arbitrary, is also without substance and force. The respondent Board has stated that while fixing the inter se seniority between respondents 24 to 39 and the appellants, the total service rendered by them in the service of the Board was taken into account and on the said principle the respondents were shown above the appellants. We do not see any arbitrariness or irrationality in the fixation of the seniority by following the above principle. The 1982 draft regulations which were followed for making the said promotion did not stipulate any quota as between the category of the appellants and the respondents 24 to 39, who were promotees and direct recruits respectively to the category of Junior Field Officers, in the matter of further promotions as Field Officers. In the absence of any rule or administrative instruction governing such seniority, the respondent Board was as an instrumentality of the State, obligated to evolve and follow a rational principle in determining the seniority. The princile followed by the respondent Board is, in our view, a rational principle and is thus unexceptionable in law.

13. Coming to the decision relied upon by the appellants in support of theircontentions:

Sardara Singh v. State of Punjab's case (supra) is a case where the Supreme Court found no justification to direct relaxation of the age qualification in favour of

the appellants therein in the circumstances of the case. This case has no relevance to the facts on hand. True, this Court cannot grant any such relaxation of a qualification where it is prescribed by the regulations. In the case on hand the relaxation of service experience prescribed by thedraft regulations was accorded by the employer in the circumstances which we have adverted to and in the exigencies of administration.

14. In Ravinder Sharma (Smt) v. State of Punjab's case (supra) the Government disagreeing with the recommendations of the Public Service Commission, declined to relax the requirement of the qualification prescribed for appointment of the appellant. The appellant pleaded application of principle of estoppel which was rejected by the High Court and also by the Supreme Court. This case is not an authority for the principle that no exemption could be granted by the employer.

15. In M. Venkateswarlu v. Government of A.P.'s case (supra) the relaxation of the requirement of the length of service in the matter of promotion in favour of members of the reserved category was up held by the Supreme Court as constitutional and permissible. This principle has no application to the facts on hand. The exemption granted in favour of the appellants herein was not on the basis that they belong to reserved category. They were treated together with respondents 24 to 39 as unqualified Junior Field Officers and the exemption was granted to enable their promotions as Field Officers in the exigencies of administration.

16. In Slate of M.P. v. Dharam Bir's case (supra) the principle is reiterated that the power of relaxation vested in the Governor can not be unsurped by the Court. The other principle is that the length of experience cannot be a substitute for the educational qualification prescribed. In the present case neither of the principles has any application. The statutory rule prescribed educational qualifications as well as length of service. While the appellants do no possess the requisite length of service, respondents 24 to 39 did not have the educational qualification. In the exigenciesof administration, as we have already noted, the respondent-Board exempted the requirements prescribed by the draft regulations.

17. We thus find no infirmity in the appointments of the party respondents to the post of Field Officers for all the reasons stated supra. There is thus no merit in any of the contentions of the appellants. The judgment of the learned single Judge is vitiated neither in the application of law nor of discretion. The appeal accordingly fails and is dismissed, in the circumstances of the case without costs.

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