

R.L. Arora and anr. Vs. Union Territory Chandigarh

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Court : Punjab and Haryana

Decided On : Sep-05-2005

Reported in : (2006)142PLR331

Judge : S.S. Nijjar and; Nirmal Yadav, JJ.

Acts : [Punjab Reorganisation Act, 1966](#); [Constitution of India](#) - Articles 226, 227 and 309; Chandigarh Administration Assistant Grade Examination Rules, 1989 - Rules 2, 3 and 8; Punjab State Electricity Board Rules; Punjab State Electricity Board Ministerial Service Class III Regulations, 1985

Appeal No. : Civil Writ Petition No. 10137 of 1999

Appellant : R.L. Arora and anr.

Respondent : Union Territory Chandigarh

Advocate for Def. : K.K. Gupta, Adv.

Advocate for Pet/Ap. : T.S. Dhindsa, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Nijjar, J.

1. In this Writ Petition under Articles 226/227 of the [Constitution of India](#), the petitioners seek the issuance of a writ in the nature of certiorari setting aside the order dated 22.2.1999 (Annexure P-4) passed by the Central Administrative Tribunal in O.A. No. 956/CH/1997. The petitioners also seeks declaration to the effect that PSEB Office order dated 11.9.1985 is inoperative in the Electricity Department of U.T., Chandigarh and that the services of the petitioners were governed by Assistant Grade Examination Rules, 1989.

2. The petitioners joined Electricity Department in U.T., Chandigarh as LDCs on 20.12.1971 and 11.6.1968, respectively. They were promoted as Upper Division Clerks on 12.1.1977 and 27.5.1976, respectively. The next promotional post of the petitioners is that of Circle Assistant/Assistant Revenue Accountant. However, before the turn came for being promoted, Chandigarh Administration, Home Department issued a Notification on 23.8.1989 under Proviso to Article 309 of the [Constitution of India](#) read with Government of India Ministry of Home Affairs Notification Sr. No. 3267 dated 1.11.1966. By this Notification, the Chandigarh Administration framed the rules called 'Chandigarh Administration Assistant Grade Examination Rules, 1989. Under these Rules, it was provided that no person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualification and experience prescribed for appointment by promotion, as such he qualifies the written examination to be conducted by the Home Department. The petitioners volunteered for taking the examination which had been scheduled to be held on 17.6.1990. Roll numbers were duly issued to the petitioners, but the test was postponed on 15.6.1990 till further orders. Thereafter,

the test was never held and in fact the examination was scrapped. The petitioners filed O.A. No. 617/CH/1997 seeking exemption from appearing in the Assistant Grade Examination under the Notification dated 21.1.1991. Under this Notification, exemption had been granted to employees having more than 18 years service from the Assistant Grade Examination. However, this O.A. was withdrawn with permission to file fresh O.A. Hence the petitioners filed O.A. No. 956/CH/1997. In this O.A., the petitioners had sought a direction to the respondents to consider them for promotion as Assistant according to extant orders against two posts which were lying vacant as no examination for Assistant Grade Examination had even been held by the Chandigarh Administration. A direction was also sought to the respondents to hold the Assistant Grade Examination annually.

3. This claim of the petitioners was opposed by the respondents. In the written statement, it was pleaded that the Assistant Grade Examination is meant for other departments/offices of the Chandigarh Administration other than the Electricity Wing (Operation Circle) of the Engineering Department. The employees of the Electricity Wing (Operation Circle) are required to appear in the Departmental Accounts Examination (for short 'DAE') for Ministerial Establishment prescribed under the rules regulating their conditions of service. These employees are not required to pass the Assistant Grade Examination introduced by the Chandigarh Administration. Since the petitioners had failed to pass the DAE for Ministerial Establishment, petitioner No. 1 could not be promoted as UDC. In spite of the aforesaid rules, petitioner No. 2 was, however, promoted under a separate quota where 20% of the posts are reserved for unqualified LDCs. This quota is provided under the rules which were notified on 11.6.1985. The respondents also took the plea that PSEB Rules were applicable to the post of UDC under the [Punjab Reorganisation Act, 1966](#) and the Government of India, Ministry of Irrigation and Power letter dated 26.4.1967. At page No. 5, Item No. 13 of the aforesaid letter, it had been agreed by all the succeeding Governments that 'all rules and regulations, standing orders and other practices which were in vogue in the existing Punjab State Electricity Board would continue to apply to the new Boards and successive Governments until such time as they were altered by the competent authority'. It was stated that the Electricity Department of U.T., Chandigarh has yet not framed its own rules for promotion from the post of UDC to Circle Assistant/Assistant Revenue Accountant. Under the PSEB Ministerial Services Class III Regulations Office Order dated 11.9.1985, the posts of Circle Assistant/Assistant Revenue Accountant are to be filled up by promotion only. The promotions are to be made only from amongst the UDCs who had qualified the DAE for Ministerial Establishment and have two years of service as UDC. Under these rules, it is also provided that 20% of the posts are to be filled from amongst the UDC who have not passed the DAE for Ministerial Establishment. Having 12 years as LDC/Steno/UDC, out of which 5 years shall be as UDC. The petitioner had voluntarily applied for appearing in the Assistant Grade Examination. The examination was never held. In any case, the same was not applicable to the petitioners. It was the further the case of the respondents that the Electricity Department had been conducting DAE since 1980. but the petitioners had never chosen to appear in the examination. The last such examination was conducted on 12.6.1997 when the petitioners did not care to appear in the same. The petitioners had also relied on the instructions issued by the State of Punjab on 18.5.1994 granting exemption to the employees who had completed 18 years of regular service as Sr. Clerks, Junior Assistants from passing the Assistant Grade Examination. The Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the CAT') considered the rival contentions and held that the legality of the departmental DAE had already been upheld by the Chandigarh Bench of the Tribunal in T.A. No. 135 of 1986. Thereafter, the Tribunal examined the applicability of the judgment dated 17.12.1991 of the Division Bench in the case of Surinderjit Singh and others v. State of Punjab. The Tribunal came to the conclusion that the instructions dated 21.1.1991 would be applicable to all departments other than the Electricity Wing (Operative Circle) of the Chandigarh Administration. The employees of the Electricity Wing would be governed by the Notification dated 11.6.1985. The Tribunal thereafter came to the conclusion that all rules of Punjab State Electricity Board would continue to apply to the new Boards until such time as they were altered by the competent authority. Since the aforesaid rules have not been altered, the same would continue to apply. The tribunal also relied on a decision of this Court in C.W.P. No. 4148 of 1980 decided on 14.11.1980 in which it has been held that the employees of the Electricity Department would have to pass the DAE. Hence the OA filed by the petitioners was dismissed.

4. We have heard the learned counsel for the parties at length. Mr. Dhindsa, learned counsel for the petitioners has submitted that the petitioners are governed by the Assistant Grade Examination Rules. Learned counsel has submitted that Rule 2(c) of the aforesaid Rules defines 'the post of Assistant' as 'a civil service under the Chandigarh Administration designated as Assistant and includes all such posts, higher in rank to that of the post of Clerk, as are in the same or in an identical pay scale and carriers similar to or identical with those of the post of Assistant by whatever designation, they be called. He submits that by virtue of this definition, the petitioners will be governed under these Rules. Learned counsel further pointed out that under Rule 3, the Assistant Grade Examination Rules shall be applicable to all posts of Assistant in all offices/departments of the Chandigarh Administration. Furthermore, by virtue of Rule II, these rules have over-riding effect notwithstanding anything inconsistent therewith contained in any other rules governing appointment and other conditions of service for the time being in force. He, therefore, submits that the claim of the petitioners is squarely covered under the Assistant Grade Examination Rules. Learned counsel has relied on clarification issued by the Chandigarh Administration on 6.6.1990 on the subject of holding of Assistant Grade Examination. The aforesaid clarification has been given by the Home Secretary, Chandigarh Administration to the Chief Engineer, U.T., Chandigarh. In this clarification, it is mentioned as follows:-

2. On reconsideration, it has been decided that the officials of the Electricity Operation Circle will also be required to appear in the Assistant Grade Examination and as such, the officials who intend to appear on provisional basis in the Assistant Grade Examination to be held on 17.6.1990. You are, accordingly, advised to forward the request of concerned candidates in the prescribed form within 3 days so that the Roll Numbers could be issued to them, well in time.

It was on the basis of the aforesaid clarification that the petitioners had been issued the roll number. Merely because the examination was subsequently not held, would not change the legal position that the rules are applicable to the electricity department. Learned counsel has further submitted that the instructions issued by the Home Secretary in Memo No. 28/1/10/89-IH(7)-90-7070 dated 20.4.1990 cannot override the provisions of Assistant Grade Examination. The Executive Instructions cannot run contrary to the statutory rules framed under Proviso to Article 309 of the [Constitution of India](#). In any case, the aforesaid letter concerned only with one individual, namely, Multan Chand, UDC. In that letter, it has been mentioned that the employees of the Electricity Wing (Operative Circle) are required to appear in the departmental test prescribed under the Rules regulating their conditions of service. It was incidentally mentioned that the employees of the Electricity wing of the Engineering Department are not required to pass the Assistant Grade Examination. In support of the submission, learned counsel has relied on the judgment of the Supreme Court in the case of Sant Ram Sharma v. State of Rajasthan and Anr. 1967 S.L.R. 906 and a Division Bench judgment of this Court in the case of Joginder Singh v. State of Punjab and Ors. 2004(4) R.S.J. 379. Learned counsel has further submitted that the imposition of the tests through executive instructions is even otherwise illegal as it adversely affects the conditions of the service of the petitioners. The conditions of the service of the petitioners could only be varied by framing statutory service rules. In support of the submission, learned counsel has relied on the judgment of the Supreme Court in the case of State of Haryana and Ors. v. Shamsheer Jang Bahadur and Ors. 1972 S.L.R. 441. Learned counsel has also relied on a Division Bench judgment of this Court in the case of Madan Mohan and Ors. v. State of Haryana and Anr. 1998(1) R.S.J. 319.

5. On the other hand, learned counsel for the respondents has submitted that in view of the Notification issued by the Central Government on 27.4.1967, the Punjab State Electricity Board Rules will continue to apply till new rules are framed. There is no alteration in the rules. The conditions of the service of the employees of the PSEB are governed by the Punjab State Electricity Board Ministerial Service Class III Regulations, 1985. Rule 8 provides for mode of appointment and the minimum educational and other qualifications and experience required for different classes of posts. The post of Circle Assistant/ARA can be filled by promotion from UDC after qualifying the DAE for Ministerial Establishment. The petitioners have not qualified the aforesaid Examination and therefore, the claim has been rightly rejected by the Tribunal. Assistant Grade Examination is not applicable to the Electricity Department.

6. We have considered the submissions made by the learned counsel at some length. We are of the opinion that the reasoning adopted by the Tribunal in dismissing the OA cannot be said to be unjustified, illegal and erroneous. In view of the condition no. 13 reproduced above, the employees of the Electricity Department of the Chandigarh Administration continue to be governed by the Punjab State Electricity Board Rules. The petitioners were required to pass the departmental Accounts Examination. They cannot get the benefit of the exemption under the Assistant Grade Examination Rules. These Rules are not applicable in the Electricity Department. The holding of the DAE is not contrary to any statutory service rules, but is in fact in conformity with the rules applicable in the case of the petitioners. The judgments cited by the learned counsel are wholly inapplicable in the facts and circumstances of the present case. The Electricity Department had not issued any executive instructions which are contrary to the statutory service rules. At the time of final arguments, it was also brought to the notice of this Court that the Assistant Grade Examinations were rescinded by the U.T., Chandigarh by notification dated 7.4.1998. Learned counsel also brought to our notice the Notification dated 7.4.1998 which is as follows:-

The 7 April, 1998 No. 28/1/10/94/1H(7)/6555. In exercise of the powers conferred by the proviso to Article 309 of the [Constitution of India](#) read with Government of India, Ministry of Home Affairs' Notification No.GSR No. 3267 dated the 1st November, 1966, the Administrator, Union Territory, Chandigarh is pleased to rescind the Chandigarh Administration, Home Department's Notification No. 28/1/10/89/IH(7)/ 17158, dated the 23rd August, 1989 whereby Chandigarh Administration Assistant Grade Examination Rules, 1989 were notified.

7. In the face of the aforesaid Notification, there can be no justification in holding that the petitioners are entitled to promotion by passing the examination under the Assistant Grade Examination Rules.

8. In view of the above, we find no merit in the writ petition and the same is dismissed. No costs.

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