

STATE OF HIMACHAL PRADESH

v.

AMAR NATH SHARMA AND ORS.

JULY 12, 1994

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Service Law : Civil Services—Class III and Class IV posts under the State Govt. of Himachal Pradesh—Office memorandum laying down procedure for selection—Weightage for economically backward and for those whose family did not have anyone in the organised employment—Selection and appointment made on the basis of the office memorandum—Validity of.

For recruitment to class III and class IV posts not falling within the purview of the Public Service Commission the appellant State Government issued an office memorandum in 1980 laying down the procedure to be followed. In addition to marks for educational qualifications, general knowledge and personality, the said memorandum also provided for marks for those candidates belonging to a family in which not even one member is in organised employment and for candidates whose family income did not exceed Rs.6,000.

A special Selection Committee was constituted and candidates from various Employment Exchanges from the State were called for interview and the selected candidates were appointed. This was challenged before the High Court by way of writ petitions.

The High Court quashed part of the said memorandum as well as the selection and appointments made on the grounds that the definition of "family" did not include spouses; that there was no justification for not excluding married brothers; that a candidate who belonged to rich business family could not be considered socially and educationally backward and as such not entitled to any weightage even though not a single member of the said family was in organised employment and that the interviews were held in an arbitrary manner. The State Government preferred the present appeals against the High Court's judgment.

Allowing the appeals, this Court

A HELD : 1. The word "family" has been defined by the State Government as "parents, brother and unmarried sisters of the candidate." The High Court fell into patent error in quashing the said definition. The State Government adopted the definition keeping in view the social conditions in the State, viz. in low income groups, the married brother continues to be an integral part of the family and the spouses of men-folk do not seek employment or to work independently for earning. There was no material before the High Court to have reached the conclusion that the definition of "family" adopted by the State Government was arbitrary. [433-F-H]

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C 2. There is no justification for providing any weightage or incentive for a class of citizens which is not socially and educationally backward. An affluent family having education and social status cannot be given any preference in the matters relating to employment or appointment to any office under the State in the scheme of Articles 14 and 16 of the Constitution of India. The weightage of 10 marks for a candidate "belonging to a family for whom not even one member is in organised employment" is therefore set aside. This shall operate prospectively from the date of this judgment, and any selection already made on the basis of the memorandum shall be considered valid. [434-B-C]

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E 3. The High Court was not justified in quashing the selection procedure. It acted merely on surmises and conjectures. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lumpsum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. There is no illegality in the manner of holding the interviews. [434-D-F]

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G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3038-3048/87.

From the Judgment & Order dated 6-8-82 of the High Court of H.P. at Shimla in Civil Writ Petition Nos. 211, 212, 217, 218, 225, 235, 240 and 247/80 and 43, 55 and 4 of 1981.

H Sunil Gupta and K.J. John for the Appellants.

S.S. Khandya, Yash Pal Dhingra, B.K. Satija, Naresh K. Sharma and A
Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Government of Himachal Pradesh issued office memorandum dated September 27/29, 1980 (the memorandum) wherein B
the procedure for recruitment to class III and IV posts/services - not within the purview of the Himachal Pradesh Public Service Commission - was laid down. The memorandum provided that fresh recruitment to the posts/services mentioned therein would be made on the basis of an interview which would carry 50 marks as follows:-

"(a)	For belonging to a family of whom not even one member is in organised employment.	10 marks	C
(b)	For belonging to a family whose annual income does not exceed Rs.6000.	10 marks	D
(c)	Minimum educational qualification	10 marks	
(d)	General Knowledge, experience and personality	20 marks	E
Total :		50 marks	

The word 'family' has been defined by the Govt. as 'parents, brother and unmarried sisters of the candidate.'

The State Government decided to hold special recruitment for class F
III and class IV posts in accordance with the procedure laid down in the memorandum. Candidates registered up to the specified dates with the various employment exchanges in the State of Himachal Pradesh were called for interview by the special selection committees constituted for the recruitment. On the basis of the interviews held by the special selection G
committees, merit lists were prepared and the selected candidates were given appointments.

The selection and the consequent appointments were challenged by way of a batch of writ petition under Article 226 of the Constitution of India before the Himachal Pradesh High Court. A Division Bench of the H

- A High Court by its judgment dated August 6, 1982 allowed the writ petitions and quashed part of the memorandum, the selection and the appointments. These appeals by way of special leave are against the judgment of the High Court.

The High Court referred to various judgments of this Court and held that it was permissible for the State to make special provisions for the advancement of socially and educationally backward class of citizens. The High Court, however, did not agree with the definition of the expression "family" given in the memorandum and set aside the same on the following reasoning:—

- C "This definition does not include spouses. In other words, the income of a husband or a wife of a candidate who may be earning fabulously has not been taken into consideration. There also seems to be no justification for not excluding married brothers of a candidate. A married brother has his own obligations and so it does not stand to reason that his income should be taken into consideration for deciding the question of weightage for a candidate."
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- E The High Court also struck down the 10 marks provided for a candidate "belonging to a family of whom not even one member is in organised employment." According to the High Court a candidate who belongs to a rich - business family cannot be considered socially and educationally backward and as such is not entitled to any weightage even though not a single member of the said family is in organised employment.

- F The High Court, on the examination of the proceedings of the special selection committees, came to the conclusion that the interviews were held in an arbitrary manner and quashed the same on the following reasoning:-

- G "The record relating to the selection of Class-III employees reveals that as many as 423 candidates were interviewed. As usual, the record does not show the date of interview. If all these candidates were interviewed on the day, it shows that it was impossible to give more than one to two minutes to each candidate and the result would be that arbitrary marks must have been allotted with respect to "general knowledge, experience and personality." There are cases also where in the interview high marks have been obtained by those who had obtained very low marks in the examination. For
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example, at page 89 at Sl. No. 17 is one Miss Nirmala who obtained only 3.1 per cent marks for educational qualifications, she was given 11 marks for general knowledge etc. whereas the next two candidates at Sl. Nos. 18 and 19 who had secured 5.4 and 5.6 marks for educational qualifications, got only 10 and 11 marks. Another person at Sl. No.1 on page 89 who got 5.8 per cent marks for educational qualifications was given only 10 marks. In one case on page 65 one Miss Kamla Devi who, to begin with, got 9 marks for interview was, later on, given two more marks. This appears to have put her up very high in the total marks. All this shows that the interviews were held in a very undesirable manner.

The records of the selection committees for various Districts have been placed before us. We have gone through them. We find that selection committees for Districts Solan, Kangra, Bilaspur, and Kulu have given lump sum marks in respect of general knowledge, experience and personality. The records of District Una do not show how the selections were made though the final typed list of the candidates is on record. As regards the records of Chamba, Mandi, and Hamirpur Districts, these show that separate marks for general knowledge, experience, and personality were awarded. The records for District Sirmur Placed before us show only the names of the candidates selected after the interview."

The word "family" has been defined by the State Government as "parents, brother and unmarried sisters of the candidates." We are of the view that the High Court fell into patent error in quashing the said definition. The State Government adopted the definition keeping in view the social conditions in the State. It is contended on behalf of the State that in the existing social system in the State of Himachal Pradesh, specially in the low income groups, a married brother does not ordinarily live separately but continues to be an integral part of the family and this being a matter of common knowledge the Government was justified to take the same into account while defining the expression "family". Similarly the family structure and the social norms in the State of Himachal Pradesh do not encourage the spouses of the men-folks to seek employment or to work independently for earning. There was no material before the High Court to have reached the conclusion that the definition of "family" adopted by the State Government was arbitrary. We, therefore, set aside the finding of the High Court on this

A issue and uphold the definition of "family" as given in the memorandum.

B So far as the weightage provided for the candidates belonging to a family which has no member in the organised employment, we are of the view that the High Court was justified in holding the same to be arbitrary. There is no justification for providing any weightage or incentive for a class of citizens which is not socially and educationally backward. An affluent family having education and social status cannot be given any preference in the matters relating to employment or appointment to any office under the State in the scheme of Articles 14 and 16 of the Constitution of India. We, therefore, agree with the High Court and set aside the weightage of 10 marks for a candidate "belonging to a family for whom not even one member is in organised employment." This shall operate prospectively from the date of this judgment. Any selection made prior to the date of this judgment, on the basis of the memorandum shall be considered valid.

D The High Court, in our view, was not justified in quashing the selection - procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview. It is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly.

F We, therefore, allow the appeals and set aside the impugned judgment of the High Court. The writ petitions filed before the High Court by the respondents are dismissed. No costs.

Civil Appeal No. 4125 of 1985

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ORDER

H We have today pronounced judgment in Civil Appeal Nos. 3038 - 3048 of 1987 titled *State of Himachal Pradesh v. Amar Nath Sharma & Ors.* For the reasons recorded in the said judgment, we allow this appeal and set aside the High Court judgment and dismiss the writ petition filed by

respondent 3 before the High Court. No costs.

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Civil Appeal No. 3049/1987

ORDER

We have today pronounced judgment in Civil Appeal Nos. 3038 - 3087 of 1987 titled *State of Himachal Pradesh v. Amar Nath Sharma & Ors.* For the reasons recorded in the said judgment, we allow this appeal and set aside the High Court judgment and dismiss the writ petition filed by respondents 1 to 22 before the High Court. No costs.

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G.N.

Appeals allowed.