

PETITIONER:
STATE OF HARYANA ETC. ETC.

Vs.

RESPONDENT:
SHAMSHER JANG BAHADUR ETC. ETC.

DATE OF JUDGMENT 19/04/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.
MITTER, G.K.

CITATION:
1972 AIR 1546 1973 SCR (1) 249
1971 SCC (2) 188
CITATOR INFO :
F 1973 SC2468 (1)
O 1974 SC1631 (19)

ACT:
Constitution of India-Art. 309 and the Punjab Civil Secretarial (State Service Class III) Rules, 1952 made thereunder, if can be modified by administrative instructions issued by the State Govt.-Whether such modifications require approval of the Central Government under s.115 of the States' Re-organization Act, 1956.

HEADNOTE:

The facts in these appeals are similar and the facts in C.A. No. 1639 of 1968 are as follows :-S. the Respondent, joined Govt. service as a clerk in Civil Secretariat of the erstwhile Pepsu State. Pepsu state became a part of the State of Punjab in 1956 under the provisions of the States' Reorganisation Act 1956, S. was provisionally promoted as an Assistant in the Punjab Civil Secretariat but later, was reverted as a clerk on the ground that he failed to qualify the test prescribed under certain administrative instructions issued by the State Govt. He filed a civil suit challenging his reversion. The trial Court decreed the suit and the appellate court also affirmed the decree. The High Court, however dismissed the second Appeal filed by the State.

It was contended before this Court that the appellants at the relevant time, was governed by the Punjab Civil Secretariat (State Service Class 111) Rules, 1952 and Rule 6 which regulated the appointment of Assistants by promotion, provided that posts in the service shall be filled in the case of assistants by promotion of senior clerks or by selection from other government official.

In 1958, State Government issued instructions that 25 per cent of the vacancies in the cadre of Assistants in the Punjab Civil Secretariat will be filled by appointment of suitable personnel from other departments and the remaining 75 per cent will be filled by promotion from amongst the clerks in the Punjab-Civil Secretariat. 'the order further provided that for the purpose of appointment-as assistants, the officials will have to sit for a test. Two questions

arose for decision in the present case :- (a) Whether the Govt. was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under Art. 309 and (b) whether such an addition requires the approval of the Central Govt. under S. 115 of the States Reorganisation Act, 1956, Dismissing the appeals. HELD : (1) The Government is not competent to alter the rules framed under Art. 309 by means of administrative instructions. In *Sant Ram Sharma v. S. State of Rajasthan* and another, [1968] 1 S.C.R. III it was decided that while the government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Govt. can fill up the gaps, not inconsistent with the rules already framed. In the present case, the Rules can be implemented without any difficulty and there is no gap in the Rules. The impugned instructions after the rules relating to promotion. Hence the instructions in question are void.

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(2) The approval of the Central Government had also not been obtained for issuing those instructions in terms of proviso to sub-s. (7) of s. 115 of the States Reorganisation Act, 1956 and therefore, the instructions are invalid. *Mohammad Bhakar and ors. v. Y. Krishna Reddy and ors.* (1970) Service Law Reporter 4768, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1639 to 1641 of 1968.

Appeal from the judgment and decree dated December 14, 1967 of the Punjab and Haryana High Court in Regular Second Appeals Nos. 357, 359 and 418 of 1967 respectively and Civil Appeals Nos. 31 and 1279 of 1969.

Appeals from the judgments and orders dated March 22, 1968 of the Punjab and Haryana High Court in Civil Writ Nos. 536 of 1966 and 836 of 1967 and Civil Appeals No. 2227 of 1969.

Appeal by special leave from the order dated February 17, 1969 of the Punjab and Haryana High Court in Regular Second Appeal No. 1624 of 1968.

Bishan Narain and R. N. Sachthey, for the appellant (in C.A. Nos. 1639 to 1641 of 1968).

V. C. Mahajan and R. N. Sachthey, for the appellants (in C.A. No. 31 of 1969).

K. S. Chawla and R. N. Sachthey, for the appellants (in C.A. No. 1279 of 1969).

M. C. Chagla and R. N. Sachthey, for the appellants (in C.A. No. 2227 of 1969).

C. K. Daphtary, Hardev Singh, K. L. Mehta, S. K. Mehta, K. R. Nagaraja and M. Qamaruddin, for the respondent (in C.A. No. 1639 of 1968).

Hardev Singh, K. L. Mehta, S. L. Mehta, K. R. Nagaraja and M. Qamaruddin, for the respondents (in C.A. Nos. 1640 and 1641 of 1968).

Hardev Singh, for the respondents (in C.A. Nos. 31 and 1279 of 1969).

S. K. Mehta, Hardev Singh, K. L. Mehta, K. R. Nagaraja and M. Qamaruddin, for the respondent (in C.A. No. 2227 of 1969). The Judgment of the Court was delivered by

Hedge, J.—These appeals by certificate raise two common questions of law for decision viz. whether the Government can by administrative instructions add to the conditions of service relating

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to the promotion of a Government servant, prescribed under Art. 309 of the Constitution and further whether such an addition requires the approval of the Central Government under s. 115 of the States' Re-organization Act, 1956.

For deciding the two questions of law formulated earlier, it would be sufficient if we refer to the facts of any one of the aforementioned cases. Hence we shall refer to the facts in Civil Appeal No. 1639 of 1968.

Shamsher Jang Bahadur, the respondent in that appeal joined Government service as a clerk in the erstwhile Pepsu Secretariat on January 3, 1955, Pepsu State became a part of the State of Punjab on November 1, 1956 under the provisions of the States' Re-organization Act, 1956. Shamsher Jang Bahadur was provisionally promoted as an Assistant on December 9, 1959 in the Punjab Civil Secretariat at Chandigarh. He was reverted as a clerk on February 3, 1960 on the ground that he failed to qualify the test prescribed under certain administrative instructions issued on June 21, 1958. He filed a civil suit challenging his reversion. The suit was decreed by the trial court. That decree was affirmed by the appellate court. The High Court of Punjab and Haryana dismissed the Second Appeal filed by the State. Somewhat similar are the facts in the other appeals.

It was conceded before us that the appellants at the relevant time were governed by the Punjab Civil Secretariat (State Service Class 111) Rules, 1952 (to be hereinafter referred to as the Rules), in view of certain instructions issued by the Central Government under the provisions of the States' Re-organization Act, 1956. Hence it is not necessary to refer to the Pepsu Secretariat Service, Recruitment, Promotion, Punishment and Seniority Rules, 1952.

Rule 6 of the 'Rules' regulates the appointment of Assistants by promotion. The relevant portion of that rule reads

"6(1) Posts in the Service shall be filled

(a)

(b)

(c)

(d)

(e)

(f) in the case of Assistants

(ii) By promotion of Senior Clerks; or

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(iii) By selection from among Officials employed in departments of Government other than the Civil secretariat.

6(2)

6(3) Appointment to any post by the promotion of officials already in the service or by transfer of officials employed in Government departments other than the Civil Secretariat shall be made strictly by selection, and no official shall have any claim to such appointment as of right."

On June 21, 1958, the Government issued instructions to the effect that 25 per cent of the vacancies in the cadre of Assistants in the Punjab Civil Secretariat will be filled by appointment of suitable personnel from serving officials in the offices of the Heads of Departments in the State while the remaining 75 per cent will be filled by promotion from amongst the clerks in the Punjab Civil Secretariat. Clause (b) of that Order provides

"For the purpose of appointment of officials from the offices of Heads of Departments as Assistant in the Punjab Civil Secretariat as

also for promotion of Clerks of the Secretariat to the posts of Assistants in the cadre, a test-separately prescribed will be held by the Punjab Public Service Commission. For officials belonging to the offices of the Heads of Departments, this test will be a competitive one and for the Secretariat Clerks it will be a qualifying test. As at present this test will be conducted simultaneously in accounts as also in Noting and Drafting. The question as to what standard of accounts test it would be fair to expect of the examinees is being considered separately."

It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under, Art. 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in *Sant Ram Sharma v. State of Rajasthan* and anr. (1) that while the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned, so far as they relate to

(1) [1968] S.C.R. 111.

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the clerks in the Secretariat amend or alter the conditions of service prescribed by the rules framed under Art. 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affect the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Art. 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules.

There is a further difficulty in the way of the Government. The additional qualification prescribed under the administrative instructions referred to earlier undoubtedly relates to the conditions of service of the Government servants. As laid down by this Court in *Mohammad Bhakar and ors. v. Y. Krishna Reddy and Ors.* (1), any rule which affects the promotion of a person relates to his conditions of service and therefore unless the same is approved by the Central Government in terms of proviso, to sub-s. (7) of s. 115 of the States Reorganization Act, 1956, it is invalid as it violates sub-s. (7) of s. 115 of the States Reorganization Act. Admittedly the approval of the Central Government had not been obtained for issuing those instructions. But reliance was sought to be placed on the letter of the Central Government dated March 27, 1957 wherein the Central Government accorded advance approval to the State Governments regarding the change in the conditions of service obtaining immediately before November 1, 1956 in the matter of traveling allowance, discipline, control,

classification, appeal, conduct, probation and departmental promotion. The scope of that letter has been considered by this Court in Mohammad Bhakar's case (supra). Therein this Court held that the letter in question cannot be considered as permitting the State Governments to alter any conditions of service relating to promotion of the affected Government servants.

For the reasons mentioned above these appeals fail and they are dismissed with costs.

S.N Appeals dismissed.

(1) [1970] Service Law Report 768.

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JUDIS