

Before Nirmal Yadav & T.P.S. Mann, JJ.

VED PARKASH AND OTHERS,—Petitioners

versus

**PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH
AND OTHERS,—Respondents**

C.W.P. No. 10395 of 2006

26th February, 2008

Constitution of India, 1950—Art. 226—Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997—RI.7—Promotion of juniors as Superintendent in Subordinate Courts—Challenge thereto—Post of Superintendent to be filled up by High Court by selection as provided under RI.7(i) which provides that preference will be given to Law Graduates—Petitioners 3 to 6 having qualification of graduation of law—Service record of petitioners not upto mark viz-a-viz respondents 2 to 9— Selection after considering service record of candidates—No case made out for quashing orders of selection of respondents as Superintendents— Petition dismissed.

Held, that the very nature of work of Superintendents in the offices of District and Sessions Judges would require dealing law, day in and day out. In such a situation, it would be beneficial to have the services of those eligible, who were law graduates. Rule 7(i) is clearly in consonance with the requirement expected of a candidate who seeks his selection for the post of Superintendent Grade I. However, at the same time it has to be held that the preference would only come into play if all other things amongst suitable candidates being qualitatively and quantitatively equal.

(Para 14)

Further held, that considering the case of the petitioners on the one hand and respondents No. 2 to 9 on the other, especially in regard to the preferential qualification of graduation in law, it is also clear that other than petitioners Nos. 1 and 2, the rest are all Law Graduates.

However, as the service record of petitioners No. 3 to 6 is not found to be upto the mark and so also that of petitioners No. 1 and 2 viz-a-viz respondents No. 2 to 9, they have been rightly found to be not suitable for being appointed as Superintendent Grade I. Thus, no case is made out for quashing the impugned office order whereby respondents No. 2 to 9 have been selected for being appointed as Superintendents in the office of District and Sessions Judges in the State of Haryana.

(Paras 17 & 18)

Dr. Surya Parkash, Advocate *for the petitioners*.

Dr. Balram Gupta, Senior Advocate with Pankaj Sharma and Rajeshwar Singh, Advocates *for respondent No. 1*.

Pankaj Katia, Advocate for Sanjiv Bansal, Advocate for respondents No. 2, 3, 5, 6, 8 and 9.

Som Dutt Sharma, Advocate *for respondent No. 4*.

Raj Mohan Singh, Advocate *for respondent No. 7*.

T.P.S. MANN, J.

(1) The petitioners are aggrieved of the order dated 7th July, 2006 passed by respondent No. 1, whereby respondents No. 2 to 9, who according to the petitioners were junior to them, had been promoted to the post of Superintendent (Grade-I) in the Subordinate Judicial Courts of Haryana and also that the promotion of the respondents No. 2 to 9 was made in violation of Rule 7 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997. The petitioners, thus, sought issuance of a writ of certiorari for quashing the impugned order of promotion.

(2) In the writ petition, it was pleaded that the service conditions of ministerial staff in subordinate Courts in Haryana are governed by Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (hereinafter referred to as '**the Rules**') as per which the ministerial staff is divided into two branches. In first branch, the initial appointments are made to the post of Clerk, who are later on promoted to the post of Assistant and

thereafter as Superintendent Grade-II. Further that, for promotion to the post of Superintendent Grade-II, one should have an experience of at least three years on the post of Assistant and the promotion is governed by the principle of seniority-cum-merit. The other branch consists of Steno-typists, who are promoted to the post of Stenographers/Judgment Writers (Junior Grade) and then to the post of Judgment Writers (Senior Grade). For promotion to the post of Judgment Writer (Senior Grade), one should have the experience of at least three years on the post of Stenographer/Judgment Writer (Junior Grade) and such promotions are again based on seniority-cum-merit. Rule 7(i) provided the mode of appointment and qualifications to the post of Superintendent. This post has to be filled up by the High Court by selection from amongst graduate Superintendents Grade-II, Judgment Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and Stenographers, who were not below 40 years of age as on the date on which the applications are invited and preference is to be given to law graduates.

(3) Vide circular/letter dated 17th February, 2006 respondent No. 1 invited applications for preparation of select-list for appointment as Superintendents in the offices of District and Sessions Judges in the State of Haryana. The petitioners and respondents No. 2 to 9 submitted their respective applications within the stipulated time. However, the petitioners kept on waiting for a formal communication to appear before the High Court for the purposes of selection, but neither any intimation was received by them nor the selection criteria conveyed. Ultimately, the impugned office order was issued by respondent No. 1 on 7th July, 2006, wherein it was stated that respondents No. 2 to 9 have been selected and consequently the letter/order for their appointment/posting as Superintendents at the respective offices of the District and Sessions Judges in the State of Haryana had been issued. Pleading that the selection of respondents No. 2 to 9 had been made in violation of the provisions of Rule 7(i) and that the petitioners were not called for joining the selection process, the petitioners prayed for quashing the impugned office order.

(4) In its written statement, respondent No. 1 stated that the petitioners participated in the selection process and as they have not been found suitable for promotion, therefore, they are estopped in law

from challenging the selection of respondents No. 2 to 9. It was also stated that,—*vide* instructions dated 9th May, 1985 issued by the State of Haryana, only such official or officials, who had obtained at least 70% or more reports of “good” or better categories during the last ten years could be considered eligible for promotion to the higher posts. However, the High Court had framed its own rules for promotion to the ministerial staff in the subordinate Courts in Haryana. Therefore, the service conditions were governed by the High Court Rules, while the instructions issued by the State of Haryana had not been adopted. Even otherwise, the instructions issued by the State of Haryana were only applicable for the purposes of promotion, whereas the appointments of Superintendents in the Subordinate Courts is by way of selection as per the decision taken by a Full Court of the High Court. The applications were invited through respective District and Session Judges in the State of Haryana of eligible candidates for the appointment as Superintendents. After the applications were received, the matter was placed before the Committee of Hon’ble Judges duly constituted by Hon’ble the Chief Justice. After considering the service records of the candidates, the Committee recommended the names of the candidates for bringing them on the select-list and those names were approved by Hon’ble Judges in the Full Court meeting held on 25th May, 2006. Accordingly, select-list was prepared and appointments were made from the same. It was denied that any communication, whatsoever, was to be sent to the petitioners. On the basis of the applications submitted by all eligible persons as well as on the basis of the service record, as list of 62 candidates, who had applied was prepared. The list contained the details regarding the date of entry into service, the qualifications and precis of Annual Confidential Reports/complaints. After the first list, another list of candidates, who were having qualification of LL.B. was prepared. After the aforesaid exercise, both the lists, along with entire service record of all the candidates, was put up before the Committee of Hon’ble Judges constituted by the Hon’ble Chief Justice. The Committee considered all the eligible candidates in view of the parameters laid down in the Rules and also examined their Annual Confidential Reports. On the basis of their records as well as the academic qualifications, respondents No. 2 to 9 were recommended in the order of merit for promotion to the post of Superintendent to the

District and Sessions Judges. Being conscious of the fact regarding further posts of Superintendents, which were likely to all vacant in the near future, the Committee also kept three more candidates in the select-list for absorption within the next two years. Since the petitioners were less meritorious and less qualified than the selected candidates, hence they had been rightly ousted by respondents No. 2 to 9. Accordingly, it was prayed that the writ petition be dismissed.

(5) The private respondents also filed their written statements and stated that they have been rightly appointed to the post of Superintendent as per Rules.

(6) We have heard learned counsel for the parties and also perused the service records of the petitioners, besides that of respondents No. 2 to 9.

(7) Before proceeding further, it would be relevant to reproduce here-in-below Rule 7, which deals with the mode of appointment and qualifications to the posts of Superintendent, Judgment Writers (Senior Grade), Superintendent (Grade-II), Judgment Writer (Junior Grade)/ Stenographers, Assistant, Steno-typists and Clerks :—

“7. Mode of appointment and Qualifications to the posts :

(i) Superintendent

Post of Superintendent to District and Sessions Judge shall be in State cadre and shall be filled up by the High Court by selection from amongst graduate Superintendents Grade-II, Judgment Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and Stenographers, who are not below 40 years of age as on the date on which applications are invited. Preference will, however, be given to Law Graduates :

Provided that the District and Sessions Judge concerned may make an officiating appointment to the post of Superintendent in a leave vacancy or otherwise for a period not exceeding three months or till regular appointment is made by the High Court subject to confirmation by the Hon'ble Judges of the High Court.

A select list of candidates for appointment as Superintendent to District and Sessions Judge shall be prepared/maintained by the High Court. This list shall contain only such number of candidates as can be absorbed within two years.

Before any person is considered for acceptance as a candidate he shall sign a declaration that if appointed as such, he shall be prepared to be posted anywhere in the State of Haryana and in the event of protest against the transfer he shall be liable to disciplinary action.

CLASS III

(ii) Judgment Writer (Senior Grade)

Judgment Writer (Senior Grade) shall be appointed by promotion from amongst the Stenographers/Judgment Writers (Junior Grade) with three years experience on the basis of seniority-cum-merit.

(iii) Superintendent Grade-II

Superintendent Grade-II shall be appointed by promotion from amongst the Assistants with three years experience, on the basis of seniority-cum-merit.

(iv) Judgment Writer (Junior Grade)/Stenographer

Judgment Writer (Junior Grade)/Stenographer shall be appointed by promotion from amongst the Steno-typist with three years experience, on the basis of seniority-cum-merit.

(v) Assistants

Assistant shall be appointed by promotion from amongst the graduate Clerks already in service (before coming into force of these rules) having five years experience on the basis of seniority-cum-merit.

(vi) Steno-typists

Appointment to the post of Steno-typist shall be made by direct recruitment from; Candidates who possess a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and pass a test at a speed of 80 W.P.M. in English shorthand and 20 W.P.M. in transcription of the same. The select list so prepared on the basis of merit shall remain in force for one year from the date of declaration of result.

(vii) Clerks

Appointment to the post of Clerk shall be made in the ratio of 90% in case of direct recruitment and 10% by way of promotion.

XXX	XXX	XXX
XXX	XXX	XXX”

(8) As is clear from above, the post of Superintendent is required to be filled up from amongst graduate Superintendents Grade-II, Judgment Writers (Senior Grade), Assistants, Judgment Writers (Junior Grade) and Stenographers, who are not below 40 years of age on the date on which the applications are invited. It is clearly mentioned that the preference will, however, be given to Law Graduates. Any person, who may be holding any of the posts, i.e., Superintendent Grade-II, Judgment Writer (Senior Grade), Assistant, Judgment Writer (Junior Grade) and Stenographer could straightway be selected for the post of Superintendent Grade-I. However, he has to be selected by the High Court for the said purpose.

(9) An argument was raised by learned counsel for the petitioners that while an Assistant could be promoted to the post of Superintendent Grade-II only after he had three years' experience as such yet for being promoted as a Superintendent, he may not be having any experience, whatsoever. Similar requirement is prescribed for promotion to the posts of Superintendent Grade-II, Judgment Write (Senior Grade), Judgment Writer (Junior Grade)/Stenographer and Assistant. However,

it may be seen that wherever the requirement of three years' experience has been laid, the same was only for the purpose of promotion to the higher post and not for selection as such. The post of Superintendent, as is clear from the Rules, is only a selection post and not a promotion post. For being selected as Superintendent, the service records of the eligible candidates is required to be scrutinized by a Committee of Hon'ble Judges constituted for the said purpose by Hon'ble the Chief Justice. Therefore, we do not find any anomaly in the provisions of Rule 7 in so far as they relate to the appointment to the post of Superintendent and promotion to the other posts, i.e. of Superintendent Grade-II, Judgment Writer (Senior Grade), Judgment Writer (Junior Grade)/Stenographer and Assistant.

(10) The selection process for the post of Superintendent clearly specify that preference will be given to law graduates. It is now to be seen as to whether it means *en bloc* preference to the law graduates irrespective of *inter se* merit and suitability or the preference to be considered only as an additional qualification, other things being qualitatively and quantitatively equal.

(11) In **Government of A.P. versus P. Dilip Kumar (1)**, the Hon'ble Supreme Court held that the classification on the basis of higher educational qualification with a view to achieve improvement in administrative performance was not abhorrent to Articles 14 and 16 of the Constitution. The Court was seized of the matter where zone of consideration was narrowed by eliminating candidates, who did not succeed in the qualifying test and out of those, who succeeded in the qualifying test and secured the minimum test marks after interview were considered and thereafter in the process selection, the preference Rule was applied by first choosing the post-graduates and thereafter the graduates.

(12) In **Secretary, A.P. Public Service Commission versus Y.V.R. Srinivasulu and others (2)**, the Hon'ble Supreme Court held that preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It did not imply *en bloc* preference irrespective of *inter se* merit and suitability and the additional

(1) (1993) 2 SCC 310

(2) (2003) 5 SCC 341

qualification could not work as a reservation or complete precedence. However, in the said case, the old rules, on the basis of which preference had been claimed, stood superseded and replaced by the new Rules which deleted the preference provision. Moreover, even under the old Rules, the preference was to be given, first to candidates, who possessed the degree in Commerce and a degree in Law, secondly to those, who possessed a degree in Commerce and thirdly to those, who possessed a degree in Law and therefore, the word "first" was to be construed in the context of giving preference only in the order and manner indicated therein, *inter se* amongst more than one holding such difference class of degrees in addition and not to be interpreted vis-a-vis others, who did not possess such additional qualification so as to exclude them *en bloc*. The Court relied upon the decision in **Bibhudatta Mohanty versus Union of India (3)**, and **Secy. (Health) Deptt. of Health and F.W. versus Dr. Anita Puri (4)**. The Court, however, did not accept the view taken in **P. Dilip Kumar's case (supra)** as according to it, that decision not only turned on the peculiar scheme and context of the service rules under consideration but also did not proclaim to lay down any general rule of universal application for all cases.

(13) In **State of U.P. and another versus Om Prakash and others (5)**, the Hon'ble Supreme Court again held that when selection was made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. Preference did not mean *en bloc* preference irrespective of *inter se merit* and suitability.

(14) In the present case, we are dealing with the appointment to the posts of Superintendents in the offices of District and Sessions Judges. The very nature of their work would require dealing with law, day in and day out. In such a situation, it would be beneficial to have the services of those eligible, who were law graduates. Rule 7(i) is clearly in consonance with the requirement expected of a candidate who seeks his selection for the post of Superintendent Grade-I. However,

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- (3) 2002 (4) SCC 16
 - (4) (1996) 6 SCC 282
 - (5) (2006) 6 SCC 474

at the same time it has to be held that the preference would only come into play if all other things amongst suitable candidates being qualitatively and quantitatively equal.

(15) Learned counsel for respondent No. 1 had produced a chart detailing therein the qualification of the petitioners as well as of the private respondents, besides their service record and experience. A perusal of the same would show that petitioner No. 1 was having an excellent record in the preceding five years, but was administered a warning in connection with a complaint concerning withholding of an application for supply of copy. In the case of petitioner No. 2, though there is no adverse report, yet on the basis of pseudonymous complaints, detailed enquiries were being conducted against him. Penalty of 'Censure' was imposed upon petitioner No. 3 on 9th February, 1993, while adverse remarks were recorded on his work and conduct for the year 1998, which were conveyed. Adverse remarks ("average") for the year 2001 were conveyed to petitioner No. 4. *Vide* order dated 17th October, 2002 passed by District and Sessions Judge concerned, said petitioner was treated being wilfully absent from duty with effect from 24th July, 2001 to 31st August, 2001, from 3rd December, 2001 to 20th December, 2001 and from 22nd December, 2001 to 21st April, 2002. Coming to the case of petitioner No. 5, he was censured for misbehaviour,—*vide* order dated 21st December, 2006 passed by District and Sessions Judge concerned. A fine of Rs. 10 was imposed upon him on 23rd September, 1980 for not consigning one case file. On 22nd July, 1988, a fine of one month's salary was imposed for a serious lapse, which fine was thereafter replaced with warning. Petitioner No. 6 was imposed a fine of Rs. 400 on 8th September, 1998 on account of negligence in discharge of her duties. Even earlier on 3rd December, 1993, she was found absent from duty and she went inside the retiring-room of the District and Sessions Judge and marked her presence in the attendance register at the time when the Officer was holding Court. In the aforementioned background of the petitioners referred to by respondent No. 1 in the chart supplied, to our mind they were rightly not selected for being posted as Superintendents Grade-I.

(16) In contract to the petitioners, the private respondents have excellent service record. There is no negative remark in respect of respondents No. 2, 3, 4, 6 and 8. However, it may be mentioned here

that one increment of respondent No. 5 without cumulative effect was stopped on 16th February, 1995 and he was warned to be very carefully in future in dealing with the official record but his appeal was partly accepted and the stoppage of one increment without cumulative effect was converted to that of warning. In the case of respondent No. 7, he was conveyed adverse remarks by District and Sessions Judge concerned on 29th January, 1976 that one oral complaint had been received regarding his integrity and he was accordingly warned, whereas respondent No. 9 was imposed of punishment of warning on 7th December, 2002 for not showing the record to the Audit party at the time of audit. It is, thus, clear that five of the private respondents have unblemished service record, while the remaining private respondents were only found to have faltered insignificantly from which it cannot be said that they were not suitable for being appointed as Superintendents.

(17) Considering the case of the petitioners on the one hand and respondents No. 2 to 9 on the other, especially in regard to the preferential qualification of graduation in law, it is also clear that other than petitioners No. 1 and 2, the rest are all Law graduates. However, as the service record of petitioners No. 3 to 6 is not found to be upto the mark and so also that of petitioners No. 1 and 2 viz-a-viz respondents No. 2 to 9, they have been rightly found to be not suitable for being appointed as Superintendent Grade-I.

(18) In view of the above, no case is made out for quashing the impugned office order (Annexure P.4) whereby respondents No. 2 to 9 have been selected for being appointed as Superintendents in the offices of District and Sessions Judges in the State of Haryana.

(19) The present writ petition is without any merit and, therefore, dismissed.

(20) Before parting with the judgment, we may observe that the petitioners could not make it this time on account of their merit which was found to be at a level, lower than that of respondents No. 2 to 9. They would, however, be considered for being appointed as Superintendent Grade-I in future, if they fulfil the criteria and are placed at a higher rank on the basis of merit viz-a-viz their competitors.