

Before Hon'ble Jawahar Lal Gupta, J.

SIMARJIT SINGH AND ANOTHER,—*Petitioners.*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 12311 of 1990

July 10, 1991.

Constitution of India, 1950—Art. 226/227—Punjab State Marketing Board (Class III) Service Rules, 1989—Rules promulgated in 1989—Vacancies that existed prior to rules not filled up in accordance with 1974 resolution—Under rules petitioners now totally ineligible for promotion—Validity of Rules challenged as well as not filling vacancies—Rules held to be valid—Open to employer to prescribe qualifications—However, vacancies which occurred prior to Rules have to be filled up in accordance with the Resolution.

Held, that it is well settled that a vacancy has to be filled up in accordance with the criteria, which existed on the date of its occurrence. Subsequent amendment or promulgation of the rules cannot defeat the rights of the persons to be considered for promotion. That being so, the contention of the learned counsel for the petitioners that the vacancies which existed prior to January 27, 1989 have to be filled up in accordance with the resolution of August 13, 1974 has to be sustained. I accordingly direct that all vacancies in the cadre of Assistant Secretaries which existed prior to January 27, 1989 shall be filled up in accordance with the resolution dated August 13, 1974. The claims of the petitioners for promotion to the posts of Assistant Secretaries shall be considered in accordance with the aforesaid resolution.

(Para 5)

Held, that it is open to an employer to prescribe qualifications, which have a reasonable nexus with the requirements of the post. It has not been even suggested that the qualifications prescribed have no nexus with the job requirement. Consequently, the very basis for the submission is non-existent. The avenues of promotion *factually* exist. The petitioners, who do not possess the qualifications prescribed under the rules, are ineligible for promotion. In my view, the observations of their Lordships of the Supreme Court cannot be interpreted to mean that avenues of promotion have to be provided to every employee irrespective of the fact as to whether or not he is qualified for the post. The contention is accordingly rejected.

(Para 8)

S. N. Singla, Advocate. K. S. Virk, Advocate. for the *Petitioners.*

T. S. Dhindsa, Advocate. for A.G., Punjab, for the *Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioners herein are working as Mandi Supervisors-cum-Fee Collectors. Their grievance is two fold. Firstly, the petitioners claim that they were eligible to be considered for promotion to the post of Assistant Secretary in accordance with the criteria laid down by the Board,—*vide* resolution No. 2, dated August 13, 1974. In spite of the existence of vacancies, their claim was not considered. Secondly, it is claimed that the Government promulgated the rules, called, "The Punjab State Agricultural Marketing Board (Class-III) Service Rules, 1989" on January 27, 1989. Under these rules, the petitioners have been rendered totally ineligible for promotion to the post of Assistant Secretary or any other post. This according to the petitioners violates Articles 14 and 16 of the Constitution of India. A few facts necessary for resolving this controversy may be noticed.

(2) The petitioners, who are graduates, were appointed as Auction Recorders in the year 1975. They were promoted as Mandi Supervisors-cum-Fee Collectors with effect from 1st March, 1984 and 1st May, 1984 respectively. *Vide* resolution No. 2, dated August 13, 1974, 33½ per cent posts in the rank of Assistant Secretary had to be filled up by selection from the staff of the Market Committees. The petitioners have averred that since 1975 a number of vacancies existed which had to be filled up in accordance with the said resolution. However, these vacancies were allowed to continue till January 27, 1989, when the rules were promulgated and it was *inter alia* provided that the Mandi Supervisor-cum-Fee Collector should not only be a graduate from a recognised University, but should have also passed One year Diploma in Agricultural Marketing from the Directorate of Marketing and Inspection, Government of India, Nagpur by obtaining at least fifty per cent marks or should possess a minimum experience of seven years and should have passed two years diploma in Agriculture from a recognised University or Institute after having passed the Marticulation Examination in Second Division. According to the petitioners, the prescription of these qualifications has rendered them totally ineligible for promotion. The action of the Board in not filling up the vacancies which occurred prior to the promulgation of the rules in accordance with the resolution of 1974 and in not considering the claims of the petitioners against those vacancies as also closing further avenues of promotion has been challenged as arbitrary and violative of Articles 14 and 16 of the Constitution.

(3) Initially no written statement was filed by the Board. At the time of hearing, however, a short affidavit dated May 27, 1991 was

filed. In this affidavit it was *inter alia* averred that out of a total of 32 posts in the cadre of Assistant Secretaries, 22 posts are already filled up. Ten posts of Assistant Secretaries were stated to be vacant. On a further query the learned counsel for the Board produced a chart giving the position as it existed before the promulgation of the rules on January 27, 1989. According to this chart, four posts were available prior to the date of the promulgation of the rules in the cadre of Assistant Secretaries. The document produced by Mr. K. S. Virk, is placed on record as "Mark-A".

(4) Mr. S. N. Singla, learned counsel for the petitioners has raised a two fold contention. He has firstly contended that the vacancies which existed prior to the promulgation of the rules have to be filled by the Board in accordance with the resolution dated August 13, 1974. He has further submitted that the action of the respondents in rendering the petitioners totally ineligible for any further promotion was violative of Articles 14 and 16 of the Constitution. The vires of the relevant provisions in the rule were also sought to be challenged on this basis. Learned counsel for the respondents controverted the submissions made on behalf of the petitioners.

(5) It is well settled that a vacancy has to be filled up in accordance with the criteria, which existed on the date of its occurrence. Subsequent amendment or promulgation of the rules cannot defeat the rights of the persons to be considered for promotion. That being so, the contention of the learned counsel for the petitioners that the vacancies which existed prior to January 27, 1989 have to be filled up in accordance with the resolution of August 13, 1974 has to be sustained. I accordingly direct that all vacancies in the cadre of Assistant Secretaries which existed prior to January 27, 1989 shall be filled up in accordance with the resolution dated August 13, 1974. The claims of the petitioners for promotion to the posts of Assistant Secretaries shall be considered in accordance with the aforesaid resolution.

(6) The next submission made by the learned counsel is that it is necessary for every employer to provide avenues of promotion to persons working in different cadres of the service. He has referred to the judgment of the Apex Court, in *Raghunath Prasad Singh v. Secretary, Home (Police) Department Government of Bihar and others* (1), wherein it was *inter alia* held as under :—

"Reasonable Promotional opportunities should be available in every wing of public service. This generates efficiency in

service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

(7) According to the learned counsel the Board was bound to provide avenues of promotion to the cadre of Mandi Supervisor-cum-Fee Collectors. Its failure to do so, according to the learned counsel, is not only violative of the guarantee enshrined in Articles 14 and 16 of the Constitution of India, but is also against the dictum of law as laid down by their Lordships of the Supreme Court.

(8) A perusal of the rules shows that persons working as Mandi Supervisors-cum-Fee Collectors are eligible for promotion to the posts of Assistant Secretaries. They are, however, required to possess the qualifications prescribed in the rules. Such persons, like the petitioners, as do not possess the requisite qualifications, cannot be heard to say that no avenue of promotion has been provided. It is open to an employer to prescribe qualifications, which have a reasonable nexus with the requirements of the post. It has not been even suggested that the qualifications prescribed have no nexus with the job requirement. Consequently, the very basis for the submission is non-existent. The avenues of promotion factually exist. The petitioners, who do not possess the qualifications prescribed under the rules, are ineligible for promotion. In my view, the observations of their Lordships of the Supreme Court cannot be interpreted to mean that avenues of promotion have to be provided to every employee irrespective of the fact as to whether or not he is qualified for the post. The contention is accordingly rejected.

(9) The writ petition is accordingly accepted to the extent indicated above. It is directed that respondent No. 2 shall consider the claims of the petitioners for promotion to the post of Assistant Secretary in accordance with the resolution dated August 13, 1974. In the circumstances of the case, the parties are left to bear their own costs

J.S.T.

Before Hon'ble V. K. Bali, J.

GURAN DITTA.—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER (REVENUE) AND ANOTHER,
—*Respondents.*

Civil Writ Petition No. 5613 of 1983

December 13, 1991

*Code of Civil Procedure, 1908—S. 11—Res judicata—Applicability—
Land allotted to displaced persons—Suo motu reference by Assistant*