

CASE NO.:
Appeal (civil) 4341-42 of 2000
Appeal (civil) 1014 of 2001

PETITIONER:
O.P. LATHER & ORS., ETC.

Vs.

RESPONDENT:
SATISH KUMAR KAKKAR & ORS.

DATE OF JUDGMENT: 02/02/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan.

JUDGMENT:

K.G. BALAKRISHNAN, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T.....T..J

Aggrieved by the judgment of the Division Bench of Punjab & Haryana High Court at Chandigarh in C.W.P. No. 9655 of 1999 and C.W.P. No. 15317 of 1999, the present appeals are filed by the party respondents and the State of Haryana respectively. By the impugned judgment, the Division Bench held that the contesting party respondents [appellants in the civil appeals arising from S.L.P.(Civil) Nos. 4341-42 of 2000] were not entitled to be promoted as Executive Engineers and that the claim of the petitioner in the writ petitions shall be considered.

Initially, Satish Kumar Kakkar, the first respondent in these appeals, filed a writ petition [C.W.P. No. 9655 of 1999] claiming that he alone was entitled to be promoted as Executive Engineer and contended that the third respondent therein, namely, O.P. Lather, then working as Asstt. Engineer, lacked the requisite educational qualification for promotion as Executive Engineer. The Division Bench held that the said third respondent did not have the requisite qualification for promotion to the post of Executive Engineer and directed that the post of Executive Engineer be filled up in accordance with the Rules. Subsequent to this judgment, the Govt. of Haryana issued an executive order on 7th October, 1999 whereby it was clarified that the Three Years' Diploma in Electrical Engineering, awarded by the State Board of Technical Education, Haryana, would be treated as equivalent to Diploma in Electrical Engineering from a recognised university. Consequently, the appellants herein, namely, O.P. Lather, P.D. Sharma and Daya Nand were promoted to the posts of Executive Engineer by proceedings dated 26th October, 1999. The order passed by the Govt. of Haryana on 26th October, 1999, was challenged by Satish Kumar Kakkar in a writ petition [C.W.P. No. 15317 of 1999] contending that none of them possessed the

Engineer.

practice of electrical engineer-
ing of which not less than two
years should have been spent
in an electrical or mechanical
engineering workshop or in
generation, transmission or
distribution of electricity or in
the administration of Indian
Electricity Act, 1910, and the
Rules made thereunder in a
position of responsibility.

As per the above Rules, the requisite academic qualification for promotion to the post of Executive Engineer is Degree or Diploma in Electrical Engineering from a recognised university or its equivalent. The appellants have passed Diploma in Electrical Engineering from an institution affiliated to the State Board of Technical Education, Haryana, but the Diploma acquired by them is not from a recognised university. Therefore, the first respondent contended that they were not entitled to be promoted to the posts of Executive Engineer.

The first respondent had joined service in the Haryana Govt. as Junior Engineer in 1981 and he too is a holder of Diploma in Electrical Engineering from Haryana Polytechnic, Nilokheri, which is affiliated to the State Board of Technical Education, Haryana. He was promoted to the post of Asstt. Engineer on 2.4.1985 whereas the appellants were promoted during the period 1984-85 to the cadre of Asstt. Engineer. Three vacancies of Executive Engineer arose on 29.12.1998. The first respondent claimed that he had passed A.M.I.E. Examination in 1995 and was thus entitled to be promoted to the post of Executive Engineer. In the earlier writ petition, viz. C.W.P. No. 9655 of 1999, the Division Bench had held that as the third respondent therein, viz., appellant-O.P. Lather was only a Diploma-holder, and as the Diploma Certificate obtained by him was not from a recognised university, he was disqualified to be promoted to the cadre of Executive Engineer. Subsequent to this, the Govt. of Haryana issued a clarificatory order on 7th October, 1999 whereby it was held that the Diploma in Electrical Engineering awarded by the State Board of Technical Education, Haryana, and approved by the All India Council for Technical Education be treated as equivalent to Diploma in Electrical Engineering from a recognised university. The Division Bench, in its subsequent judgment in C.W.P. No. 15317 of 1999, held that the vacancies arose prior to the issue of the said clarificatory order by the Govt. of Haryana and, therefore, the promotion to those posts should have been made in accordance with the then existing rules as the order passed by the Govt. on 7th October, 1999 cannot have retrospective effect. It was held that by virtue of the amendment of Rules, no retrospective effect could be given to the said order and as the vacancies had occurred prior to the coming into force of the amended rules, the appellants herein were not entitled to be promoted to the posts of Executive Engineer.

We heard the learned counsel on either side. It is true

that as per the special rules framed under Proviso to Article 309 of the Constitution, the requisite qualification for the purpose of promotion to the cadre of Executive Engineer is Degree or Diploma in Electrical Engineering from a recognised university or its equivalent. The learned counsel for the State of Haryana submitted that there is no university in the State of Haryana which awards Diploma in Electrical Engineering and that such Diplomas are awarded by various recognised institutions which are affiliated to and approved by the State Board of Technical Education in Haryana. It is argued that the first respondent had also acquired a three years' Diploma in Electrical Engineering granted by the State Board of Technical Education, though he has passed A.M.I.E. Examination, which is also not issued from a recognised university. It was submitted that realising this position, the Govt. of Haryana issued an executive order on 7th October, 1999 by way of clarification wherein it is stated that no university situated in the State of Haryana awards Diploma in Electrical Engineering and that the Diploma in Electrical Engineering is awarded only by the State Board of Technical Education, Haryana, and no requirement of equivalent qualification has been prescribed for such a course (Diploma) in the State of Haryana; the three years' Diplomas awarded by the State Board of Technical Education, Haryana, are duly approved by the All India Council for Technical Education also.

The question that arises for our consideration is whether the clarification issued by the Govt. of Haryana by an executive order is proper and valid and whether it amounts to amendment of the Rules made under Article 309 of the Constitution. If it is an amendment to the Rules made under Article 309, a further question arises whether by an executive order, can such rules be amended.

Normally, the Rules framed under the proviso to Article 309, cannot be amended except in accordance with procedure laid down therein. But in the instant case, the question is whether a clarification issued by the Govt. could be construed as an amendment to the rules. Even under the rules, it is specifically stated that a Degree or Diploma in Electrical Engineering from a recognised university or its equivalent would be the requisite qualification for promotion to the cadre of Executive Engineer. In the Rules, some of the recognised universities are also mentioned and admittedly, these institutions are not awarding any Diploma. The rules say that equivalent qualification also would be considered. There is nothing wrong in the appointing authority issuing a clarification as to what would be the equivalent qualification for the purpose of appointment. When the universities do not offer the Diplomas prescribed under the Rules, the rule itself becomes meaningless and nugatory. Under the Rules, the candidates are asked to produce a certificate which is neither in existence nor awarded. It was at this juncture that the Govt. issued a clarification that the Diploma awarded by recognised institutions, which are affiliated to the State Board of Technical Education in Haryana, would be considered as equivalent.

A similar question came up for consideration in State of Haryana vs. Shamsher Jang Bahadur (1972) 2 SCC 188. It was held in paragraph 7 of the judgment as under :

"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 Article 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 Another 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."

In the instant case also, the Govt. Order passed on 7th October, 1999 was only supplemental to the Rules already@

framed under the Proviso to Article 309 of the Constitution.@

It does not have the effect of altering the Rules nor is it inconsistent therewith. The relevant rule in fact provides that Diploma holders are entitled to be promoted to the cadre of Executive Engineer. If this rule, without the present clarification, is allowed to operate, no officers in the cadre of Assistant Engineers would be entitled to get promotion as they are not holders of Diploma from a recognised university. That would be a virtual denial of opportunity of promotion to these officers. The rule does not intend that the Diploma holders shall not be promoted to the cadre of Executive Engineer. To obviate this difficulty, the clarification was issued. It is also pertinent to note that even the 1997 Rules give the power to Govt. to relax the Rules. Rules 17 and 18 of 1997 Rules thus confer power of relaxation and for making special provisions/special terms and conditions as may be deemed to be expedient.

The next question that arises for our consideration is whether the High Court was justified in holding that the posts had to be filled up in accordance with the Rules that were in existence at the time the vacancies arose. We do not think that the stand taken by the High Court is correct. The executive order issued by the Govt. was only clarificatory in nature and the 'equivalent qualification', which formed part of the Rules was explained by that order.

It was argued that by amendment of Rules, benefits acquired under the existing Rules cannot be taken away. It is true that by retrospective amendment of rules, vested rights cannot be taken away. This view was held by this Court in T.R. Kapur vs. State of Haryana 1986 Supp. SCC 584 = AIR 1987 SC 415. This Court held in Para 16 of the said judgment as follows :

"The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights."

But in the present case, by issuing the clarification no vested rights of any person were taken away or impaired, much less that of the first respondent. By this

clarification, it was made clear that Diploma issued by the State Technical Education Department would be equivalent to a Diploma issued from a recognised university. Even without this explanation, both Diploma-holders and Degree-holders having eight years' service as Asstt. Engineer are entitled to be promoted to the cadre of Executive Engineer. This clarification has been issued by the State Govt. after taking into consideration all relevant circumstances, including the fact that no university in Haryana grants Diploma in Electrical Engineering. When expert qualification is fixed by competent authority, ordinarily court shall not interfere with such matters. In *University of Mysore & Anr. vs. C.D. Govinda Rao & Anr.* (1964) 4 SCR 575, it was observed that normally it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be.

We do not find any illegality in the order passed by the Govt. of Haryana promoting the appellants to the posts of Executive Engineer. They are admittedly senior to the first respondent in the cadre of Asstt. Engineer. We, therefore, set aside the impugned judgments and hold that the promotions of the appellants are made in accordance with the Rules. All the appeals are allowed accordingly without, however, any order as to costs.

