

@

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3019 OF 2003

Bohar Singh & Anr. ... Appellants

Versus

State of Punjab & Ors. ... Respondents

O R D E R

This appeal has been preferred against the impugned judgment and order of Punjab & Haryana High Court dated 15.9.2000 by which the writ petition No.16147/1998 filed by the respondents has been allowed quashing the promotion of the present appellants.

Facts and circumstances giving rise to this appeal are that in view of the provisions of Punjab Kanungo Service (State Service Class III) Rules, 1976 ("Rules" for short) a Patwari could be promoted to the post of Kanungo if he fulfils the requirement of eligibility in terms of Rule 8 (2) of the Rules which reads as under:

"No person shall be appointed by promotion Unless he has qualified the Departmental Qualification in Appendix 'C' to these rules."

It appears that the executive instructions were issued on 20th December, 1982 dispensing with the condition of passing the departmental examination for the purpose of promotion to the post of Kanungo. Some of the respondents/similarly situated persons challenged the executive instructions dated 20.12.1982 by filing the writ petition No. 6849/1994 (Navinder Singh & Ors. vs. State of Punjab & Ors.) on the ground that the executive instructions could not override the statutory rules. During the pendency of the said writ petition, the Rules of 1976 stood repealed by Punjab Kanungo (Class III) Service Rules, 1994 providing for a different criteria for promotion to the post of Kanungo. The High Court disposed of the said writ petition vide judgment and order dated 29.3.1995 issuing the following directions:

"(i) The instructions issued by the Government vide letter dated December 20, 1982 are not in conformity with the rules. These are consequently, quashed. The promotions which have been made during the pendency of these petitions without holding a test are illegal. These will now be made on the result of a test to be held in accordance with the provisions of the 1976 Rules. All the vacancies which may have occurred during the pendency of these petitions upto November 8 1994, shall be filled up on the basis of this test.

(ii) The respondents are directed to hold a test in respect of these vacancies and promotions made during the pendency of these petitions are set aside."

Such directions were necessary as it is settled legal proposition that the vacancies have to be filled up as per the law existing on the date the selection process stood initiated.

In pursuance of the said judgment and order of the High Court dated 29.3.1995, the selection process again started. Appellants appeared in the examination but could not pass all the papers. Under the statutory Rules of 1976, the District Collector had the power to grant relaxation in such cases and further promote the Patwari conditionally in stipulation that the promotion would be subject to passing the required papers within a period of two years. The matter was placed before the learned District Collector for granting that relaxation order. The District Collector vide order dated 10.9.1998 observed:

"Therefore, in the present situation, it appears to me proper that those patwaris should be considered for promotion whether they have passed the test under the rules 1976 as partly passed the test or out of 4 papers if any patwari has passed the 2 papers, he may also be considered. Paper in the subject of 'Urdu' would be exempted by the Government. Therefore, 2/3 patwaris seem to be qualified for promotion."

The appellants got promotion in pursuance of the said order passed by learned District Collector which was challenged by the respondents and the High Court vide impugned judgment and order set aside their promotion. The High Court proceeded on the premises that the appellants could not pass the said required test within the period stipulated in the statutory rules of 1976.

There is no dispute to the said factual position. However, it has been submitted before us by learned counsel for the private respondents that vide order dated 10.9.1998 District Collector did not grant the relaxation in favour of the appellants for the simple reason that the paper in 'Urdu' which the appellant could not pass, was essential for promotion and the District Collector did not grant any relaxation rather left it open for the Government of Punjab to exercise such power and no order had ever been passed by the Government to grant relaxation so far as the 'Urdu' paper is concerned. Such a position is not disputed by the learned Counsel for the appellants. In view of the above, we are of the considered opinion that the appellants could not have been promoted even after passing the order of so called relaxation by the District Collector.

In view thereof, we do not find any cogent reason to interfere in this appeal. The appeal lacks merit and is accordingly dismissed.

It is open for the respondents - State authorities to consider the case of the appellant(s) or similarly situated persons afresh, if they possess requisite eligibility strictly in accordance with law.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi,
January 18, 2013
ITEM NO.104

COURT NO.8

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3019 OF 2003

BOHAR SINGH & ANR.

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T., permission to file additional documents and office report)

Date: 18/01/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. P.N. Puri, Adv.

Mr. Dhiraj, Adv.
Mrs. Reeta Dewan Puri, Adv.
Mr. Abhishek Puri, Adv.

For Respondent(s)

Mr. Jagjit Singh Chhabra, Adv.
Mr. Garvesh Kabra, Adv.
Ms. Pooja Kabra, Adv.
Ms. Nikita Kabra, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

(Signed order is placed on the file)