

State Of Punjab vs S.P. Sharma on 27 July, 1973

Equivalent citations: AIR1973SC2468, 1973LABLC1467, (1973)2SCC466, 1973(5)UJ722(SC), AIR 1973 SUPREME COURT 2468, 1973 2 SCC 466, 1973 LAB. I. C. 1467, 1974 (1) SCJ 406, 1973 SCD 809, (1973) 2 S C C 468

Bench: A. Alagiriswami, D.G. Palekar

JUDGMENT

Alagiriswami, J.

1. The question that arises in these two Appeals is the same as arose in judgment of this Court in Shamsher Jang Shukla's case reported in the . The respondents in these cases are officials of the Punjab Government, the history of whose services is the same as that of the persons whose cases were dealt with in that judgment. On the basis of that judgment these two appeals have to be dismissed. However, an application, CMP No. 103 of 1973, has been filed in C.A. No. 1678 of 1970 for amendment of the written statement and for urging additional grounds in the appeal. By that petition the appellant wants to contend that since the post of assistant, for which the passing of the examination which was struck down in the reported judgment was made a necessary qualification under the rule, was newly created and there was no such post earlier there is no question of changing the service conditions of the respondent to his disadvantage, and Section 115(7) of States Reorganisation Act, 1956 would, therefore, not apply. We consider that it is too late in the day to permit the appellant to amend its written statement and allow it to urge the additional grounds in this appeal. It would necessitate the matter being remanded to the Trial Court for establishing various facts as for instance in the Pepsu State, in which these respondents were originally employed there was any necessity for clerks to pass any examination before they could be promoted to a higher post, what that higher post was, and what was the equivalent post in the Pepsu Secretariat to the post of Assistant on the Punjab Secretariat. That apart the fact that there was no post of Assistant in Pepsu Secretariat would not affect the merits of the question. The post of Assistant is not the only step in the official hierarchy nor is it the final step. Therefore if the passing of an examination is made a pre-requisite for a clerk to be promoted as an Assistant, he can never hope to act any promotion except by passing an examination and becoming an Assistant. There is, therefore, clearly a change in the conditions of service of the respondents contrary to the provisions of Section 115(7) of the State Reorganisation Act, 1956. We, therefore, dismiss the Civil Miscellaneous Petition No. 193 of 1973, and these two appeals are also dismissed. The appellant will pay the respondent's cost in G.A. No. 1678 of 1970. There will be no order as to costs in G.A. No. 314 of 1970 as the respondent did not enter appearance.

2. There are 10 Special Leave Petitions. Respondents in SLPs & Nos. 250, 785 and 1010 of 1972 and 419 of 1973 are represented by Counsel. These four petition as well as 6 other Special Leave Petition

Nos. 307 and 602 of 1970 and 249, 2308 and 2816 of 1972, in which no notice has yet been issued to parties, have been kept pending because of the pendency of these two appeals, As a consequences of dismissal of these two appeals, these Special Leave Petition will also stand dismissed. The petitioner will pay the costs of respondents in the first mentioned four petition in which counsel have appeared on behalf of the respondents. There will be no order as to costs in the other Special Leave Petitions.