

Supreme Court of India

Smt. Ravinder Sharma And Another vs State Of Punjab And Others on 17 October, 1994

Equivalent citations: AIR 1995 SC 277, 1995 (70) FLR 43, JT 1994 (6) SC 531, (1995) IILLJ 589 SC, 1994 (4) SCALE 511, (1995) 1 SCC 138, 1995 (1) UJ 1 SC

Author: S Mohan

Bench: M V Verma, S Mohan

ORDER S. Mohan, J.

1. The facts lie in a narrow compass.

2. The appellant No. 1 Smt. Ravinder Sharma was appointed as a clerk in the Punjab Public Service Commission (hereinafter referred to as 'the Commission') through Employment Exchange on 8.6.1967. At that time, she possessed the educational qualification as Matriculate III Class while the rule required Matriculate I class. Later on, she qualified from the Subordinate Service Selection Board and was appointed as a clerk on regular, basis on 28.8.1968. She was promoted as Assistant on 1.2.1974.

3. Appellant No. 2, Surjit Singh was appointed as Clerk in the Commission through the Employment Exchange on 8.6.1967. He had passed Higher Secondary Examination in III Division. After qualifying from the Selection Board, he was appointed as a Clerk on regular basis on 28.8.1968. He was further promoted as Assistant on 26.6-1974. Since the second appellant has died, his case need not be considered.,

4. The appellant did not possess the requisite qualification as required under Regulation 7 of the Punjab Public Service Commission (State Service Class III) Regulations, 1967 (hereinafter referred to as the 'Regulations'). Therefore, the Commission recommended to the Government that the qualification required under Regulation 7 of the Regulations might be relaxed in the case of the appellant. The Government declined to accede to the request, Thereupon, the appellant was, served the following memo by the Commission:

From H.S: Chatwal, P.C.S., Secretary, Punjab Public Service Commission, Patiala, To Smt. Kavinder Sharma, Assistant No. B.F./1015/72-CAG/7834 dated Patiala, the 26.4.1977.

Subject : Regulations of Service of Clerk Memo Reference corresponding resting with the Commission letter No. B.F. 1015/727. CAG/31895 dated 13.1,1975 Keeping in view your representation sent in reply to the Memorandum mentioned above, your case for regularisation of your services of relaxing the relevant provisions, was referred to the Punjab Government in the General Services Branch.

The Government has again rejected the proposal, because you did not fulfil the qualifications of Matric 1st Class or Intermediate II Class or B.A; laid down in Regulation 7 of the Punjab Public Service Commission (State Service Class HI) Regulations, 1967 at the time of your initial appointment nor you fulfil the condition at the present moment. As such your initial appointment as Clerk in the Commission was not in accordance with the above mentioned Regulations.

Under the circumstances, it is clear that your continuance as Clerk in the Commission without fulfilling the initial qualifications cannot be allowed. The Government have informed that they can at the most consider your appointment/adjusting in some other Department as a fresh candidate keeping in view your merit and in accordance with rules. It can only be done if you submit an application giving full details of your educational qualifications, experience etc. addressed to the Chief Secretary to Government, Punjab. In case you are aware about the vacancies lying vacant in some other departments, you can mention the same in your application.

Your reply should reach the commission within four days from the receipt of this letter, failing which the case will be decided in accordance with rules. It is also made clear to you that no more representation on the subject will be entertained from you.

5. There were also similarly placed persons. All of them filed Writ Petition No. 1331 of 1977 before the High Court challenging the respective orders issued to them. However, in this appeal, we are concerned only with appellant No. 1 Smt. Ravinder Sharma.

6. Before the High Court, the argument was that inasmuch as the appellant did not conceal her qualification, she could not be blamed if she had been appointed. Therefore, no order adverse to her, could have ever been passed.

7. This was opposed on behalf of the Government stating that the petitioner (appellant herein) was not charged for concealing the qualifications. On the contrary, she did not possess the requisite qualifications as required, under Regulation 7 of the Regulations at the time of her appointment. Though the Commission made a request for relaxation, that was not acceded. The result of it would be, the initial appointment itself was bad. Therefore, the impugned order dated 26.4.1977 came to be passed. It is perfectly valid.

8. The High Court on a consideration of the above arguments dismissed the writ petition holding that the petitioners before it did not conceal the qualification per se would not validate their appointments when such appointments were not in conformity with Regulation 7 of the Regulations.

9. Aggrieved by the said order, appellant filed Letters Patent Appeal No. 935 of 1983 before the High Court which was also dismissed. Hence, the present appeal.

10. The same point is reiterated in this appeal that the appellant cannot be blamed for the improper appointment. The Commission was Conscious of the lack of qualification yet, it chose to appoint the appellant. Therefore, the principle of estoppel will apply. In any event, as on today, the appellant is qualified, fully under Regulation 7 of the Regulations.

11. We are of the view that no exception could be taken with the impugned judgment. The appellant is not found fault with for concealment of qualification. On the contrary, what is complained against her is lack of qualification. We may now extract Regulation 7 of the Regulations. It reads as under:

Recruitment to the service shall be made-

(a) ----- (b) ----- (C) ----- (d) -----

(e) in the case of Junior scale stenographer.-

(i) ----- (ii) -----

(iii) by direct appointment of a persons who is a Graduate or Intermediate Second Class or a Matriculate first class of a recognised University and qualifies such tests as may be prescribed by the Establishment Member.

(f) in the case of clerks-

(i) ----- (ii) -----

(iii) by direct appointment of a person who is a Graduate or Intermediate second class or Matriculate first class of a recognised University and has passed a qualifying examination conducted by the Board.

12. The appellant was directly appointed. In such a case, the qualification must be either:

i) a Graduate/Intermediate Second Class or

ii) Matric first class.

13. Admittedly, the appellant did not possess this qualification. That being so, the appointment is bad. The Commission recommended to the Government for relaxation of the qualification under Regulation 17 of the Regulations. The Government rejected that recommendation. Where, therefore, the appointment was clearly against Regulation 7, it was liable to be set-aside. That being so, no question of estoppel would ever arise. We respectfully agree with the view taken by the High Court.

14. It was, however, submitted that the appellant had passed her B.A. examination in 1977 and had become a graduate and that therefore, her case may be considered for regularisation on merits with effect from the date of acquiring necessary qualification adumbrated under Regulation 7. The Government is at liberty to do so. It may also be appropriate for the Government to consider this clause. We do not express any opinion on this aspect. The civil appeal is disposed of in the above terms.