

Supreme Court of India

T.R. Kapur & Ors vs State Of Haryana & Ors on 17 December, 1986

Equivalent citations: 1987 AIR 415, 1987 SCR (1) 584

Author: A Sen

Bench: Sen, A.P. (J)

PETITIONER:

T.R. KAPUR & ORS.

Vs.

RESPONDENT:

STATE OF HARYANA & ORS.

DATE OF JUDGMENT 17/12/1986

BENCH:

SEN, A.P. (J)

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SEN, A.P. (J)

NATRAJAN, S. (J)

CITATION:

1987 AIR 415 1987 SCR (1) 584

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F 1987 SC 424 (11)

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RF 1989 SC 307 (5)

D 1990 SC 1072 (5)

ACT:

Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964: Rule 6(b)--Haryana State amendment with retrospective effect declared ultra vires.

Punjab Reorganisation Act, 1966: s.82(6), proviso--Service conditions of persons serving in composite State of Punjab--Alteration of--Approval of Central Government mandatory. Civil Services.

Benefits acquired under existing service rules cannot be taken away by amendment of rules with retrospective effect.

Constitution of India, Article 309, proviso--Service Rules--Amendment of with retrospective effect--Must satisfy tests of Articles 14 and 16(1).

HEADNOTE:

The proviso to sub-s.(6) of s.82 of the Punjab Reorganisation Act, 1966 mandates that the conditions of service applicable to any person referred to in sub-s.(1) or sub-s.(2) shall not be varied to his disadvantage except with the previous approval of the Central Government. Rule 6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, as it stood at the relevant time, provided that in case of appointment by promotion from Class II Service no person shall be appointed unless he has completed in that Class of Service for a period of ten years from the commencement of these Rules, six years service and after that period eight years service. The Governor of Haryana by a notification dated 22nd June, 1984 amended the above Rules by inserting the words 'in addition to the qualifications prescribed in clause (a)' after the words "eight years service" in cl(b) of r.6 with retrospective effect from July 10, 1964 thereby making a degree in Engineering essential for promotion to the post of Executive Engineer in Class I service.

Rule 3(c) of the Punjab Service of Engineers, Class II P.W.D.

585

(Irrigation Branch) Rules, 1941 had enjoined that no person shall be appointed to the service unless he possessed one of the University degrees or other qualifications prescribed. The proviso to r.5 however, laid down that that rule may be relaxed by Government on the recommendations of the Chief Engineers in order to admit the promotion of a member of the Overseers Engineering Service of outstanding merit who may not possess the qualifications specified in rule 3.

The petitioners, who are Engineering Diploma holders, were appointed to Class I Overseers Engineering Service (Irrigation Branch) in the erstwhile State of Punjab in the year 1953, 1949 and 1952 respectively. In due course they were promoted as Sub-Divisional Officers in Class II service and were eligible for promotion to the post of Executive Engineer in Class I service under the unamended rule 6(b) having more than eight years' service in Class II service. In *A.S. Parmar v. State of Haryana*, [1984] 2 SCR 476 this Court interpreting the unamended rule 6(b) had held that a degree in Engineering was not an essential qualification for promotion of Class II Officers to the cadre of Executive Engineer in Class I service. But just before they were about to be promoted the State of Haryana issued the impugned notification rendering them ineligible.

Aggrieved by the said notification they filed these writ petitions under Art.32 of the Constitution. It was contended for them that the impugned notification purporting to amend r.6(b) of Class I Rules with retrospective effect was ultra vires the State Government being contrary to the proviso to s.82(6) of the Punjab Reorganisation Act, 1966, that the unamended r.6(b) had conferred a vested right of promotion on them which could not be taken away by retrospective

amendment under the proviso to Art. 309 of the Constitution, that a retrospective amendment taking away eligibility for promotion from a back date ranging over 20 years and thereby rendering invalid the promotions already made was constitutionally impermissible, and that the action of the Government in making such retrospective amendment to nullify the decision in Parmar's case was wholly arbitrary, irrational and mala fide and thus violative of Arts. 14 and 16(1) of the Constitution.

For the respondents it was contended that the proviso to s. 82(6) was not attracted to the facts of the case since on the appointed day, that is, November 1, 1966 the petitioners were not members of Class II Service. They were then Supervisors belonging to Class III Service, and, therefore, were not governed by the unamended r.6(b). It was further contended that under r.3(c) of the Punjab Service of Engineers, Class II

586

P.W.D. (Irrigation Branch) Rules, 1941 a degree in Engineering was essential till the 1970 Rules brought about a change. Inasmuch as none of the petitioners had the requisite qualifications, they could not become members of Class II Service. It was strenuously contended that the decision in A.S. Parmar v. State of Haryana was incorrect.

Allowing the writ petitions, the Court,

HELD: 1.1 The impugned notification dated June 22, 1984 issued by the State Government of Haryana purporting to amend r.6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules 1964, with retrospective effect from July 10, 1964 is declared ultra vires the State Government being contrary to s.82(6) of the Punjab Reorganisation Act, 1966. [602EF, 597CD]

1.2 The proviso to s.82(6) of the Punjab Reorganisation Act is in the nature of a fetter on the power of the Governor under the proviso to Art. 309 of the Constitution not to alter the conditions of service applicable to members of civil services affected by the reorganisation of the State to their disadvantage without the previous approval of the Central Government. [593E, 597B]

In the instant case, the State Government never moved the Central Government seeking its prior approval to the proposed amendment of r.6(b) of the said Class I Rules. There was no Chief Secretaries Conference as was held prior to the reorganisation of the States under the States Reorganisation Act, 1956. Nor was there any communication issued by the Central Government conveying its previous approval of the changes in the service conditions which the States of Punjab and Haryana might make in terms of the proviso to s.82(6) of the Punjab Reorganisation Act, 1966. The amendment, therefore, must be struck down. [596E,G, 597C]

Mohammad Bhakar v.Y. Krishan Reddy, [1970] SLR 768; Mohammad Shujat Ali & Ors. v. Union of India & Ors., [1975] 1 SCR 449 and A.S. Parmar v. State of Haryana, [1984] 2 SCR

476, referred to.

2. I The decision in Parmar's case is not open to question. What was of the essence for purposes of promotion of Sub-Divisional Officers who were members of Class II Service to the post of Executive Engineer under r.6(b) of the Class I Rules was not a degree in Engineering, but eight years' experience in Class II Service. [597G, 598CD]

587

2.2 The petitioners like other members of Class II Service who are diploma-holders and satisfy the eligibility test of eight years' service in that Class were, therefore, eligible for being considered for promotion to the post of Executive Engineer in Class I service without having a degree in Engineering. [594B]

A.S. Parmar v. State of Haryana, [1984] 2 SCR 476, referred to.

3. The requirement of a degree in Engineering which was an essential educational qualification for purposes of direct recruitment of Assistant Executive Engineers in Class I Service under r.6(a) of the Class I Rules could not be projected for promotion of Sub-Divisional Officers belonging to Class II Service to the posts of Executive Engineers in Class I. Service under r.6(b) as they form two distinct sources from which appointments to the posts of Executive Engineers could be made. [598B]

4. The proviso to r.5 of the 1941 Rules conferred power on the State Government to relax the requirement of r.3(c) on the recommendation of the Chief Engineer in order to admit the promotion of a member of the Overseen Engineering Service (Irrigation Branch), Punjab if he was an officer of outstanding merit although he did not possess the qualification prescribed in r.3(c), i.e. a degree in Engineering. Presumably, the petitioners were officers of outstanding merit as they were promoted as Offg. Sub-Divisional Officers in Class II Service in January 1964, July 1966 and November 1969. [597H--598A, 596A]

5. It cannot be said that on the appointed day i.e. on November, 1, 1966 the petitioners were Overseers belonging to the Class III Service and were therefore not governed by unamended r.6(b). Two of them had already been promoted as (Mfg. Sub-Divisional Officers prior to the appointed day, i.e. in January 1964 and July 1966 and were, therefore, governed by the unamended r.6(b). The third petitioner was also promoted to that post subsequently in November 1969. Upon such promotion to the post of Offg. Sub-Divisional Officers they had not only the legitimate expectation that they would in due course be considered for confirmation but also had the right on such confirmation to be considered for promotion. It is also not quite accurate to say that the petitioners were not shown as belonging to the Class II Service. A bare look at the notification dated October 27, 1985 would show that the petitioners figure at Sr. Nos. 246, 254 and 369. [596B-D]

6. The power to frame rules to regulate the conditions of service

588

under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect. 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. Therefore, unless it is specifically provided in the rules, the employees who were already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Arts. 14 and 16(1) of the Constitution. They do not, in the instant case. [599B-F]

B.S. Vadhera v. Union of India, [1968] 3 SCR 575, Raj Kumar v. Union of India, [1975] 3 SCR 963; K. Nagaraj & Ors. v. State of A.P. & Anr., [1985] 1 SCC 523; State of J & K v. Triloki Nath Khosla & Ors., [1974] 1 SCR 771; State of Mysore v. M.N. Krishna Murthy & Ors., [1973] 2 SCR 575; B.S. Yadav & Ors., v. State of Haryana & Ors., [1981] 1 SCR 1024; State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors., [1983] 2 SCR 287 and Ex-Captain K.C. Arora & Anr. v. State of Haryana & Ors., [1984] 3 SCR 623, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 630-32 of 1984 Under Article 22 of the Constitution of India. M.K. Ramamurthy, Shanti Bhushan, U.R. Lalit, M.R. Sharma, S.K. Mehta, B.R. Agarwala, N.D. Garg, E.M.S. Anam, P.D. Sharma, C.V. Subba Rao, I.S. Goel, Dr. K.S. Tiwari, P.H. Parekh, Sohail Dutt, Uma Datta and V.P. Goel for the appearing parties.

The Judgment of the Court was delivered by SEN, J. These petitions under Art. 32 of the Constitution assail the constitutional validity of a notification issued by the State Government of Haryana in the Public Works Department (Irrigation Branch) dated June 22, 1984 purporting to amend r.6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 (for short 'the Class I Rules') with retrospective effect from July 10, 1964 as violative of Arts. 14 and 16(1) of the Constitution and also ultra vires the State Government by reason of the proviso to s.82(6) of the Punjab Reorganisation Act, 1966. The purport and effect of the impugned notification is to nullify the decision of this Court in A.S. Parmar v. State of Haryana, [1984] 2 SCR 476, holding that a degree in Engineering was not essential for such promotion. By the impugned notification, a degree in Engineering is made an essential qualification for promotion of Assistant Engineers in the Irrigation Branch, a Class II service under r.6(b) of the Class I Rules and thereby the petitioners have been rendered ineligible for promotion to the post of Executive Engineer in Class I service. The circumstances which led to the issuance of the impugned notification are these. A controversy had arisen on the construction of r.6 of the Class I Rules as to whether a degree in

Engineering was necessary when the post of Executive Engineer, which is a post in Class I service, was to be filled by promotion by members of Class II service and this was settled by the decision of this Court in A.S. Parmar's case, *supra*. The Court on a consideration of the relevant rules came to the conclusion that a member of Class II service, namely, Assistant Engineer or Sub-Divisional Officer did not require to have a University degree for promotion to the post of Executive Engineer in Class I service. On February 24, 1984, the Additional Solicitor General gave an undertaking on behalf of the State Government that it would consider the cases of all eligible persons including the petitioners for regular appointment to the Class I service in accordance with the rules and complete the process within four months from that day. The Court, accordingly, in Civil Appeal No. 149 of 1981 (Ashok Gulati & Ors. v. State of Haryana) and the connected matters as also in these petitions under Art. 32 of the Constitution passed an order to the effect:

"Mr. K.G. Bhagat, learned Additional Solicitor General says that the State Government will consider the cases of all the eligible persons including the appellants/petitioners and respondents for regular appointments to Class I Service in accordance with the law and complete the process of appointments within 4 months from today. The Government is permitted to do so. But all appointments made pursuant to this order will be subject to the final result of these cases.

In the meanwhile the appellants will continue in the posts held by them. These matters will stand adjourned for a period of 6 months from today."

Just two days before the expiry of the period within which promotion of eligible persons including the petitioners was to be completed, the State Government purported to effect an amendment of r.6(b) retrospectively w.e.f. July 10, 1964. The impugned notification was in these terms:

"HARYANA GOVERNMENT PUBLIC WORKS DEPARTMENT (IRRIGATION) NOTIFICATION
The 22nd June, 1984.

No. G.S.R. 47/Cons./Art. 309/Amend. (1)-84- Inexercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Haryana, hereby makes the following rules further to amend the Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch) Rules, 1964, namely:-

1. (1) These rules may be called the Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch), Haryana, (Second Amendment) Rules, 1984.

(2) "These rules shall be deemed to have come into force with effect from the 10th July, 1964.

2. In the Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch) Rules, 1964, in rule 6, in clause (b), after the words "eight years service", the words, "in addition to the qualifications prescribed in clause (a)" shall be inserted."

Presumably, the State Government adopted this unfortunate course of action taking cue of the observations made by this Court in the concluding part of the judgment in A.S. Parmar's case saying that if the Government wish to appoint only persons having a degree in Engineering to Class I service, it was free to do so by promulgating appropriate rules and that the power to frame such a rule was beyond question. But the Court never laid down that such a rule may be framed under Art. 309 of the Constitution with retrospective effect so as to render ineligible Class II officers like the petitioners who were Diploma-holders for further promotion as Executive Engineers in Class I service. In view of the clear formulation of law interpreting r.6(b) of the Class I Rules holding that a degree in Engineering was not an essential qualification for promotion of Class II Officers to the cadre of Executive Engineers in Class I service, there was no occasion for the State Government to issue the impugned notification unless it was with the object of nullifying the decision of this Court in A.S. Parmar's case.

In order to appreciate the points involved, it is necessary to state a few facts. The three petitioners T.R. Kapur, Mohinder Singh and V.D. Grover who are Diploma-holders hold the posts of Sub Divisional Officers, Public Works Department (Irrigation Branch), Haryana, a Class II service, governed by the Haryana Service of Engineers, Class II P.W.D. (Irrigation Branch) Rules, 1970. They joined Class III service as Overseers in the Irrigation Branch on September 18, 1953, October 6, 1949 and November 8, 1952 respectively in the erstwhile State of Punjab. At the time when they were appointed to the Overseers Engineering Service, Punjab, r.3(c) of the Punjab Service of Engineers, Class II P.W.D. (Irrigation Branch) Rules, 1941 enjoined that no person shall be appointed to the service unless he possessed one of the University degrees or other qualifications prescribed in Appendix 'A' to the Rules. Note beneath cl.(c), however, provided that the requirements of cl.(c) could be waived in the case of members of the Overseers Engineering Service (Irrigation Branch) Punjab to be promoted in the service under the proviso to r.5 of the Rules. The term 'service' was defined in r. 1(2)(g) to mean the Punjab Service of Engineers, Class II (Irrigation Branch), Proviso to r.5 of Part II--Appointments Rules, reads as follows:

"Provided that this rule may be relaxed by Government on the recommendations of the Chief Engineers in order to admit the promotion of a member of an Overseer Engineering Service (Irrigation Branch), Punjab of outstanding merit who may not possess the qualifications specified in In due course, the petitioners were promoted as Offg. Sub-

Divisional Officers in the Class II service in November 1969, July 1966 and January 1964 respectively. Subsequently, by notification dated October 27, 1985, the petitioners were appointed as Sub-Divisional Officers on a regular basis w.e.f. December 25, 1970. Under the unamended r.6(b) of the Class I Rules, the petitioners were eligible for promotion as Executive Engineers in Class I service despite the fact that they did not possess a degree in Engineering. Rule 6 of Class I Rules insofar as relevant may be reproduced:

"6. Qualifications: No person shall be appointed to the service unless he--

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix B of these rules;

Provided that Government may waive this qualification in the case of a particular officer belonging to the Class II Service.

(b) In case of appointment by promotion from Class II Service, has completed in that Class of Service for a period of ten years from the commencement of these rules, six years service and after that period eight years service."

Shri Shanti Bhushan, learned counsel for the petitioners has put forward a three-fold contention. First of these submissions is that the impugned notification which purported to amend r.6(b) of the Class I Rules with retrospective effect from July 10, 1964 making a degree in Engineering essential for promotion to the post of Executive Engineer in Class I service constitutes a variation in the conditions of service applicable to officers belonging to Class II service who are diplomaholders like the petitioners prior to the appointed day i.e. November 1, 1966 to their disadvantage as it renders them ineligible for promotion to the post of Executive Engineer in Class I service and was ultra vires the State Government having been made without the previous approval of the Central Government as enjoined by the proviso to s.82(6), of the Punjab Reorganisation Act, 1966. It is urged that any rule which affects the promotion of a person relates to his conditions of service, although mere chances of promotion may not be. The contention, in our opinion, must prevail. The second is that it was not permissible for the State Government to amend r.6(b) of the Class I Rules with retrospective effect under the proviso to Art. 309 of the Constitution so as to render ineligible for promotion to the post of Executive Engineer in Class I service, the members of Class II service who are diploma-holders although they satisfy the condition of eligibility of eight years' experience in that class of service. It is said that the unamended r.6(b) conferred a vested right on persons like the petitioners which could not be taken away by retrospective amendment of r.6(b). The third and the last submission is that the action of the State Government in issuing the impugned notification making retrospective amendment of r.6(b) of the Class I Rules was wholly arbitrary, irrational and mala fide and thus violative of Arts. 14 and 16(1) of the Constitution. It is submitted that the impugned notification was calculated to circumvent the direction given by this Court in its order dated February 24, 1984 on the basis of the undertaking given by the learned Additional Solicitor General that the State Government would consider the cases of all eligible officers belonging to Class II service for promotion to the Class I service.

Sub-s.(6) of s.82 of the Punjab Reorganisation Act, 1966 provides:

"82(6). Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall

not be varied to his disadvantage except with the previous approval of the Central Government."

It is quite clear that the proviso to s. 82(6) of the Punjab Reorganisation Act, 1966 is in the nature of a fetter on the power of the Governor under the proviso to Art. 309 of the Constitution to alter the conditions of service applicable to all persons serving in connection with the affairs of the State. It interdicts that the conditions of service applicable to persons referred to in sub-s. (1) or sub-s. (2) thereof i.e. members of civil services affected by the reorganisation of the State. The conditions of service of any persons who immediately before the appointed day were serving in connection with the affairs of the existing State of Punjab and are as from that date allocated for service in connection with the affairs of the successor State i.e. allocated Government servants can not be varied to their disadvantage.

There is a long line of decisions starting from *Mohammad Bhakar v. Y. Krishan Reddy*, [1970] SLR 768 down to *Mohammed Shujat Ali & Ors. v. Union of India & Ors.*, [1975] 1 SCR 449 while construing the analogous provision contained in the proviso to s. 115(7) of the States Reorganisation Act, 1956 laying down that any rule made under the proviso to Art. 309 of the Constitution which seeks to vary or alter the conditions of service without the previous approval of the Central Government would be void and inoperative being in violation of the proviso to sub-s. (7) of s. 115 of the Act., It is a trite proposition that any rule which affects the right of a person to be considered for promotion is a condition of service, although mere chances of promotion may not be. As laid down by this Court in *A.S. Parmar's case*, the petitioners like other members of Class II service who are diploma holders and satisfy the eligibility test of eight years' service in that class, were eligible for being considered for promotion to the post of Executive Engineer in Class I service without having a degree in Engineering. Admittedly, the impugned notification which seeks to amend r.6(b) with retrospective effect from July 10, 1964 clearly operates to their disadvantage as its purports to make them ineligible for promotion being diploma-holders.

In *Mohammad Bhakar's case*, the Court speaking through Mitter, J. said: "A rule which affects the promotion of a person relates to his conditions of service". It was held that a rule which made the passing of certain departmental examinations a pre-requisite for promotion having been made without the previous approval of the Central Government was void by reason of sub-s. (7) of s. 115. In *Mohammad Shujat Ali's case*, a Constitution Bench of this Court speaking through Bhagwati, J. observed:

"A rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service."

Under the Class I Rules as they existed immediately prior to the appointed day i.e. before November 1, 1966, a member of the Overseers Engineering Service in the Irrigation Branch, Punjab having a diploma was eligible for being promoted as Sub-Divisional Officer in the Class II Service and then in due course to the post of Executive Engineer in the Class I service within the quota prescribed for them without having a degree in Engineering. It was not necessary to possess a degree in Engineering as held by this Court in *A.S. Parmar's case* for purposes of promotion under the

unamended r.6(b) of the Class I Rules, as in the case of promotion to the post of Executive Engineer in Class I service under r.6(b) what was essential was eight years' service in that class and not a degree in Engineering. The impugned notification which purports to amend r.6(b) with retrospective effect, however, renders members of the Class II service like the petitioners who are diploma-holders ineligible for promotion by making a degree in Engineering an essential qualification for such promotion which amounts to alteration of the conditions of service applicable to them to their disadvantage without the previous approval of the Central Government and is thus void by reason of the proviso to sub-s.(6) of s.82 of the Punjab Reorganisation Act, 1966.

Faced with the difficulty, learned counsel for the respondents strenuously contends that the proviso to s.82(6) of the Act is not attracted in the present case. It is argued that on the appointed day i.e. November 1, 1966 the petitioners were not members of Class II service. It is said that the petitioners on the appointed day being Supervisors belonged to the Class III service and therefore were not governed by the unamended r.6(b). Reliance is placed on the notification issued by the State Government dated October 27, 1985 constituting the Class II service w.e.f. December 25, 1970 and it is said that the petitioners are not shown as belonging to Class II service. It was then contended that under r.3(c) of the Punjab Service of Engineers, Class II P.W.D. (Irrigation Branch) Rules, 1941, a degree in Engineering was essential till the Punjab Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1970 brought about a change. Inasmuch as none of the petitioners had the requisite qualifications, they could not become members of the Class II service. We are unable to accept this line of reasoning.

Undoubtedly, at the time when the petitioners were recruited as Supervisors in the Irrigation Branch, a Class III service, r.3(c) of the Punjab Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1941 laid down that no person shall be appointed to the service unless he possessed one of the university degrees or other qualifications prescribed in Appendix 'A' to the Rules. Note beneath r.3(c) however provided that the requirements of cl. (c) could be waived in the case of members of the Overseers Engineering Service, Irrigation Branch, Punjab for promotion to the service under the proviso to r.5 of the Rules. The term 'service' as defined in r. 1(2)(g) meant the Punjab Service of Engineers, Class II (Irrigation Branch). Proviso to r.5 of the Rules, however, empowered the State Government to relax the condition. It is clear from the terms of the proviso to r.5 quoted above that the State Government could relax the requirements of r.3(c) on the recommendation of the Chief Engineer in order to admit the promotion of a member of the Overseers Engineering Service, Irrigation Branch, Punjab if he was an officer of outstanding merit although he did not possess the qualifications specified in r.3(c) i.e. a degree in Engineering. Presumably, the petitioners were officers of outstanding merit and they were promoted as Offg. Sub-Divisional Officers in Class II service in January 1964, July 1966 and November 1969. Eventually, the State Government by notification dated October 27, 1985 appointed them on a regular basis in that post, w.e.f. December 25, 1970. 'Further, it is wrong to suggest that on the appointed day i.e. on November 1, 1966 they were all Overseers belonging to the Class III service and were therefore not governed by the unamended r 6(b). Two of them V.D. Grover and Mohinder Singh had already been' promoted as Offg. Sub-Divisional Officers prior to the appointed day i.e. in January 1964 and July 1966 and were therefore governed by the unamended r.6(b) of the Class I Rules and the third petitioner T.R. Kapur was also promoted to that post. subsequently in Novem-

ber 1969. Upon such promotion to the post of Offg. Sub- Divisional Officers they had not only the legitimate expectation that they would in due course be considered for confirmation but also had the right on such confirmation to be considered for promotion. It is also not quite accurate to say that the petitioners were not shown as belonging to the Class II service. A bare look at the notification dated October 27, 1985 would show that the petitioners figure at Sr. Nos. 246, 254 and 369.

It is not suggested that the State Government ever moved the Central Government seeking its prior approval to the proposed amendment of r.6(b) of the Class I Rules. In that connection, it is necessary to recall that prior to the reorganisation of the States under the States Reorganisation Act, 1956, a conference of the Chief Secretaries of the States that were to be affected was held at Delhi on May 18 and 19, 1956 for the purpose of formulation of the principles upon which integration of services was to be effected. The Government of India by its circular dated May 11, 1957 to all the State Governments stated inter alia that it agreed with the views expressed on behalf of the States' representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to sub-s.(7) of s. 115 of the Act in the matter of change of the conditions of service relating to departmental promotions. These considerations however do not arise in the present case. Admittedly, there was no Chief Secretaries Conference as was held prior to the reorganisation of the States under the States Reorganisation Act, 1956. Nor Was there any communication issued by the Central Government conveying its previous approval of the changes in service conditions which the States of Punjab and Haryana might make in terms of the proviso to s.82(6) of the Punjab Reorganisation Act, 1966. Under the States Reorganisation Act, 1956 so also under the Punjab Reorganisation Act, 1966, the power of the Governor to make rules under the proviso to Art.309 of the Constitution had been controlled by the proviso to s. 115(7) of the former Act and s.82(6) of the latter. It follows that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-s.(1) or (2) of s.82 of the Act could not be varied to his disadvantage except with the previous approval of the Central Government. That being so, the impugned notification issued by the State Government purporting to amend r.6(b) of the Class I Rules w.e.f. July 10, 1964 which rendered members of Class II Service who are diploma-holders like the petitioners ineligible for promotion to the post of Executive Engineer in Class I Service making a degree in Engineering essential for such promotion, although they satisfied the condition of eligibility of 8 years' experience in that class of service, must be struck down as ultra vires the State Government being contrary to s.82(6) of the Punjab Reorganisation Act, 1966. ' On the view that we take, there is no need for us to deal in detail with the other points raised. We shall only touch upon them.

One should have thought that the controversy whether a degree in Engineering was an essential qualification for promotion of Sub Divisional Officers in Class II Service to the post of Executive Engineer in Class I Service under r. 6(b) of the Class I Rules had ended with the decision of this Court in A.S. Parmar's case. Curiously enough, learned counsel for the respondents strenuously contends that the decision of this Court in A.S. Parmar's case was incorrect. He presses into service for our acceptance the decision of the High Court in o.P. Bhatia v. State of Punjab, ILR 1980 P & H 470 taking a view to the contrary. It is urged that in the erstwhile State of Punjab a degree in

Engineering was essential for recruitment of Assistant Engineers in Class II Service under r. 3(c) of the 1941 Rules as held by the High Court in O.P. Bhatia's case and that view was in consonance with the departmental instructions of the relevant rules in the State of Punjab and the State of Haryana as also in the erstwhile State of Punjab that r.6(b) required the promotees to have the essential qualification of a degree in Engineering. We do not think that it is open to question the correctness of the decision in A.S. Parmar's case which expressly overrules the view taken by the High Court in O.P. Bhatia's case. That apart, the proviso to r.5 of the 1941 Rules conferred power on the State Government to relax the requirement of r.3(c) on the recom-

mendation of the Chief Engineer in order to admit the promotion of a member of the Overseers Engineering Service (Irrigation Branch), Punjab if he was an officer of outstanding merit although he did not possess the qualification prescribed in r.3(c) i.e. the educational qualification of a degree in Engineering. The requirement of a degree in Engineering for recruitment to the Class II Service was done away with in the 1970 Rules. The contention also fails to take note of the fact that the requirement of a degree in Engineering which was an essential educational qualification for purposes of direct recruitment of Assistant Executive Engineers in Class I Service under r. 6(a) of the Class I Rules could not be projected for promotion of Sub-Divisional Officers belonging to Class II Service to the posts of Executive Engineers in Class I Service under r. 6(b) as they form two distinct sources from which the appointments to the posts of Executive Engineers could be made. As laid down in A.S. Parmar's case, what was of the essence for purposes of promotion of Sub-Divisional Officers who were members of Class II Service to the post of Executive Engineer under r.6

(b) of the Class I Rules was not a degree in Engineering, but 8 years' experience in that class of service i.e. Class II Service.

More fundamental is the contention that the impugned notification issued by the State Government purporting to amend r.6(b) with retrospective effect from July 10, 1964 which rendered members of Class II Service who are diploma-holders like the petitioners, ineligible for promotion to the post of Executive Engineer although they satisfied the condition of eligibility of 8 years' experience in that class of service was unreasonable, arbitrary and irrational and thus offended against Arts. 14 and 16(1) of the Constitution. It is urged that they were eligible for promotion under the unamended r.6(b) of the Class I Rules and had a right to be considered for promotion to the post of Executive Engineer, and a retrospective amendment of r.6(b) seeking to render them ineligible was constitutionally impermissible. It is said that the reason for this was obvious inasmuch as immediately prior to the reorganisation of the State of Punjab i.e. prior to November 1, 1966 even a member of the Overseers Engineering Service, a Class III Service, having only a diploma was eligible for being promoted as Executive Engineer in Class I Service in due course since in the matter of promotion under the unamended r.6(b) it was not necessary to possess a degree in Engineering as held by this Court in A.S. Parmar's case. It follows therefore that every member of the Overseers Engineering Service was eligible for promotion first as Assistant Engineer or Sub-Divisional Officer in Class II Service and thereafter, in due course, to the post of Executive Engineer in Class I Service even without the educational qualification of a degree in Engineering. In substance, the submission is that a retrospective amendment of r.6(b) by the impugned notification which seeks to take away

the eligibility of members of Class II Service who are diploma-holders for purposes of promotion to the posts of Executive Engineers in Class I Service from a back date ranging over 20 years and thereby renders invalid the promotions already made is constitution- ally impermissible.

It is well-settled that the power to frame rules to regulate the conditions of service under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: *B.S. Vadhera v. Union of India*, [1968] 3 SCR 575, *Raj Kumar v. Union of India*, [1975] 3 SCR 963, *K. Nagaraj & Ors. v. State of A.P. & Anr.*, [1985] 1 SCC 523 and *State Of J & K v. Triloki Nath Khosla & Ors.*, [1974] 1 SCR 771. It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the quali- fications. 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 Art. 309 which affects or impairs vested rights. Therefore, unless it is specifi- cally provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be re- verted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessary satisfy the tests of Arts. 14 and 16(1) of the Constitution: *State of Mysore v. M.N. Krishna Murty & Ors.*, [1973] 2 SCR 575 *B.S. Yadav & Ors. v. State of Haryana & Ors.*, [1981] 1 SCR 1024 *State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors.*, [1983] 2 SCR 287 and *Ex-Captain K.C. Arora & Anr. v. State of Haryana & Ors.*, [1984] 3 SCR 623.

A Constitution Bench of this Court in *State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors.* (supra) had to con- sider the constitutional validity of the proviso to s. 102 (1)(a) of the Gujarat Panchayat Act, 1961 as introduced by the Gujarat Panchayat (Third Amendment) Act, 1978 with retrospective effect and sought to extinguish the status of secretaries, officers and servants of the Gram and Nagar Panchayats who became members of a service under the State on being allocated to the panchayat service. The Court speaking through Chinnappa Reddy, J. observed:

"Now, in 1978 before the Amending Act was passed, thanks to the provisions of the Prin- cipal Act of 1961, the ex-municipal employees who had been allocated to the Panchayat Serv- ice as Secretaries, Officers and Servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as Government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accord- ance with the provisions of Art.311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Art. 14 of the Constitution."

The learned Judge observed that the Amending Act was sought to be given retrospective effect to get over the constitu- tional safeguards of Arts. 311 and 14 by reverting to a situation that existed some 17 years ago. He said that there was no power to do so and observed:

"The legislation is pure and simple, self- deceptive, if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legis- late with retrospective effect to take away or impair any vested right acquired under exist- ing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution nei- ther prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitu- tional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."

The learned Judge relied with approval on the following observations of Chandrachud, CJ. speaking for a Constitution Bench in *B.S. Yadav & Ors. v. State of Haryana & Ors.* (supra):

"Since the Governor exercises the legislative power under the proviso to Art. 309 of the Constitution, it is open to him to give retro-

spective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case. ' ' and summed up:

"Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Consti- tutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (consti- tutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Arts. 311 and 14 and is arbitrary and unrea- sonable."

Following the view the Court in *K.C. Arora's case* re-

ferred with approval to the observations of the Punjab & Haryana High Court in *Harbhajan Singh v. State of Punjab*, [1977] 2 SCR 180 to the effect:

"Now the rule-making authority must have been aware that a competitive examination for appointment to the service had been held under the old rules and

appointments were yet in the offing. Surely, the rule-making authority did not intend to exclude from appointment candidates who were eligible under the old rules but became ineligible by reason of an amendment of the rules made after the process of selection had almost reached a final stage."

And then queried:

"Are they to be penalised "by barring their entry into the Punjab Civil Service (Judicial Branch) because they accepted employment at a time when acceptance of such employment was not a bar to appointment to the service? We do not think that we will be justified in attributing such an unreasonable intention to the rule-making authority. In our view, the only reasonable interpretation of the amended rule, consistent with the prevailing situation, is to hold that only those persons who having joined the service of the Union or the State or a post under the Union or the State previously continued to hold the post on the date of the coming into force of the rule, are excluded from appointment to the Punjab Civil Service (Judicial Branch). The expression 'joined or joins' must be given a reasonable interpretation in the context of the situation and we think that our interpretation does not strain the language or attributes unreasonableness to the rule-making authority. In that view, the petitioner cannot be said to be ineligible for appointment."

The view expressed by the High Court has received the imprimatur of the Court in K.C. Arora's case. That appears to be the present trend.

In the result, the petitions must succeed and are allowed with costs. The impugned notification dated June 22, 1984 issued by the State Government of Haryana purporting to amend r.6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 with retrospective effect from July 10, 1964 is declared to be ultra vires the State Government.

P.S.S.
allowed.
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Petitions