

Supreme Court of India

State Of H. P vs Amar Nath Sharma on 12 July, 1994

Equivalent citations: 1994 SCC, Supl. (2) 532 JT 1994 (5) 342

Author: K Singh

Bench: Kuldip Singh (J)

PETITIONER:

STATE OF H. P.

Vs.

RESPONDENT:

AMAR NATH SHARMA

DATE OF JUDGMENT 12/07/1994

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

YOGESHWAR DAYAL (J)

CITATION:

1994 SCC Supl. (2) 532 JT 1994 (5) 342

1994 SCALE (3) 141

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The Government of Himachal Pradesh issued office memorandum dated September 27/29, 1980 (the memorandum) wherein the procedure for recruitment to Class III and IV posts/services not within the purview of the Himachal Pradesh Public Service Commission was laid down. The memorandum provided that fresh recruitment to the posts/services mentioned therein would be made on the basis of an interview which would carry 50 marks as follows:

"(a) For belonging to a family of whom not even one 10 marks member is in organised employment.

(b) For belonging to a family whose annual income 10 marks does not exceed Rs 6000.

(c) Minimum educational qualifications. 10 marks

(d) General knowledge, experience and personality. 20 marks

Total 50 marks The word 'family' has been defined by the Government as 'parents, brothers and unmarried sisters of the candidate'."

2. The State Government decided to hold special recruitment for Class III and Class IV posts in accordance with the procedure laid down in the memorandum. Candidates registered up to the specified dates with the various employment exchanges in the State of Himachal Pradesh were called for interview by the special selection committees constituted for the recruitment. On the basis of the interviews held by the special selection committees, merit lists were prepared and the selected candidates were given appointments.

3. The selection and the consequent appointments were challenged by way of a batch of writ petitions under Article 226 of the Constitution of India before the Himachal Pradesh High Court. A Division Bench of the High Court by its judgment dated 6-8-1982 allowed the writ petitions and quashed part of the memorandum, the selection and the appointments. These appeals by way of special leave are against the judgment of the High Court.

4. The High Court referred to various judgments of this Court and held that it was permissible for the State to make special provisions for the advancement of socially and educationally backward class of citizens. The High Court, however, did not agree with the definition of the expression "family" given in the memorandum and set aside the same on the following reasoning:

"This definition does not include spouses. In other words, the income of a husband or a wife of a candidate who may be earning fabulously has not been taken into consideration. There also seems to be no justification for not excluding married brothers of a candidate. A married brother has his own obligations and so it does not stand to reason that his income should be taken into consideration for deciding the question of weight age for a candidate."

5. The High Court also struck down the 10 marks provided for a candidate "belonging to a family of whom not even one member is in organised employment". According to the High Court a candidate who belongs to a rich business family cannot be considered socially and educationally backward and as such is not entitled to any weight age even though not a single member of the said family is in organised employment.

6. The High Court, on the examination of the proceedings of the special selection committees, came to the conclusion that the interviews were held in an arbitrary manner and quashed the same on the following reasoning:

"The record relating to the selection of Class III employees reveals that as many as 423 candidates were interviewed. As usual, the record does not show the date of interview. If all these candidates were interviewed on the day, it shows that it was impossible to give more than one to two minutes to each candidate and the result would be that arbitrary marks must have been allotted with respect to 'general knowledge, experience and personality'. There are cases also where in the interview high marks have been obtained by those who had obtained very low marks in the examination. For example, at p. 89 at Si. No. 17 is one Miss Nirmala who obtained only 3.1 per cent marks for educational qualifications, she was given 11 marks for general knowledge etc. whereas the next two candidates at SI. Nos. 18 and 19 who had secured 5.4 and 5.6 marks for educational qualifications, got only 10 and 11 marks. Another person at St. No. 1 on p. 89 who got 5.8 per cent marks for educational qualifications was given only 10 marks. In one case on p. 65 one Miss Kamla Devi who, to begin with, got 9 marks for interview was, later on, given two more marks. This appears to have put her up very high in the total marks. All this shows that the interviews were held in a very undesirable manner. The records of the selection committees for various districts have been placed before us. We have gone through them. We find that selection committees for Districts Solan, Kangra, Bilaspur, and Kulu have given lump sum marks in respect of general knowledge, experience and personality. The records of District Una do not show how the selections were made though the final typed list of the candidates is on record. As regards the records of Chamba, Mandi, and Hamirpur Districts, these show that separate marks for general knowledge, experience, and personality were awarded. The records for District Sirmur placed before us show only the names of the candidates selected after the interview."

7. The word 'family' has been defined by the State Government as "parents, brothers and unmarried sisters of the candidate". We are of the view that the High Court fell into patent error in quashing the said definition. The State Government adopted the definition keeping in view the social conditions in the State. It is contended on behalf of the State that in the existing social system in the State of Himachal Pradesh, specially in the low income groups, a married brother does not ordinarily live separately but continues to be an integral part of the family and this being a matter of common knowledge the Government was justified to take the same into account while defining the expression 'family'. Similarly the family structure and the social norms in the State of Himachal Pradesh do not encourage the spouses of the menfolks to seek employment or to work independently for earning. There was no material before the High Court to have reached the conclusion that the definition of 'family' adopted by the State Government was arbitrary. We therefore, set aside the finding of the High Court on this issue and uphold the definition of 'family' as given in the memorandum.

8. So far as the weightage provided for the candidates belonging to a family which has no member in the organised employment, we are of the view that the High Court was justified in holding the same to be arbitrary. There is no justification for providing any weightage or incentive for a class of citizens which is not socially and educationally backward. An affluent family having education and

social status cannot be given any preference in the matters relating to employment or appointment to any office under the State in the scheme of Articles 14 and 16 of the Constitution of India. We, therefore, agree with the High Court and set aside the weightage of 10 marks for a candidate "belonging to a family for whom not even one member is in organised employment". This shall operate prospectively from the date of this judgment. Any selection made prior to the date of this judgment, on the basis of the memorandum shall be considered valid.

9. The High Court, in our view, was not justified in quashing the selection procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly.

10. We, therefore, allow the appeals and set aside the impugned judgment of the High Court. The writ petitions filed before the High Court by the respondents are dismissed. No costs.

OMPAL SHARMA AND ANOTHER V. STATE OF HIMACHAL PRADESH AND OTHERS ORDER
We have today pronounced judgment in titled State of H.P. v. Amar Nath Sharma¹. For the reasons recorded in the said judgment, we allow this appeal and set aside the High Court judgment and dismiss the writ petition filed by Respondent 3 before the High Court. No costs.

UNION OF INDIA V. NASIRMIYA AHMADMIYA CHAUHAN ORDER

1. N.A. Chauhan, respondent in the appeal herein, was working as a Postmaster in the service of the Union of India. On attaining the age of 55 years, he was served with a notice dated 23-4-1990 directing his premature retirement from service after the expiry of the notice period. Pursuant to the said notice he was retired from service by the order dated 26-7-1990. The respondent challenged the order of retirement before the Central Administrative Tribunal, 1 1994 Supp (2) SCC 532 2 1994 Supp (2) SCC 532 Ahmedabad Bench. The Tribunal allowed the application and set aside the order of retirement. This appeal by way of special leave is against the judgment dated 23-10-1992 of the Central Administrative Tribunal, Ahmedabad Bench.

2. The order of retirement was challenged before the Tribunal on several grounds. The Tribunal, however, quashed the order of retirement on the short ground that the instructions dated 5-1-1978 issued by the Ministry of Home Affairs providing time-schedule for reviewing the cases of the government servants for premature retirement were not complied with in the case of the respondent. The Tribunal proceeded on the following reasoning :

"It is not in dispute that as per the above O.M. the applicant's case ought to have been reviewed in the quarter of July to September, 1988 as he had completed the age of 55 years on 16-3-1989 but his case was not reviewed by the Internal Screening Committee till 21-2-1989 and by the High-Power Committee till 21-2-1990. As per the observation in the Nigam case (supra), the principle behind such instruction is that the sword of Damocles must not hang over the officer every six months after attaining the age of 50/55 years. On analogy of the said observation in this case, the respondents by not reviewing the case of the applicant within the quarter as per the time-schedule resulted in great prejudice to the applicant, because after the period of quarter July to September, 1988 was over, the applicant could legitimately believe that as per this O.M. his case would not be reviewed thereafter unless on the question of integrity and he could legitimately believe that he would not be made to retire before his normal age of superannuation. In this case, the review which has been made is not on the ground of integrity but the ground is that of inefficiency of the applicant. Thus review not being made as per the time-schedule, has resulted in great prejudice to the applicant, which vitiates the order of premature retirement."

3. We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgments that the power under Fundamental Rule 56(j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the service record of the person concerned. There is no other bar for the exercise of the power under the said Fundamental Rule by the prescribed authority. Government instructions relied upon by the Tribunal are only the guidelines laid down, by the Central Government for its functioning. A government servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some Government instructions the order is liable to be quashed. The Tribunal was wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56(j) against a government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the said rule. If the record is adverse then he cannot take shelter behind the executive instructions and must be "chopped off" as and when he catches the eye of the prescribed authority.

4. On the last hearing we adjourned the case and directed the Union of India to produce the personal file of the respondent. We have examined the same and we are satisfied that there is sufficient material on the record to justify the order of prematurely retiring the respondent. We, also, permitted the learned counsel for the respondent to have a look at the record perused by us. We allow the appeal, set aside the impugned judgment of the Tribunal dated 23-10-1992 and dismiss the application of the respondent filed before the Tribunal. No costs.