T.R. KAPOOR & ORS.

*v.*

STATE OF HARYANA & ORS.

AUGUST 31, 1989

[S. NATARAJAN AND L.M. SHARMA, JJ.]

*Punjab Engineering Service—Class II Officers—Promoted as class I Officers pursuant to this Court's Judgment and Order dated 17.12.86—Whether Courts order complied with in its full spirit—Directions sought re: date of promotions.*

**This is an application filed by the Petitioners seeking directions of the Court for implementation of this Court's order dated 17.12.86 in its true spirit, in particular, praying that the promotion orders dated 30.12.87 be given effect from the back dates (deemed dates) or the dates when their juniors were promoted. The circumstances that led to the filing of this application may be stated thus.**

**The Petitioners were members of the regularly constituted class II Engg. service of the State with effect from 25.12.1970 and were working as Sub-Divisional Officers. Further avenues of promotion to them were barred because the State Government construed the service Rules to mean that without a degree in Engineering, a class II officer could not be promoted to class I service. The said interpretation of the State Government was disapproved by this Court in the case of *A.S. Parmar* v. *State of Haryana,* [1984] 2 SCR 476 as a consequence whereof a degree in Engineering did not remain an essential pre-requisite for a member of Class II service for being promoted to Class I service. After the Judgment in *Parmar's* case, the Petitioners filed a Writ Petition in this Court seeking a direction to the State Government to consider the case of the Petitioners and others similarly situated for promotion to the post of Executive Engineers in Class I service.**

**On 24.2.84 an undertaking was given to the Court by the State, that the State would consider the claims of all the eligible persons including the petitioners for regular appointment to Class I service within four months. Instead of granting promotions, the State Government amended the Rules with retrospective effect from 10.7.64 so as to make a degree in Engineering as an indispensable qualification for an officer in Class II service for being promoted as Class I officer. The Petitioners thereupon amended their Writ Petition and challenged the validity of**

A the amendment and the Court by its Judgment dated 17.12.86 struck down the amendment to the Rules as *ultra vires* the State Government.

In another case involving the same point viz., *Ashok Gulati* v. *B.S. Jain*, [1987] 1 SCR 600 this Court directed the State Government to consider the cases of all eligible members of Class II service for B promotion as Executive Engineers, within six months time. The State having failed to comply with the Court's order aforesaid, a contempt petition was filed, which was disposed of by the Court's order dated 30.12.87 by which time the State had reported to the Court that the promotions to all concerned eligible officers had since been granted.

C The Petitioners have now filed this application contending that since their placement in Class II service had been made effective with effect from 25.12.70 though the order therefor was issued on 27.10.85, they were entitled to be considered for promotion to Class I service as and when they attained eligibility after 25.12.70 especially in view of the Court's Judgment in *Parmar's* case whereby the degree in Engineering D was no longer a necessary qualification. The Petitioners therefore urge that they be placed in their rightful position by giving promotion from back dates or deemed dates, or, in any case, the date when persons junior to them were given promotions. According to them promotions granted to them belatedly on 30.12.87 did not render true justice to them and that the said order did not fully comply with the Court's E order. Further a grievance is also made that no benefit has been given to those officers who retired from service during this period. On the other hand the State contended that it has duly complied with the Court's order by giving promotions w.e.f. 30.12.87. The State supported its contention by saying that in approval of its action the Court on 17.12.86 dropped further proceedings in contempt petition F which meant that there has been due compliance with the Court's order.

Disposing of the application with directions this Court,

HELD: The combined effect of the striking down of the amend- G ment to the Rules by the Government and the direction issued to the Government in *Ashok Gulati's* case to consider for promotion the names of all the eligible Class II officers would entitle the petitioners to seek the benefit of promotion from 24.6.84 when the time limit of four months sought for by the State Government to make the promotions came to expire. But for the unsustainable amendment made to the H Rules, the Government could not have postponed the promotions of the

**Petitioners and other Class II officers similar to them beyond the time limit of four months which expired on 24.6.84. It would therefore follow that the order of promotion made by the State Government on 30.12.87 will not amount to due compliance of the Court's directions dated 17.12.86. The Government cannot take advantage of its own error in making an illegal amendment to the Rules with retrospective effect and postpone the benefit of promotion to Class II officers. [1087G-1088B]**

**The Government cannot also take umbrage for its action in giving promotion to the petitioners and other eligible Class II officers with effect from 30.12.87 either because the directions given on 17.12.86 did not set out the date from when promotions should be given or because the Court passed orders on 4.1.1989, dropping further proceedings in the contempt petition. [1088C]**

**The State Government was directed to give promotions to all eligible Class II officers with effect from 24.6.84 and to give them all the consequential benefits arising therefrom. The court further directed that the benefit of promotion and consequential benefits should also be given to all those officers who were eligible for promotion on 24.6.84 but who have retired since then. [1089B]**

CIVIL APPELLATE JURISDICTION: C.M.P. No. 17238 of 1988.

IN

Writ Petition Nos. 630-632 of 1984.

(Under Article 32 of the Constitution of India).

Shanti Bhushan and P.D. Sharma for the Petitioner.

G.L. Sanghi, Mahabir Singh, Rana Ranjit Singh, Srinivas Choudhary, S.K. Mehta and G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by

**NATARAJAN, J.** This Civil Miscellaneous Petition has been filed with a prayer for appropriate directions being issued to the State of Haryana as under:

(a) Issue appropriate directions to the respondents No. 1 and 2

A to implement the judgment and order dated 17.12.86 and carry out the directions issued by way of writ of mandamus as prayed to this Hon'ble Court in its full spirit giving effect to the promotion orders dated 30.12.87, from back dates (deemed dates) or the dates when their juniors were promoted.

B (b) Further issue suitable directions to the Respondents No. 1 and 2 to allow other consequential benefits viz. fixation of pay from deemed dates, payment of arrears, pension and gratuity benefits to all officers figuring in list dated 27.10.85 irrespective of their retirement prior to the order of promotions dated 30.12.87 pronouncement.

C (c) Give effective relief to the petitioner Shri Mohinder Singh Kundu in full, irrespective of his retirement.

(d) Any other suitable orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances set D out in the present petition.

To understand the grievance of the petitioners, it is necessary to set out the back ground material and the pronouncements made in *T.R. Kapoor* v. *State of Haryana,* [1987] 1 SCR 584 and *Ashok Gulati* v. *B.S. Jain,* [1987] 1 SCR 603 in favour of the E petitioners.

The petitioners who are Diploma holders initially joined the Class III Engineering Service of the Punjab State in the early fifties and were promoted to Class II service as officiating S.D.Os in the middle sixties and in the case of some of them the F said temporary promotion was even earlier. By a Notification dated 27.10.1985 the petitioners and other similarly situated persons were regularly constituted as Class II service officers with effect from 25.12.1970. Further avenues of promotion to them were barred because the State Government construed the Service Rules to mean that without a degree in Engineering, a G Class II officer cannot be promoted to Class I service. The said interpretation of the Service Rules was disapproved by this Court in *A.S. Parmar* v. *State of Haryana,* [1984] 2 SCR 476. By reason of that judgment, it followed that a degree in Engineering was not an essential pre-requisite for a member of Class II service being promoted to the Class I service.

H

After the judgment in *A.S. Parmar's* case (supra) was rendered, the petitioners filed Writ Petitions under Article 32 of the Constitution seeking writs of mandamus to the State Government to consider the case of the petitioners and the like of them for promotion to the posts of Executive Engineers in Class I service. On 24.2.1984 an undertaking was given to the Court that the State would consider the claims of all the eligible persons including the petitioners for regular appointment to Class I service and that the exercise would be completed within four months time. However, two days before the expiry of the said period of four months, the State Government brought an amendment to the Rules with retrospective effect from 10.7.64 so as to make a degree in Engineering an indispensable qualification for an officer in Class II service being promoted to Class I service. Dismayed by the action of the State Government, the petitioners amended their writ petitions suitably and challenged the validity of the amendment to the Rules. After considering the matter in detail, this Court delivered judgment on 17.12.1986 striking down the impugned amendment to the rules as *ultra vires* the State Government and in a connected appeal C.A. No. 149 of 1981 *Ashok Gulati* (supra) this Court directed the State Government to consider the cases of all eligible members of Class II service for promotion to the post of Executive Engineer in Class I service in accordance with law and to complete the process of appointment within six months' time.

As the State Government failed to give effect to the said directions within the allotted time of six months, the petitioners filed a contempt petition C.M.P. No. 15430 of 1988 against the State. In reply to the contempt petition, the State Government stated that the delay in the implementation of the Court's order was due to the stupendous nature of the work involved in the fixation of seniority of more than four hundred officers, their promotions, reversion, claims, and counter-claims and their deemed promotions etc. After taking note of the said explanation, this Court directed the State to expedite the matter and to complete the process of promotion of Class II officers to class I service within a period of two months and ordered the contempt petitions to be listed in the first week of January 1988. When the contempt petition came up before Court on 4.1.1988, it was represented on behalf of the State Government that the Court's directions have been complied with and orders of promotion have been issued to the petitioners on 30.12.87 itself. Acting on

A the said representation, this Court passed the following order and discharged the notice in the contempt petition:

> "In view of this Court's order dated 17th December, 1986 and the order dated 12th October, 1987, the officers concerned have been promoted by an order
B dated 30th December, 1987 and we presume that they will now be posted in consequence of that promotion. We hope and trust that the State of Haryana will pass posting orders expeditiously. The Civil Miscellaneous Petition is disposed of accordingly".

C It is thereafter the petitioners have come forward with this application for directions. The contention of the petitioners is that since their placement in Class II service had been made effective with effect from 25.12.1970, though the order therefor was issued on 27.10.1985, they were entitled to be considered for promotion to Class I service as and when they attained eligibility after 25.12.1970 especially in view of
D the judgment in *A.S. Parmar's* case (supra) which held that a degree in Engineering was not an essential pre-requisite for members of Class II service being promoted to posts in Class I service. It is, therefore, stated by the petitioners that in all fairness they must be placed in their rightful position by being given promotion "from back dates or deemed dates or, in any case, the dates when persons junior to them
E were promoted." According to the petitioners their juniors were given promotions in the years 1963, 1969, 1970, 1971, 1973, 1976 and 1978. The petitioners blame the State Government for their non-promotion because of the delay in preparing the seniority list of Class II officers till 1985 and for closing the doors of promotion to them by wrong interpretation of the Rules and thereafter by making a wrongful
F amendment to the rules till judgments were rendered in *T.R. Kapoor's* case (supra) and *Ashok Gulati's* case (supra) on 17.12.1986. The petitioners would therefore contend that the promotions given to them belatedly on 30.12.1987 do not render full justice to them and the said order is also not fully in compliance with the directions given by this Court in the judgments rendered in the two cases on 17.12.86. Yet
G another grievance put forth is that the Government has not given relief to those Class II officers who have retired from service prior to 30.12.1987. The petitioners therefore seek further directions being issued to the State Government to give them and other similarly placed officers besides those who have already retired from service the benefit of promotion with effect from back dates or deemed dates as
H per their entitlement or atleast from the dates when persons junior to

them were promoted together with all the consequential benefits arising therefrom. A

In reply to the petition for directions, three counter-affidavits have been filed on behalf of the State of Haryana, one by Shri H.D. Bansal, Financial Commissioner and Secretary to Government, Irrigation & Power Department and the second by Shri H.K. Khosla, B Engineer-in-Chief, Irrigation Department. In both the counter-affidavits it has been stated that the State has fully complied with the directions of the Court by giving promotion to all the petitioners by order dated 30.12.87 and that the Court, in approval of the action of the Government as proper compliance to the directions given on 17.12.1986, dropped further proceedings in the contempt petition and C as such there is no basis for the petitioners to seek further directions from the Court.

The third counter-affidavit dated 14.10.88 has been filed by Shri Raj Rup Fuliya, Deputy Secretary to Government of Haryana, Irrigation and Power Department. Therein the stand taken is that since the D petitioners had acquiesced in the interpretation of the Service Rules by the Government till they filed the writ petitions, the petitioners are not entitled to claim promotional benefits with reference to their service in Class II posts from 1970. It is further stated that in the judgments rendered in *T.R. Kapoor* v. *State of Haryana,* (supra) and *Ashok Gulati* v. *B.S. Jain,* (supra), this Court had not directed that promo- E tions should be given to the petitioners from back dates or deemed dates or from the dates their juniors were promoted to Class I Service. Likewise, it is stated that the Court had not directed the State to give the benefit of promotion to persons who have already retired from service.

F

The petitioners have controverted the averments in the counter-affidavits by means of a rejoinder and have reiterated their claim for promotion from anterior dates. In turn Shri Raj Rup Fuliya, Deputy Secretary to the Government has filed a supplemental counter-affidavit to the rejoinder filed by the petitioners.

G

In the light of the conflicting stands taken by the parties, it falls for consideration whether the petitioners are entitled to the benefit of promotion from anterior dates i.e. from deemed dates of promotion or from the dates their juniors were promoted as claimed by them or whether the promotions given to them on 30.12.87 by the Government amounts to grant of full relief to the petitioners as per this Court's H judgments dated 17.12.86.

A Taking up for consideration the contention of the petitioners that by reason of their being constituted Class II Officers with effect from 25.12.70, they were entitled to promotion as and when they attained seniority, but the State Government had unjustly deprived them the benefit of promotion due to wrong interpretation of the Rules, we are unable to accept the plea for more than one reason. In the first place, B the petitioners had acquiesced in the interpretation of the Rules by the State Government all along and it was only after the decision in *A.S. Parmar's* case, they chose to move this Court under Art. 32 of the Constitution to seek promotional benefits. Having remained complacent for a long number of years, the petitioners cannot now turn round and say that notwithstanding their inaction, they should be granted promotion from deemed dates on the basis of seniority. Secondly, in C the long interval of time that had elapsed before the petitioners chose to file the writ petitions, several other Class II Officers holding engineering degrees have been promoted to Class I Service. The benefits which had accrued to those persons by reason of their promotions cannot now be disturbed or interfered with by giving the peti- D tioners promotions from deemed dates of eligibility for promotion. In other words, a settled state of affairs among the Class I Promotees cannot be unsettled now.

As already stated, during the pendency of the writ petitions, the State Government gave an undertaking on 24.2.1984 that they would E consider the claims of the petitioners for promotion to Class I service and pass orders in four months' time. Subsequently, the State Government went back on its representation and brought about an amendment with retrospective effect to the Rules so as to make a degree in engineering an essential qualification for promotion to Class I serivce. This amendment was struck down by this Court in *T.R. Kapoor's* case F and it was observed as follows:

> "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 G 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 H 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".

After thus disapproving the Government's action, this Court gave directions to the State Government in the connected appeal *Ashok Gulati* v. *B.S. Jain,* (supra) to consider the claims of all the eligible Class II officers for promotion to Class I service without reference to their possessing a degree in Engineering. It is bearing in mind these factors the question whether the promotions granted to the petitioners with effect from 30.12.1987 amounts to sufficient compliance of the directions of the Court dated 17.12.1986 has got to be examined.

Inasmuch as the petitioners had not asked for mandamus being issued for promotion them to Class I posts from anterior dates on deemed basis or with reference to the promotions given to junior persons, and since even if such a prayer had been made, the relief would not have been given for the reasons set out above, this Court appropriately called upon the Government to consider the case of all eligible members of Class II service for promotion to the post of Executive Engineer in Class I service in accordance with law and to complete the process of appointment within six months time. The direction therefore enjoined the Government to give promotion to all Class II officers who were eligible for promotion to Class I service after Rule was issued in the writ petitions. Even before the direction was issued, the Government had conceded the position and that was why the Government had asked for four months time through its counsel to consider the case of all eligible Class II officers and give them promotion.

The combined effect of the striking down of the amendment to the Rules by the Government and the direction issued to the Government in *Ashok Gulati's* case (supra) to consider for promotion the names of all the eligible Class II officers would entitle the petitioners to seek the benefit of promotion from 24.6.1984 when the time limit of four months sought for by the State Government to make the promotions came to expire. But for the unsustainable amendment made to

A the Rules, the Government could not have postponed the promotion of the petitioners and other Class II officers similar to them beyond the time limit of four months which expired 24.6.1984. It would therefore follow that the order of promotion made by the State Government on 30.12.1987 will not amount to due compliance of the Court's directions dated 17.12.1986. The Government cannot take advantage of its own B error in making an illegal amendment to the Rules with retrospective effect and postpone the benefit of promotion to Class II officers.

The Government cannot also take umbrage for its action in giving promotion to the petitioners and other eligible Class II officers with effect from 30.12.1987 either because the directions given on 17.12.1986 did not set out the date from when promotions should be C given or because the Court passed orders on 4.1.1989 dropping further proceedings in the contempt petition. As regards the directions issued on 17.12.1986 to the State Government to give promotions to the Class II officers in accordance with law, they must be construed with reference to the observations made in *T.R. Kapoor's* case (supra) that the D amendment to the Rule with retrospective effect by the Government "was with the object of nullifying the decision of this Court in *A.S. Parmar's* case". Viewed thus, the Government's action in giving promotions to the petitioners and others belatedly on 30.12.1987 cannot be construed as due compliance of the Court's directions. Once that conclusion is reached the question would then be as to from which E date the Government should have given promotions to the petitioners and others in accordance with the directions of the Court. The latest point of time in which the Government could not and should have given promotions would be the date on which the four months' time prayed for by the Government on 24.2.1984 to give promotions to the eligible Class II officers came to an end. The said period on 24.6.1984 F and the Government cannot escape its obligation to give promotions to the officers in question with effect from that date.

In so far as the order passed in the contempt application on 4.1.1988 is concerned, it is needless to say that this Court did not go into the question on that day as to whether the order of promotion G passed on 30.12.1987 was in full compliance or only in partial compliance of the Court's order dated 17.12.1986. In fact it is the grievance of the petitioners that the State Government did not communicate to them the orders passed on 30.12.1987 and therefore they had no opportunity to state before Court on 4.1.1988 that the Government had acted *mala fide* in granting them promotion only with effect H from 30.12.1987 and that the said order had been passed only to escape

the consequences of the contempt petition and not for fulfilling the directions given by the Court on 17.12.1986 to promote all eligible persons in accordance with law.

We, therefore, direct the State Government to give promotion to all eligible Class II officers with effect from 24.6.1984 and to give them all the consequential benefits arising therefrom. The benefits of promotion and consequential benefits should also be given to all those officers who were eligible for promotion on 24.6.1984 but who have retired since then The Government shall complete the exercise in two months' time from today.

To this extent the petition for directions will stand ordered. No costs.

Y. Lal