

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

2024:PHHC:044885-DB:

CWP-7374-2024**Date of Decision:- 02.04.2024**

Bhupinder Singh and another

...Petitioners

Vs.

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS.JUSTICE SUDEEPTI SHARMA**Present: Mr.Harjeet Singh Minhas, Advocate
for the petitioners.**SANJEEV PRAKASH SHARMA, J. (Oral)**

The petitioners by way of this writ petition seek notional promotion and they are also challenging Punjab Roadways (Operational) State Services Class III (First Amendment) Rules, 2000 whereby Appendix A and B was introduced and channel of promotion was provided as per Appendix B to the post of Inspector from three different sources namely, i) Sub Inspectors, who have working experience for a minimum period of five years; ii) conductors who have experience for a minimum period of 10 years and iii) Ticket-verifiers who have experience for a minimum period of 15 years.

2. Learned counsel for the petitioners submits that the Ticket-verifiers cannot be equated to that of conductors and the channel of promotion so provided, is ultra-vires to the rules and seeks to take away right of the petitioners for promotion to the post of inspector by adding the Ticket-verifiers in the said channel.

3. Learned counsel for the petitioners submits that the Ticket-verifiers as per Appendix were temporary cadre posts and the performance of conductors is much wider. Further that the Educational qualification and experience for the post of conductors are different than that of ticket verifiers. The ticket verifiers being lower post to the post of conductor, therefore, the equal chance of promotion as provided for under the Appendix B to the post of inspector is discriminatory and arbitrary. The Rule, therefore, deserves to be quashed, and only channel available for promotion to the post of inspector ought to be from sub-inspectors as well as conductors alone. The learned counsel for the petitioners submits that by following the aforesaid provisions, the post of the petitioners would be able to get regular promotion on the post of inspectors and also further promotions to the post of Station Supervisor from earlier date.

4. We have considered the submissions made by learned counsel for the petitioner, firstly, we find that the petitioners have already filed writ petition before the Single Bench of this Court bearing No.CWP-21181/2017 titled as Bhupinder Singh and others Vs. State of Punjab and others, assailing their claim for promotion and contempt petition is also pending before the Single Bench bearing COCP No.1418 of 2018. We further find that so far as the petitioner No.1 is concerned, he was appointed as a conductor on 22.09.1976 and was promoted as Inspector on 26.05.2010 and further promoted to the post of Station Supervisor on 12.08.2015 and he retired from service on 31.01.2016, whereas petitioner No.2 was appointed as conductor on 10.06.1981 and was promoted as Sub Inspector on 17.09.2010 and he retired from service in the year 2015.

Both of them have retired from service way back in the year 2015 and 2016 respectively

5. That apart, we find that the petitioners have already been granted promotion from the post of conductors under the same set of rules. The promotions granted to them as Inspector and Station Supervisor as well as Sub Inspector was accepted by them. They did not approach this Court for challenging the said notification and Appendix at the relevant time when they themselves were promoted. The method and manner of promotion granted to the petitioners was in terms of the same Appendix which they have now challenged after retirement from service.

6. Coming to the challenge to the vires of the Appendix, law has been well addressed regarding the principles which are required to be considered upon a challenge made to the subordinate legislation in **“Naresh Chandra Agrawal Vs. The Institute of Chartered Accountants of India and others”**, 2024(2) Scale 246, the Hon’ble Apex Court laid down broad guidelines which reads as under:-

“32. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being 'ultra vires' the parent Act:

(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.

(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be noncompliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like 'to carry out the provisions' or 'to carry out the purposes.' Another sub-section specifies areas for delegation, often using language like 'without prejudice to the generality of the foregoing power.' In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the 'generality vs enumeration' principle.

(e) The "generality vs enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the

provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act”.

7. Keeping in view of the above guidelines, if we examine the present rules, which are sought to be challenged, we find that so far as the avenue of promotions are concerned, Sub-Inspectors are required to have experience of a minimum period of five years; Conductors are required to have a minimum period of 10 years of service experience while Ticket-verifiers are required to have a minimum period of 15 years service experience for consideration for promotion to the post of Inspector.

8. The provision also reflects that there is only one avenue of promotion available to the Ticket-verifier that is after period of 15 years. It needs not to be further stressed that each and every person in service must be given an opportunity and avenue of promotion at least once during his service.

9. Examining it from this angle, we find that so far as the Ticket-verifiers are concerned, they have been provided one avenue of promotion after they have put in 15 years of service and therefore, no plausible objection can be raised in this regard. We also do not find any provision of the Constitution being violated on account of the inclusion of ticket verifiers in the channel of promotion to the post of Inspector which also includes the conductors.

10. No fundamental right can be said to have been violated of the petitioners as the right available with the petitioners is only for consideration for promotion and not a right of promotion itself. In case titled as **Ashok Kumar Gupta and another Vs. State of U.P. and others, (1997) 5, SCC 201**, the Hon'ble Apex Court has held accordingly and we respectfully follow the same.

11. The subordinate legislation has resulted in benefits to the petitioners too and they have already been considered for promotion and also granted promotions to the higher posts. After retirement, it only appears to be a luxury litigation on their part which cannot allowed to be entertained.

12. The writ petition found to be devoid of merits and is accordingly, dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

02.04.2024
sd

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No