

A

LALJEE DUBEY AND OTHERS

v.

UNION OF INDIA AND OTHERS

November 13, 1973

B

[A. N. RAY, C.J. AND S. N. DWIVEDI, J.]

Constitution of India, Arts. 14 and 16—Discrimination in the matter of conferment of benefit through an administrative order—Letter of President dated November 17, 1953 classifying checker's post in Government Harness and Saddlery Factory, Kanpur as posts of lower division clerks—Appellants denied the designation as clerks while others similarly situate were given the benefit—Held discriminatory.

C

The appellants were employed as checkers in the Government Harness and Saddlery Factory, Kanpur. Their duties were substantially clerical. The question of designating checkers substantially during clerical work was referred by the Government to a committee known as "Kalyanwala Committee". The committee recommended that the persons doing clerical work should be designated as lower division clerks. The recommendation was accepted by the President of India by his letter dated November 17, 1953. The Director General was directed to re-classify checkers as L.D.Cs if they were matriculates or completed three years continuous service as checkers. The appellants claimed that they satisfied the above test and yet they were not classified as lower division clerks.

D

The appellants filed a civil suit for a declaration that they were entitled to be classified and re-designated as lower division clerks, founding their claim on the President's letter dated November 17, 1953. The grievance of the appellants was that other employees who did not possess the necessary qualifications were designated as L.D.Cs. The trial Court on evidence found that the appellants were performing duties which were substantially of a clerical nature and therefore granted the declaration in favour of the appellants. The District Court, on appeal by the State, held that the Court had no jurisdiction to grant relief since the President's letter was in the nature of departmental rules. On appeal by the appellants, the High Court held that the letter of the President of India did not constitute a rule under Art. 309 of the Constitution but was merely in the nature of an administrative or executive order. Before this Court, the appellants contended that the letter dated November 17, 1953, should be implemented because the Government accepted the recommendations of the Kalyanwala Committee. The other checkers performing duties similar to those of the appellants having been granted the benefit of the order contained in the President's letter, denial of the same benefit to the appellants who were similarly situate would be violative of the fundamental rights guaranteed under Art. 14 and 16.

E

F

Allowing the appeal,

G

HELD: (i) The letter of the President of India dated 17th November, 1953 gave a sanction to the recommendations of the Kalyanwala Committee. The authorities admitted some checkers as lower division clerks and left others to their own posts. The direction containing the sanction of the President indicates that the checkers who had the requisite qualifications, viz., passing matriculation examination or, in the alternative three years continuous service in the department, were to be put in the category of lower division clerks. In the case of checkers who had requisite qualifications the authorities concerned had no option to make any selection among such persons for the conferment of the benefit. The appellants possessed the required qualifications and were performing the duties which were substantially clerical. The appellants are thus entitled to be designated as lower division clerks in accordance with the directions contained in the letter of the President dated November 17, 1953. There has been arbitrary discrimination against the appellants.

H

In the case of checkers who did not possess the requisite qualifications, the authorities had the discretion in matters of classification of checkers as lower division clerks. [253F-G]

(ii) Held further that it was not necessary to express any opinion as to whether the President's letter dated November 17, 1953 became a rule under Art. 309 of the Constitution. [254C]

Purushottam Lal and others v. Union of India and another, [1973] 1 S.C.C. 651, followed.

Union of India v. K. P. Joseph and others, A.I.R. 1973 S.C. 303, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1987 of 1968.

Appeal by Special Leave from the judgment and Order dated the 29th September, 1965 of the Allahabad High Court in Second Appeal No. 2517 of 1961.

R. K. Garg, S. C. Agrawala and V. J. Francis, for the appellants.

S. N. Prasad and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by

RAY, C.J. This is an appeal by special leave from the judgment dated 29 September, 1965 of the Allahabad High Court.

The question in this appeal is whether the appellants who are plaintiffs in the suit are entitled to be classified and re-designated as lower division clerks.

The appellants were employed in the Government Harness and Saddlery Factory, Kanpur. They were designated as checkers. Their duties were substantially clerical. They made representations to the authorities for being classified as clerks. The matter was referred to a Committee called 'Kalyanwala Committee'. The Committee recommended that persons doing clerical work should be designated as lower division clerks. The recommendation was accepted by the President of India. The Director General was directed to re-classify checkers as lower division clerks if they were matriculates or completed three years' continuous service. The appellants claimed that they satisfied the tests and yet they were not classified as lower division clerks. The grievance of the appellants was that other employees who did not possess the necessary qualifications were designated as lower division clerks. The appellants asked for a declaration that they were entitled to be classified and redesignated as lower division clerks. The appellants founded their claim on the letter dated 17 November, 1953.

The respondents contended that the duties performed by the appellants were not substantially clerical and other employees who were sufficiently qualified were designated as lower division clerks.

The trial Court referred to the oral evidence. Three witnesses on behalf of the appellants narrated their career in the service of Harness and Saddlery Factory and described the duties performed by them. The trial Court also referred to the evidence on behalf of the respondents. The principal issue before the trial Court was whether the appellants were entitled to be classified and designated as lower division clerks on the basis of the recommendation of Kalyanwala Committee and the sanction of the President of India thereon. On

A this issue the trial Court referred to the evidence on behalf of the parties and found that the evidence showed beyond any doubt that the appellants performed duties which are of a substantially clerical nature. The trial Court, therefore, answered the issue in favour of the appellants.

B On appeal the District Judge found in favour of the appellants that the duties performed by them were of a substantially clerical nature. The District Judge, however, held that the Court had no jurisdiction to grant relief to the appellants even if departmental rules have been disregarded by the executive authorities.

C The High Court on second appeal found that the finding of the trial Court as well as of the appellate Court was in favour of the appellants that they performed duties of a substantially clerical nature. The learned single Judge of the High Court on second appeal referred the matter to the learned Chief Justice for constituting a larger Bench on the question as to whether the order of the President of India created a right in favour of the appellants.

D The matter was thereafter heard by a Division Bench of the High Court. The question for consideration before the High Court was whether the letter dated 17 November, 1953 conferred any right on the appellants. The appellants contended that the letter constituted a rule framed by the President of India under Article 309 of the Constitution. The respondents on the other hand contended that the letter was a mere order of an administrative nature.

E The letter dated 17 November, 1953 was addressed by the Under Secretary to the Government of India, Ministry of Defence to the Director General, Ordnance Factories. The letter referred to the recommendations of a committee of Enquiry called the 'Kalyanwala Committee' and conveyed the sanction of the President as follows :—

F "The existing posts of Checkers, Grades I & II in Ordnance Factories, the duties of which are substantially clerical, shall be classified by you in consultation with the D.F.A. (FYS) as posts of Lower Division Clerks. The incumbents of the posts so classified will be redesignated as lower division clerks provided they are at least matriculates, or, if non-matriculates, they have completed 3 years' continuous service as Checkers on the date from which these orders take effect, or from the date of reorganisation of the existing cadre of Checkers whichever is later. Such of the incumbents of these posts as are non-matriculates and have not completed 3 years' continuous service as Checkers on the date of effect of this letter, provided they are considered suitable in all respects for the work, will also be redesignated as Lower Division Clerks; they will, however, be reverted as checkers as and when vacancies occur, in future in that grade and will then be replaced in the grade of Lower Division Clerks by qualified individuals.

H The remaining posts will continue to be designated as Checkers but there will be no grades. Incumbents of these

posts will be brought on to the single scale of Rs. 45-2-55-3-85 in place of the existing two scales of Rs. 40-1-50-2-60 and Rs. 55-3-85 on the date of from which these orders take effect or the date of reorganisation of the cadre of Checkers; whichever is later".

The letter dated 17 November, 1953 consisted of directions of two different nature. First, there were directions laying down how certain Checkers were to be reclassified as lower division Clerks. Second, directions given related to the abolition of the two grades of Checkers who remained after excluding those persons who were redesignated as Lower Division Clerks. There was a further direction that in future there would be only one single grade for the Checkers. That grade would be Rs. 45-2-55-3-85 instead of the two pre-existing scales of Rs. 40—1—50—2—60 and Rs. 55—3—85.

The High Court on second appeal was divided in opinion. One of the learned Judges held that the letter contained orders and instructions governing certain individuals only who were in service towards the end of the year 1953 and the underlying idea was to reclassify them as Checkers. There was no idea to fix conditions of service of Checkers for all time. The letter did not constitute a rule under Article 309 of the Constitution. The letter was a mere direction of an administrative nature. The other learned Judge held that the letter laid down conditions of service. Conditions of service could only be prescribed by the President by Rules under Article 309. The letter amounted to a rule framed by the President of India.

In view of the division the question was referred to the third learned Judge as to whether the letter dated 17 November, 1953 constituted a rule framed by the President under Article 309. The third learned Judge held that the letter was of a composite nature. There were *ad hoc* directions in respect of certain checkers. The letter also laid down some conditions of service which would apply to the remaining checkers. The letter did not constitute a rule framed by the President of India under Article 309. The letter merely contained an order of an administrative or executive nature. This view of the third learned Judge became the majority view of the High Court.

Counsel on behalf of the appellants contended that the letter dated 17 November, 1953 should be implemented because the Government accepted the recommendation of Kalyanwala Committee. Counsel for the appellants submitted these reasons. Denial of the benefits of the order to the appellants is violative of fundamental rights guaranteed under Articles 14 and 16 of the Constitution. Other checkers performing duties similar to those of the appellants have been granted the benefit of the order contained in the letter dated 17 November, 1953 whereas the appellants who are similarly situate have been arbitrarily denied the benefit of the same.

In the recent decision in *Purshottam Lal & Ors. v. Union of India & Anr.* [1973] 1.S.C.C. 651 this Court held that the Government was bound to implement the recommendations of the Second Pay

A Commission and if the Government did not implement the report regarding some employees only there would be a breach of Articles 14 and 16 of the Constitution. In *Purshottam Lal* case (supra) the Government of India set up a Commission called the "Second Pay Commission" to enquire into emoluments and conditions of service of Central Government employees. Purshottam Lal and others were employed in the Forest Research Institute and College, Dehra Dun. They were Research Assistants. Their contention was that their case was covered by the recommendations of the Commission. On 2 August, 1960 the Government issued a notification giving effect to the recommendations of the Pay Commission. On 21 June, 1962 the Government of India revised the pay scales of the petitioners and stated that the revision of the pay scales of the petitioners would take effect from the date of the issue of the order. The petitioners contended that the revised pay scales of similar posts in similar sister institutes of the Research Institute under the same Ministry had been implemented from 1 July, 1959 according to the Second Pay Commission recommendations, and, therefore, the petitioners were entitled to the benefit of the retrospective date, viz., 1 July, 1959. The Government contended that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine what categories of employees should be taken to have been included in the terms of reference. This Court did not accept the contention of the Government. The Government made reference in respect of all Government employees. The Government accepted the recommendations. Therefore, the Government was bound to implement the recommendations in respect of all Government employees. The reason given by this Court was that if the Government did not implement the Report regarding some employees only there would be a breach of Articles 14 and 16 of the Constitution.

In the present case the letter dated 17 November, 1953 shows that the President of India gave sanction to the recommendations of Kalyanwala Committee. The authorities admitted some of the persons as lower division clerks and left others to their own posts. The direction containing the sanction of the President indicates that checkers who had the requisite qualifications, viz., passing the matriculation examination or in the alternative three years' continuous service in the department were to be put in the category of lower divisions clerks. The letter dated 17 November, 1953 divided checkers into two groups. The first group consisted of checkers who possessed the necessary qualifications as laid down in that order. The second group consisted of those who did not possess that qualification. In the case of persons of the first group the authorities concerned could not have any option to make any selection among such persons. The direction in that letter indicates that such persons should be classified as lower division clerks. In the case of the second group, viz., those who did not fulfil the qualification requirements it was left open to the authorities to exercise their discretion and classify some of the checkers in the posts of lower division clerks if they considered them to be fit and suitable to serve in those posts. The appellants were, therefore, entitled to be designated as lower division clerks, in accordance with the directions contained in

the letter dated 17 November 1953. There has been arbitrary discrimination against the appellants. A

In another decision in *Union of India v. K. P. Joseph and Ors.* not yet reported in Supreme Court Reports but reported in A. I. R. 1973 S. C. 303 this Court considered whether a general order described as Office Memorandum providing for certain benefits to ex-military personnel on re-employment on the basis of their length of actual military service conferred any right relating to conditions of service. This Court held that the persons mentioned in the order were entitled to have their pay fixed in the manner specified in the order and that was part of the conditions of service. B

It is not necessary to express any opinion as to whether the letter dated 17 November, 1953 became a rule under Article 309 of the Constitution. For the purposes of the appeal it is sufficient to hold that the letter has been accepted by the authorities and given effect to in the case of some of the employees belonging to the same group as the appellants. C

For these reasons, the appellants are entitled to succeed. The appeal is accepted. The judgment of the High Court is set aside. D

The parties will pay and bear their own costs in view of the fact that they did so throughout under the orders of Court.

S.B.W.

Appeal allowed.