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VIMAL KUMARI
v.
STATE OF HARYANA AND ORS.

FEBRUARY 4, 1998

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[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

Service Law :

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Haryana Social Welfare and Relief Organisation Service Group 'C' Rules, 1983:

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Service Rules—Draft Rules—Not notified for about a decade—Nor the Government gave any explanation for not doing so—Employee reverted on the basis of Draft rules—Validity of—Held: If there is clear intention on the part of Government to enforce the draft rules in the near future, recourse to such draft rules is permissible to meet any emergent situation—However, if there is no intention to enforce or notify the rules at all recourse to such rules cannot be taken—This is because such draft rules cannot be treated as rules made under Art. 309—Further, draft rules cannot legally exclude the jurisdiction of the competent authority for regulating service conditions of employees by executive instructions—In the circumstances of the case, draft rules cannot be invoked for regulating promotion—Hence, reversion order of employee set aside—Constitution of India, 1950, Art. 309.

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Promotion—Criteria—Seniority—Basis for promotion—Held: In the absence of any other criterion seniority was rightly adopted as the basis for promotion.

Back wages—Employee wrongly reverted—Held: Order of reversion quashed—Direction issued for payment of all consequential benefits including arrears of salary.

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The appellant was appointed as Tailoring Instructor and subsequently promoted as Superintendent. The promotion was made on the basis of seniority as there were no departmental provisions to specifically regulate the promotion. However, respondent nos. 3 and 4 challenged the promotion before the High Court on the ground that they were graduates and, therefore should have been promoted in place of the appellant in terms of the Draft Rules known as Haryana Social Welfare Organisation Service Group 'C' Rules,

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1983. The High Court accepted this contention and accordingly respondent no. 3 was promoted to the post of Superintendent in place of the appellant who was reverted to the post of Tailoring Instructor. Hence this appeal.

On behalf of the appellant it was contended that the Draft Rules had not been enforced and consequently promotion to the post of Superintendent could have been regulated only on the basis of executive instructions by adopting "seniority" as a criterion.

Allowing the appeal, this Court

HELD : 1. It is open to the Government to regulate the service conditions of the employees for whom the Rules are made, by those Rules even in their "draft stage" provided there is clear intention on the part of the Government to enforce those Rules in the near future. Recourse to such Draft Rules is permissible only for the interregnum to meet any emergent situation. But if the intention was not to enforce or notify the Rules at all, as is evident in the instant case, recourse to "Draft Rules" cannot be made. Such Draft Rules cannot be treated to be Rules made under Article 309 of the Constitution and cannot legally exclude the operation of any existing executive or administrative instruction on the subjects covered by the Draft Rules nor can such Draft Rules exclude the jurisdiction of the Government, or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the conditions of service of the employees working under them. [661-C-E]

2.1. In the instant case, the Draft Rules were prepared in 1983. They have been lying in the nascent state since then. In the meantime, many promotions including that of the appellant were made on the basis of 'seniority' which, in the absence of any Rule made under Article 309, could be legally adopted as the reasonable basis for promotion. Seniority having thus been adopted as the criterion for making promotion on the post of Superintendent could not have been displaced by the Draft Rules. [661-F-G]

2.2. In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the employees would be regulated by the "Draft Rules" prepared in 1983, it was not open either to the Government or to any other authority nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those Rules particularly as the Government has not come out with any explanation why the Rules, though prepared in

A 1983, have not been notified for the long period of more than a decade. The delay, or, rather inaction is, startling. [661-H; 662-A]

2.3. Since the appellant was wrongly reverted the revision order is quashed. The appellant shall be allowed to continue on the post of Superintendent and shall be paid all consequential benefits, including the arrears of salary. [662-F]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4721 of 1996.

C From the Judgment and Order dated 25.4.94 of the Punjab & Haryana High Court in C.W.P. No. 757 of 1994.

S. Balakrishanan, S. Prasad and M.K. D. Namboodri for the Appellant.

Jasbir Malik, Prem Malhotra and Lalita Kaushik (N.P.) for the Respondents.

D The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. This appeal is directed against the judgment and order dated 25.4.1994 of the High Court of Punjab & Haryana by which the writ petition filed by respondents 3 and 4 challenging the promotion of the present appellant on the post of Superintendent was allowed.

E The appellant was appointed as Tailoring Instructor in 1983. On 31.5.1991, she was promoted to the post of Superintendent. Respondents 5 to 9 were also promoted to that post. Their promotions were challenged by respondents 3 and 4 on the ground that they being eligible for promotion to the post of Superintendent should also have been considered first and should have been promoted in place of the appellant and respondent 5 to 9, as they were Graduates and were, therefore, eligible for such promotion in terms of the Draft Rules, known as "Haryana Social Welfare and Relief Organisation Service Group 'C' Rules, 1983."

F The High Court by the impugned judgment accepted the claim of respondents 3 and 4 and held that respondents 3 and 4 being Graduates and eligible in terms of the Draft Rules ought to have been promoted in place of the appellant and other respondents who were promoted only on *ad hoc* basis.

G Respondents 1 and 2 thereafter considered the claim of respondents 3 and 4 and other similarly situated employees for promotion to the post of

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Superintendent in terms of the Draft Rules, as directed by the High Court and promoted Smt. Asha Kiran, respondent no. 3, to the post of Superintendent and posted her at Mahila Ashram, Karnal, in place of the appellant who was reverted to the post of Tailoring Technician. It is in these circumstances that the present appeal has been filed. A

Learned counsel for the appellant has contended that the High Court was not justified in relying upon the Draft Rules which had not been enforced and consequently the promotion to the post of Superintendent could have been regulated only on the basis of executive instructions by adopting any reasonable criteria, including "seniority" as the basis of such promotion. B

The Draft Rules were prepared in 1983 and since then they have not been enforced. It is, no doubt, open to the Government to regulate the service conditions of the employees for whom the Rules are made, by those Rules even in their "draft stage" provided there is clear intention on the part of the Government to enforce those Rules in the near future. Recourse to such Draft Rules is permissible only for the interregnum to meet any emergent situation. But if the intention was not to enforce or notify the Rules at all, as is evident in the instant case, recourse to "Draft Rules" cannot be taken. Such Draft Rules cannot be treated to be Rules made under Article 309 of the Constitution and cannot legally exclude the operation of any existing executive or administrative instruction on the subjects covered by the Draft Rules nor can such Draft Rules exclude the jurisdiction of the Government, or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the conditions of service of the employees working under them. C D E

In the instant case, as pointed out above, the Draft Rules were prepared in 1983. They have been lying in the nascent state since then. In the meantime, many promotions, including that of the appellant were made on the basis of 'seniority' which, in the absence of any Rule made under Article 309, could be legally adopted as the reasonable basis for promotion. Seniority having thus been adopted as the criteria for making promotion on the post of Superintendent could not have been displaced by the Draft Rules and the High Court could not have invoked any provision of those Draft Rules which had been lying frozen at their embryonic stage for more than ten years. F G

In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the respondent and their other colleagues would be regulated by the "Draft H

A Rules” prepared in 1983, it was not open either to the Government or to any other authority, nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those Rules particularly as the Government has not come out with any explanation why the Rules, though prepared in 1983, have not been notified for the long period of more than a decade. The delay, or, rather inaction, is startling.

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D On facts also, there is a strong case in favour of the appellant. She was appointed originally on the post of Tailoring Instructor in 1983. After having put in eight years of service, she was promoted on ad hoc basis to the post of Superintendent on the basis of seniority, as she was, by all reckonings, senior to other eligible candidates, including respondents 3 and 4 who were appointed in 1986. If the question of promotion is considered in the background of the fact that the Draft Rules, which were lying in a frozen state, could not have been utilised for regulating the services of the employees working in the department in question, the appellant’s promotion, which was made on the basis of seniority could not have been legally disturbed. Moreover, she was appointed on the post of Tailoring Instructor and not on the post of Tailoring Technician which is the feeder post for making promotion to the post of Cutter Master and then to the post of Manager and ultimately to the post of Superintendent. It will be noticed that the State Govt. had not disputed before the High Court that the appellant was senior to respondents 3 and 4.

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F Since the appellant’s reversion has been brought about only because of the promotion of respondent No. 3 on the post of Superintendent in terms of the order passed by the High Court and since we have found that the order passed by the High Court is not correct, we allow this appeal and set aside the impugned judgment dated 25.4.1994 and quash the order dated 1.7.1994 by which the appellant was reverted to the post of Tailoring Instructor. The appellant shall be allowed to continue on the post of Superintendent and shall be paid all consequential benefits, including the arrears of salary. There shall, however, be no order as to costs.

G We may, however, clarify that if any post of Superintendent is available for promotion of the appellant, the promotion of respondents 3 and 4 already made, shall not be disturbed.

V.S.S.

Appeal allowed.