

INDIRA VIJ
v
STATE OF HARYANA

NOVEMBER 12, 2003

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

Service Law:

Haryana Technical Education Department (Group A Service) Rules:

r. 9(1)(c)—Government Polytechnic—Post of Principal of Engineering Institute—Promotion to—Eligibility—English teacher, later became Head of Department in Applied Sciences—Claiming promotion as Principal of Engineering Institute—Held, Head of Department in Engineering would not include Heads of Department in Applied Sciences—Applied Sciences cannot be treated in the Engineering side—Therefore, claimant not eligible for being promoted as Principal of Engineering Institute—However, in view of amendment in r.9 by notification dated 23.3.2001, claimant's case should now receive consideration for promotion to the post of Principal on non-Engineering side.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4717 of 1998.

From the Judgment and Order dated 16.4.98 of the Punjab and Haryana High Court in C.W.P.No. 7897 of 1997.

Ms. Indu Malhotra and Ms. Ruchi Khurana for the Appellant.

S.C. Patel, Praveen Kumar Rai and Ms. Kavita Wadia for the Respondents.

The following Order of the Court was delivered :

The short question that arises for consideration in this appeal is whether the appellant who is Head of Department in the Applied Sciences, was eligible for promotion to the post of Principal of the Engineering Institute under the unamended Rules known as Haryana Technical Education Department (Group-A) Service Rules (hereinafter referred to as the 'Rules').

A The appellant was appointed as far back in 1975 as a lecturer in English in a Government Polytechnic for Women, Ambala. Subsequently, on 23rd of May, 1983 she was promoted to the next higher post of Head of Department in applied sciences. It is not in dispute that under the Rules no provision existed as regards grant of promotion to the head of the Department of non-technical institution to the post of Principal.

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C The appellant with some other persons filed a writ petition No. 16160/1990 in the High Court of Punjab and Haryana. A Division Bench of the High Court by reason of a Judgment and order 18.3.1991 at the threshold dismissed the same on the ground that the petitioners being belonging to the Engineering side as also being head of the Department thereof can claim for consideration for their promotion on that side. Subsequently a post of principal in Engineering Institute fell vacant. It appears that the appellant was promoted to the post of principal on Engineering side.

D Questioning the same a writ petition under Article 226 of the Constitution came to be filed before the Punjab and Haryana High Court challenging the promotion of the appellant on the ground that she was not eligible for being promoted to the post of principal in Engineering Institute. The High Court, after having found that the appellant was not eligible for being promoted to the post of principal in Engineering Institute, set aside the said order of promotion. It is against the said judgment of High Court, the appellant is in
E appeal, by means of special leave petition, before us.

F Ms. Indu Malhotra, learned counsel appearing on behalf of the appellant urged that the question as to whether the appellant belonged to the Engineering side or non-Engineering side has already been determined by the Division Bench in Writ Petition No. 16160/1990 and thus the impugned judgment must be held to be bad in inasmuch as a coordinate Bench of the High Court could not have take a different view. Learned counsel would contend that in such a situation the only course left open to the High Court was to refer the matter to a bench of three judges. Learned counsel would contend that as no appeal was filed against the aforementioned judgment dated 25th March, 1991, it
G attained finality and the State was bound thereby.

H The said submission loses much of its relevance keeping in view the fact that the respondents herein were not parties to the said decision as by reason the wrong interpretation of the statutory rules at the threshold, the High Court could not have interfered with the rights of the third parties.

Furthermore, this Court independently is required to interpret the rules. It may further be noted that the High court in its judgment in our considered opinion, has correctly held that the questions which had been raised before the High Court had not been raised before the earlier Division Bench. A

We therefore, proceed to decide the manner on merits, as regards the eligibility of the appellant for promotion to the post of principal on Engineering side, B

The relevant portion of Rule of runs as under:

9(1) Recruitment of the Service shall be made, C

(a)

(b)

(c) in case of Principal of Polytechnics/Technical Institutions offering diplomas in Engineering Trades, D

(i) 75% by promotion from amongst Heads of Departments in Engineering; and

(ii) 25% by direct recruitment or,

(iii) by transfer or deputation of an officer already in the service of any State Government or the Government of India. E

Rule 9(1) (c) on a plain reading would clearly shows that recruitment of Principals of Polytechnics/Technical Institution offering diplomas in Engineering rides can be made in one of the manner laid down therein. Sub-clause (1) of clause (c) of sub-rule (1) of Rule 9 specifies that 75% of such recruitment would be made by promotion from amongst Heads of Departments in Engineering. Applied science is taught only in the first year whether Engineering or Non-Engineering course at this. It does not fulfil the criteria laid down in the statutory rule. F

It is not disputed that the appellant is an English teacher and is promoted as Head of the Department of Applied Sciences. The subject which is tough has nothing to do with the knowledge of Engineering. Heads of the Department in Engineering, therefore, in our opinion would not include Heads of the Department in Applied Sciences. The applied sciences can not be treated in the Engineer side and therefore, the appellant was not eligible for being promoted as principal of a Engineering Institute. We therefore, affirm the H

A decision of the High Court.

Learned counsel then urged that in any view of the matter, she being the senior most ought to have been promoted after the amendment carried out in the Rules in the year 2001. The Notification dated 23.3.2001 whereby the Rules were amended runs as thus:

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**HARYANA GOVERNMENT
TECHNICAL EDUCATION DEPARTMENT**

NOTIFICATION THE
23RD MARCH, 2001

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No GSR. 8/Const./Art. 309/2003- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Government of Haryana thereby makes the following rules further to amend the Haryana Technical Education Department (Group-A) Service Rules, 1986, namely.

D

1. These rules may be called the Haryana Technical Education Department (Group-A) Service (Amendment) Rules 2001.

E

2. In the Haryana Technical Education Department (Group-A) Service Rules, 1986 called the said rule, in rule 9 in sub-rule (1) in clause (d) in item (e), after the word "Management", the sign and words "Applied Sciences" shall be inserted.

3. In the said rule, In Appendix B.

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(i) against serial number 4, under column 3 and 4 after the word "Management" wherever occurring, the sign and words "/Applied Sciences" shall be inserted.

(ii) against serial number 19 under column 3 and 4, for the words "Commercial Practice and Stenography" wherever occurring the words "Commercial Practice or Stenography" shall be substituted.

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(iii) against serial number 30. under column 3 and 4 for the words "Commercial Practice and Stenography" wherever occurring, the words "Commercial Practice or Stenography" shall be substituted.

H.C. DISODIA.

COMMISSIONER AND SECRETARY TO GOVERNMENT HARYANA,
TECHNICAL EDUCATION DEPARTMENT,

H

CHANDIGARH.

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In terms of the aforementioned notification, therefore, applied science has been held to be falling within non Engineering side. The right of the petitioner to be considered for promotion in view of the said amendment arose thereafter. In view of the amendment carried out in Rule 9 by the State of Haryana we are of the opinion that the appellant's case should now receive consideration at the hands of the Appropriate Authorities for promotion to the post of Principal on non-Engineering side. The competent authority, no doubt, shall consider the matter in accordance with law and having regard to the admitted fact that the appellant had been performing duties as a Principal since 1996. We hope and trust that such consideration be bestowed as and when a post falls vacant and as expeditiously as possible.

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With these observations, we dismiss this appeal. No costs.

R.P.

Appeal dismissed