

place and obtained *ex parte* decree. The passing of *ex parte* decree further shows that probably the wife was not properly got served in the village in district Jullundur and when she came to know of the decree, she moved to Allahabad High Court and her appeal was dismissed as barred by time. At least, on these facts it will cause manifest injustice not only to the wife but also to the husband because both the parties would be driven to the jurisdiction of Allahabad Court. If with difficulty, the wife is able to go to Allahabad Court to file the petition under section 25 of the Act, it will drag her husband also to that place and only at that time, the husband will realise that he committed a mistake in opposing the petition filed at Jullundur.

6. For the reasons recorded above, this appeal is allowed, the order of the Court below dated 18th October, 1980 is set aside and it is held that the Jullundur Court has jurisdiction to decide the petition filed under section 25 or 27 of the Act. For deciding the remaining matter on merits in accordance with law, the parties, through their counsel, are directed to appear before the Additional District Judge, Jullundur, on 20th September, 1982. The appellant will have her costs.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & S. C. Mital, JJ.

I. S. GOEL AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 2018 of 1981*

March 3, 1983.

*Punjab Service of Engineers, Class-I, P.W.D. (B & R Branch) Rules, 1960—Rules 6(a), 9 and 22—Appointment by promotion to Class-I Service—Members of Class-II Service not possessing a university degree promoted to Class-I on the ground of seniority—Requirement of holding a degree waived generally in their case—Such waiver—Whether permissible under the proviso to Rule 6(a)—Rule 6(a)—Scope of—Matter of waiver—Whether required to be considered in the case of each officer specifically—Rule 22—Whether applicable.*

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*Held*, that an over-all view of rule 6(a) of the Punjab Service of Engineers Class-I, P.W.D. (B & R Branch) Rules, 1960 manifests a larger intent that as a general rule, the appointees to the Class-I Service are to be University Degree-holders to which an exception is provided in a narrow and specific terms. It could not be disputed that Class-I Service being at the apex of the Engineering Services, both efficient and well qualified persons were needed to man the same. Therefore, the prescription of a University Degree as regards academic qualifications and also in case of promotion from Class-II, the requisite experience of eight years of completed service therein and the passing of the provisional examination provided in rule 15 of the Rules, has been mandated. Apparently, the framers of the Rules did not intend that persons who did not possess the basic academic qualification of a University Degree should be appointed to the Class-I Service. They did not want non-Graduate Engineers to become Superintending Engineers or Chief Engineers later. This is buttressed by a reference to rule 9 of the Rules which talks of promotion within service. The proviso to rule 9 of the Rules, in terms, lays down that even those persons in whose case the qualifications mentioned in rule 6(a) had been waived, would not be eligible for promotion to the posts of Superintending Engineers or above until and unless they acquired the necessary qualifications. The necessity of a University Degree for holding posts in the highest echelons of the Engineering Service, thus seems manifest. It deserves highlighting that public interest is neither the requirement nor the prescription of rule 6(a) and these words do not find any place therein. To pin-point, it is the case of a particular officer which alone attracts the governmental power of waiver and not anything else. It is only when this basic pre-requisite is satisfied that waiver is to be exercised on the consideration of a particular officer's case belonging to Class-II Service and not in a general fiat in the interest of persons collectively or in a body. Therefore, *per se*, the exigencies of service or an administrative demand for more engineers by itself would not be a relevant consideration. It is thus plain that in order to remain within the parametres of rule 6(a) of the Rules, the waiver of prescribed qualifications of the University Degree can be rested only on the surer foundation of considering a particular officer individually. Indeed it is only the peculiar and the particular distinguished services of a specific officer which would call for the invocation of the governmental power of waiver.

(Paras 6 and 8):

*Held*, that rule 22 of the Rules embodies the general power of relaxation of the rules in the Government. This rule which is a general one for relaxation is not applicable or attracted to the specific case of the waiver of the prescribed qualifications expressly provided under rule 6(a) of the Rules. It is axiomatic that the specific excludes the general. For the purpose of the waiving of

the prescribed qualifications, the proviso to rule 6(a) is the particular and specific prescription which excludes the operation of the general power of relaxation under rule 22 of the Rules.

(Para 7).

*Case referred by a Single Judge consisting of the Hon'ble Mr. Justice M. M. Punchhi on 31st May, 1982 to the Larger Bench for deciding the important question of law involved in this case. The Larger Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice P. C. Jain and the Hon'ble Mr. Justice S. C. Mital finally decided the case on 3rd March, 1983.*

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other suitable writ, order or direction be issued, directing the respondents:—*

- (i) to produce the complete records of the case;
- (ii) the order at Annexure P-1 be quashed;
- (iii) the respondent I be directed to promote officers to Class I post after getting their names approved from the Haryana Public Service Commission;
- (iv) this Hon'ble Court may also grant all consequential reliefs in the nature of arrears of salary, seniority etc. ;
- (v) it is further prayed that pending disposal of the writ petition, the operation of the order at Annexure P-1 be stayed;
- (vi) respondent No. 1 may be restrained to promote Diploma Holders to Class I post on account of their being ineligible for want of basic degree qualification on posts of the Executive Engineers which are likely to be created very shortly on account of the development activities of the State Government ;
- (vii) the costs of this petition may also be awarded to the petitioners.
- (viii) the service of notice of motion on the respondents be dispensed with as the matter is of urgent nature and prayer for stay has been made.

H. L. Sibal, Sr. Advocate, with S. C. Sibal & Ishwari Prashad Markan, Advocates.

Kuldip Singh Sr. Advocate with C. M. Chopra and S. S. Nijjar from the private respondents.

B. L. Bishnoi Additional A. G. Hy., for the State.

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JUDGMENT

S. S. Sandhawalia, C.J.

1. The true import and width of the governmental power to waive the mandatory prescribed qualifications for appointment of Class I Service, conferred by the proviso to Rule 6(a) of the Punjab Service of Engineers, Class I, P.W.D. (B & R Branch) Rules, 1960— is the significant common question which has necessitated the reference of this set of three Civil Writ Petitions to the Full Bench.

2. Since we propose to limit ourselves primarily to the question aforesaid, the facts directly relevant there to alone call for notice. These may be picked from C.W.P. No. 2018 of 1981 (*I. S. Goel & Ors. v. State of Haryana & Ors.*). The writ petitioners therein are graduates in Engineering and were appointed to the Class II Engineering Service of the Haryana Public Works Department (Buildings & Roads Branch) on various dates in the year 1970-71. Their basic claim is that, being Degree-holders they alone are primarily eligible for promotion to Class I Service of Engineers under Rule 6 of the Punjab Service of Engineers Class I, P.W.D. (Buildings and Roads Branch) Rules, 1960 (hereinafter called the Rules). The main grievance presented on their behalf is that respondents Nos. 3 to 10, who do not possess a B.Sc. Engineering Degree or its equivalent, have nevertheless been promoted to the Class I Service,—*vide* annexure P/1, by a general relaxation of the prescribed qualifications. It is pointed out that these respondents are merely Diploma Holders who were originally recruited as Sectional Officers/Draftsmen and later promoted to officiate as Sub-Divisional Engineers in 1969-70. The basic reliance on behalf of the petitioners is on the provisions of rule 6 of the Rules though an infraction of rule 8 thereof has equally been averred. However, as we do not propose to advert to the applicability or infraction of rule 8, it is unnecessary to recount the averments with regard thereto. It has then been averred that out of 15 vacancies of Class I posts, 8 persons, who are Diploma-holders have been promoted to Class I by granting them relaxation in qualifications in a general and routine manner and in violation of both the letter and spirit of the proviso to rule 6(a) of the Rules.

3. As a background to the impugned action of the respondents, it has been pointed out in para 11 that from 1975 onwards, the

Haryana Government has resorted to this power of relaxing the prescribed educational qualifications for the Class I Service in a routine and general manner. It is alleged that persons not possessing an Engineering Degree and thus ineligible for Class I Service are being promoted on the basis of seniority by treating them at par with those possessing the Degree qualification. Reference is made to the representation, annexure P/2, representing against the violation of rule 6 of the Rules and a number of earlier cases in which observations have been made with regard to the true import of rule 6 of the Rules and the governmental power of waiver thereunder.

4. In the written statement, filed on behalf of the respondents, the broad factual position is not controverted. It is admitted that respondents Nos. 3 to 10 are only Diploma-holders, but it is denied that they are ineligible for appointment to Class I Service because of the absence of B.Sc. Engineering Degree. An emphasis is laid on the government's power of relaxation of qualifications for which according to the respondents' stand no further reasons are required to be indicated. In paras 5, 8, 9, 11, 14 and 15 (i) of the return, what is highlighted that respondents Nos. 3 to 10 being senior to the petitioners are required to be considered first in preference to them and have every right for promotion prior to the petitioners, if they otherwise are found suitable. It has been averred by the respondent-State that annexure P/2 has been declined and the case of the petitioners would only be considered at the time when their turn for promotion to Class I Service arrives after exhausting the list of all their senior colleagues, apparently irrespective of the fact whether they possess an Engineering Degree or not. It is then averred that the case of respondents Nos. 3 to 10 was considered along with others holding an Engineering Degree in the order of seniority and since the only hitch in their case was of Degree qualifications, the same was waived under rule 6 (a) of the Rules. In para 14 of the return, it is admitted that as many as 60 officers with Degree qualification, having a requisite experience in Class II Service are available, but they are to be promoted in their turn when the list of their senior colleagues is exhausted. Finally, it is stated that the petitioners being junior to respondents Nos. 3 to 10 would be considered only when their turn comes after the promotion of their seniors.

5. Inevitably the controversy herein turns on the specific language of rule 6 of the Rules and since some reference was made

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to the general power of relaxation under rule 22 also, it seems apt to quote the relevant parts of both the provisions at the outset for facility or reference:—

“6. *Qualifications.*—No person shall be appointed to the service, *unless* he—(a) possesses one of the University Degree or other qualifications prescribed in Appendix B of the Rules *provided* that Government may waive this qualification in the case of a particular officer belonging to Class II Service.

(b) \* \* \*

“22. *Power to relax.*—(1) Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may, by order dispense with or relax the requirements of that rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner.”

Now a plain analysis of rule 6(a) would indicate that the framers thereof have mandated in categorical terms the requirement of a University Degree or other qualifications prescribed in Appendix B of the Rules as prerequisites for appointment to the Class I Service. The language in which the rule has been deliberately couched appears to me as something more than a mere prescription of minimum qualifications. The use of the word ‘unless’ is significant. It does not only prescribe a requirement but equally spells a bar against the appointment of persons not holding a University Degree. The intent and the generality of the rule, therefore, plainly is that posts in Class I Service are to be manned by persons holding a University Degree in Engineering. However, an exception to the basic rule is provided in specific terms by the proviso itself. The limitation for resorting to this exception, or to put it in other way, a waiver of the prescribed qualifications, has itself been made a part of the rule in the shape of a proviso. This, in terms, states that the qualifications are to be waived in the case of a particular officer belonging to Class II Service. Inevitably the waiver is to be related to the peculiarities of a particular incumbent.

6. Now an over-all view of rule 6(a) of the Rules manifests a larger intent that as a general rule, the appointees to the Class I

Service are to be University Degree-holders to which an exception is provided in a narrow and specific terms. It could not be disputed before us that the Class I Service being at the apex of the Engineering Services, both efficient and well-qualified persons were needed to man the same. Therefore, the prescription of a University Degree as regards academic qualifications and also in case of promotion from Class II, the requisite experience of eight years of completed service therein and the passing of the provisional examination provided in rule 15 of the Rules, has been mandated. Apparently, the framers of the Rules did not intend that persons who did not possess the basic academic qualification of a University Degree should be appointed to the Class I Service. They did not want non-Graduate Engineers to become Superintending Engineers or Chief Engineers later. This is buttressed by a reference to rule 9 of the Rules which talks of promotion within service. The proviso to rule 9 of the Rules, in terms, lays down that even those persons in whose case the qualifications mentioned in rule 6(a) had been waived, would not be eligible for promotion to the posts of Superintending Engineers or above until and unless they acquired the necessary qualifications. The necessity of a University Degree for holding posts in the highest echelons of the Engineering Service, thus seems manifest.

7. Ere I proceed further it seems apt to clear the decks as regards the applicability or otherwise of rule 22 of the Rules. As is evident, this embodies the general power of relaxation of the rules in the government. I am firmly inclined to take the view that this rule which is a general one for relaxation is not applicable or attracted to the specific case of the waiver of the prescribed qualifications expressly provided under rule 6(a) of the Rules. It is axiomatic that the specific excludes the general. For the purpose of the waiving of the prescribed qualifications, the proviso to rule 6(a) is the particular and specific prescription which excludes the operation of the general power of relaxation under rule 22 of the Rules. Consequently, the broader considerations of dealing with a case in just and equitable manner and dispensing with a rule to avoid undue hardship subject to any condition which is spelt out in rule 22 of the Rules, is not attracted in the present case. In view of the particular provisions of the proviso to rule 6 (a) of the Rules, we see no reason or compulsion to further invoke or make a resort to the general rule 22 of the Rules in face of a specific provision for waiver under rule 6(a) of the Rules.

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8. It would appear that the respondent-State is obviously under some misapprehension about the true import of rule 6(a) of the Rules. It is plain from para 3 of the impugned order, annexure P/1, that the relaxation of the conditions of the Degree qualifications in case of respondents Nos. 3 to 10 has been done in public interest. It deserves highlighting that public interest is neither the requirement nor the prescription of rule 6(a) and the words do not find any place therein. To pinpoint, it is the case of a particular officer which alone attracts the governmental power of waiver and not anything else. It is only when this basic pre-requisite is satisfied that waiver is to be exercised on the consideration of a particular officer's case belonging to the Class II Service and not in a general fiat in the interest of persons collectively or in a body. Therefore, *per se*, the exigencies of service or an administrative demand for more engineers by itself would not be a relevant consideration. It is thus plain that in order to remain within the parametres of rule 6(a) of the Rules, the waiver of prescribed qualifications of the University Degree can be rested only on the surer foundation of considering a particular officer individually. Indeed it is only the peculiar and the particular distinguished services of a specific officer which would call for the invocation of the governmental power of waiver. The impugned order, annexure P/1, pertaining *en bloc* to 8 officers and on its own showing being rested on public interests is thus beyond the intent of rule 6(a) of the Rules and suffers from a serious legal infirmity on this score alone.

9. It goes to the credit of the learned counsel for the respondents that they themselves took the stand that rule 6(a) of the Rules truly envisages the particularity, of the individual case for waiver and not any blanket relaxation of educational qualifications for a number of posts or body of persons in public interest. Waiver therefore has to be rested on the specific considerations within the narrow confines of rule 6(a) of the Rules. The matter was thus narrowed down to the examination of the stand taken on behalf of the respondent-State and the record which was readily made available for our perusal. This would disclose that a Screening Committee constituted under rule 8 of the Rules for the purposes of promotion of officers of Class II Service to Class I Services, considered their cases in routine in the order of seniority, irrespective of the eligibility rule of possessing a University Degree or not. Thereafter, it recommended a waiver of qualifications in cases of all



officers found otherwise fit for promotion. This is plain from the fact that out of the 15 vacancies of Class I posts, as many as 8 Diploma-holders, not possessing a University Degree, were both recommended for and granted a waiver of the prescribed qualifications.

10. Now a consideration of the categoric averments in paras 5, 8, 9, 11, 14 and 15 (i) of the State's return as well as the perusal of the record, referred to above, leaves no manner of doubt that the incumbent members of Class II Service were considered in the routine order of seniority irrespective of the legal requirement of those possessing a University Degree of Engineering or otherwise. In essence, therefore, officers possessing the University Degree and those not possessing the same were treated wholly at par and virtually as mathematical equivalent of each other. In all those cases where the record of the incumbents warranted their promotion, the Committee recommended their appointment to Class I Service either simplicitor or by waiving the qualification of a degree. In sum, identical consideration prevailed for promotion of members of Class II Service irrespective of the fact whether they were Degree-holders or non-Degree-holders.

11. It is the aforesaid action of the respondent-State which has been forcefully assailed (in my view rightly) on a variety of grounds by the petitioners as a total negation of both the letter and spirit of rule 6(a) of the Rules. It calls for pointed notice that in view of the language in which this rule is couched, the very eligibility for appointment to Class I Service is governed by the possession of a University Degree in Engineering. If the incumbent of a post in the Class II Service satisfies the other conditions of experience and passing of departmental examinations and is holder of a University Degree, he is eligible for promotion to Class I. On the contrary, if he does not possess such a Degree, he is normally not so eligible and therefore, is not inflexibly entitled even to consideration for promotion to the higher service. Thus, the University Degree-holders in Engineering and those not possessing such a Degree are placed by rule 6(a) of the Rules into distinct classes for purposes of appointment to Class I. They are equally put at an unequal footing. To treat these unequals as mathematically equal and to consider them at par with each other and to appoint them to the Class I Service, on the basis of seniority alone is, therefore, contrary and violative of the very intent of the Rules.

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12. Again, it bears repetition that the main provision of rule 6(a) prescribes the general mandate in categoric terms that appointees to Class I Service must hold a Degree in Engineering. It is only as a specific exception within narrow limits that a waiver of this requirement is to be allowed in the case of a particular and individual officer. Consequently, it is evident that the generality of principle is the possession of a University Degree and a special exception thereto is the absence thereof. Therefore, in considering persons possessing the Degree and those not possessing the same, on the equivalent and identical basis of seniority alone, the underlying principle of the rule has not only been given the go-bye, but if one may say so, has in fact been inverted. Going by the record and the averments of the respondents, it would seem that the waiver of the qualifications in the case of non-Degree-holders has been made the general rule and the denial of such waiver as a mere exception. The respondent-State's stand indicates clearly that those incumbents of the Class II Service not possessing a University Degree but having an average record which did not bar their promotions, have been granted a waiver of qualifications in routine. In sum, the specific statutory exception of waiver with regard to a particular officer has been made one of general application and the general rule that Class I Officers must possess a University Engineering Degree, has been virtually rendered illusory and in a way exceptional. This is an approach which is obviously alien and extraneous to the categoric provision of rule 6 (a) of the Rules.

13. It seems to emerge distinctly from the respondent-State's stand that they have rested themselves primarily on the ground of the seniority *inter se* of the incumbent of Class II Service. The theme song is that respondents Nos. 3 to 10 are senior to the petitioners and the later would be considered only after their seniors have been exhausted irrespective of the possession and otherwise of a University Degree. I am inclined to take the view that in this context, the sole consideration of seniority betwixt the two distinct classes of the holders of University Degree and non-Degree holders, appears to be wholly alien to rule 6 (a) of the Rules. The postulate of rule 6(a) appears to be that the persons holding a University Degree alone are primarily eligible and the seniority of persons not possessing the said Degree is of little and perhaps of no relevance at all. Therefore, I am inclined to uphold the petitioners' stand that the mere consideration of

seniority betwixt the distinct classes of Degree-holders and non-Degree holders was extraneous to rule 6(a) and resort and reliance on seniority alone by the respondent-State was contrary to the statutory provision:

14. It then deserves highlighting that in rule 6 (a) as it stands, it is the particular individuality of an incumbent of the Class II Service which alone is the true basis for invoking the power of waiver. It is only if the particular officer is of such an exceptional merit that he cries out for recognition despite the absence of the necessary academic qualification that the government would resort to waiving the generality of the principle of Degree qualification. A somewhat plausible example projected on behalf of the petitioners was that of Mr. Slocum, the architect of the Bhakra Dam, who though an engineer of world repute, yet did not have any formal engineering education in the shape of a University Degree. It was pointed out that it would be the cases of analogous nature though obviously at a much lower place where the peculiarities of the case of an individual officer may stand out for recognition and promotion to a higher rank by a resort to the waiver rule. Therefore, the proviso to rule 6 (a) is attracted only in the case of an individual officer of exceptional outstanding merit belonging to the Class II Service.

15. Lastly, one may also seek support from a sound canon of construction. A look at rule 6 (a) makes it plain that the prescription of qualifications is the general provision whilst the waiver thereof is in the shape of a proviso to the same. As is well known, a proviso merely clarifies or qualifies the main clause and cannot override the same. The respondent-State apparently wishes to construe this proviso (prescribing the waiver rule) in a manner which virtually nullifies the main clause's mandate that no person shall be appointed to the class I service unless he holds a University Degree or other equivalent qualifications.

16. For the detailed reasons aforesaid, I am clearly of the view that the impugned governmental action in CWP 2018/1981 (*I. S. Goel etc. v. State of Haryana and others*) in favour of respondents Nos. 3 to 10 is unwarranted and the same is hereby struck down. The relevant paragraph 3 of annexure P/1 therein, is consequently quashed and the promotion of respondents Nos. 3 to 10, as Executive Engineers, is hereby set aside. This writ petition

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accordingly is allowed in the above terms without any order as to costs.

17. It is common ground that other issues might well arise in CWP No. 3307 of 1980 (*Rajinder Parshad etc. v. State of Haryana and others*), and C.W.P. No. 2632 of 1980 (*S. C. Kaura and others v. State of Haryana and others*). These would now go back to the learned Single Judge for decision on merits in the light of the above.

18. Before parting with this judgment, it is apt a notice that this reference to the Full Bench appears to have been necessitated because of some alleged divergence of judicial opinion in *O. P. Bhatia and another v. State of Haryana and others* (1) and *S. S. Deswal and others v. The Chief Secretary to Government, Haryana* (2) and others. However, before us the counsel for the parties were unanimous in stating that on a closer analysis no conflict of judicial opinion is disclosed which may call for resolution. This is otherwise evident on a reference to *S. S. Deswal's case* (supra) which clearly has been decided on its own peculiar facts at the motion stage.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & Surinder Singh, JJ.

RAM PARKASH SHARMA —Petitioner.

versus

STATE OF PUNJAB AND ANOTHER —Respondents.

Civil Writ Petition No. 1263 of 1981

March 4, 1983.

*Punjab Municipal Act (III of 1911)—Section 38—Municipal employee voluntarily opting for absorption in the State Municipal*

(1) (1980) 1 I.L.R. Pb. & Hary. 470.

(2) CW 767/79 decided on 7th May, 1979.