* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: May 14, 2024*

\+ W.P.(C) 6833/2024 & CM APPL. 28501/2024

(61) PREMJEET KUMAR AND ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Farman Ali, SPC with Mr. Vidur Dwivedi, G.P., Ms. Usha Jamnal, Adv., SI Prahlad Devenda and SI Amit Kumar for respondents

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE RAVINDER DUDEJA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 28501/2024 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6833/2024

1. This petition has been filed by the petitioners with the following prayers:

"In view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Issue a writ of certiorari thereby quashing/setting aside

the Central Industrial Security Force Fire Wing (Subordinate Ranks) Group 'B' and Group 'C' Posts Recruitment Rules, 2011 being utra vires to the Constitution of India to the extent they permit promotion from the rank of Head Constable (DCPO) to Assistant Sub Inspector (Fire) being violative of Part III of the Constitution; AND

(ii) Issue a writ mandamus thereby directing Respondents to amend the Central Industrial Security Force Fire Wing (Subordinate Ranks) Group 'B' and Group 'C' Posts Recruitment Rules, 2011 in a manner which permits promotion to the post of Assistant Sub Inspector (Fire) only from the post of Head Constable (Fire); OR

(iii) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. In effect, the petitioners are challenging a stipulation in the Recruitment Rules, viz. 'Central Industrial Security Force Fire Wing Subordinate Ranks (Group 'B' and Group 'C' posts) Recruitment Rules, 2011 ('Recruitment Rules of 2011', for short), whereby the post of Assistant Sub Inspector (Fire) ('ASI (Fire)', for short) is sought to be filled by promotion from the post of Head Constable (Driver-cum-Pump Operators) ('H/CT DCPO', for short). This according to Mr. Chhibber suffers from manifest arbitrariness and is unsustainable in law as the same has been prescribed without taking into account the difference in roles, functions, duties and nature of work discharged by DCPOs, who have neither any qualification nor any training in respect of the duties to be performed by ASI (Fire).

3. His submission is also that by prescribing promotion to the post of ASI (Fire) from H/CT DCPO in the Recruitment Rules of 2011, the

respondents did not consider that prescription of promotion in the ratio of 2:1 and have effectively granted reservation in promotion to the DCPOs, due to which the DCPOs junior to the petitioners have been promoted to the post of ASI (Fire), upsetting the settled *inter se* seniority.

4. In this regard, he submits H/CT DCPO who has joined CISF in the year 2011, has been granted promotion to the rank of ASI (Fire) on October 30, 2023, whereas those in the rank of Head Constable (Fire), even though had joined CISF in the year 1994, have not been promoted.

5. He states that the respondents should consider providing a promotion channel to H/CT DCPO in the MT cadre in CISF, which cadre primarily pertains to all personnel who have been deployed as drivers in CISF, specially, when MT cadre has similar promotional avenues till the rank of Inspector.

6. We are unable to appreciate the submissions so made by Mr. Chhibber for the simple reason that the impugned stipulation was incorporated in the Recruitment Rules of 2011 in the year 2013, which means for the last 11 years, the impugned stipulation is in operation and since then, H/CT DCPOs have been promoted as ASI (Fire). For Mr. Chhibber to say that H/CT DCPO does not have the relevant experience / training / qualification relatable to fire cannot be accepted inasmuch as the very nomenclature, i.e., 'H/CT DCPO' which is an abbreviated form of 'Driver-cum-Pump Operator', suggests that H/CT DCPO surely plays an important role in operation by pumping water from a fire tender for extinguishing of fire. Moreover, it is the outlook

of an employer to prescribe recruitment rules for any particular post keeping in view the nature of duties being performed by an employee.

7. Another submission of Mr. Chhibber by referring to circular dated December 1, 2023, which reads as under, is that the ASI / SI (Fire) promoted from the rank of H/CT DCPOs are only being used for the purpose of driving heavy vehicle that too on need basis and exigency of services and as such are not performing the job of ASI (Fire).

> *"Please find enclosed a copy of AIG/Fire FHQ New Delhi letter no (48) dated 29.11.2023 on the subject matter.*
> *02. vide letter ibid, it has intimated that instructions/ guidelines was issued vide Fire dte., letter no.(682) dated 25.08.2011* ***(copy enclosed)*** *for utilising services of SOs/Fire promoted from HC/DCPO on actual need basis and exigency of services to meet out the requirement of DCPOs in Fire Cadre.*
> *03. In view of the above, it is requested to kindly direct Unit Commanders of Fire inducted Units under your jurisdiction to utilize the services of ASI/SI (Fire) promoted from rank of HC/DCPO having valid Heavy Driving License on actual need basis and exigency of services to meet out the requirement of DCPOs in Fire Cadre."*

8. The said submission does not appeal to us for the reasons stated above and also the fact that ASI / SI (Fire) capable of driving heavy vehicle having valid Heavy Driving License like the fire tenders, surely can be considered being associated with duties relatable to fire.

9. Further, on hearing Mr. Chhibber, we are very clear that the filing of the present petition has been triggered because of the delay in the petitioners getting promotion to the post of ASI (Fire), but that

cannot be a ground to set aside the Rules under consideration, which are otherwise valid and are in operation for the past 11 years.

10. It is a settled law that the scope of judicial review challenging the recruitment rules is very limited as this Court cannot substitute the wisdom of an employer with its own and set aside the rules by directing the authorities to frame them in a particular manner.

11. In this regard, we may refer to a judgment of the Supreme Court in the case of ***Union of India and Others v. Ilmo Devi and Another, (2021) 20 SCC 290***, wherein in paragraphs 13 and 14, it has been held as under:

> ***13.*** *The observations made in para 9 are on surmises and conjectures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularisation policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue mandamus and/or direct to create and sanction the posts.*

> *14. Even the regularisation policy to regularise the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue mandamus and/or issue mandatory directions to do so. In R.S. Bhonde [State of Maharashtra v. R.S. Bhonde, (2005) 6 SCC 751 : 2005 SCC (L&S) 907] , it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularisation is done."*
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> (emphasis supplied)

12. The judgment in the case of ***Ilmo Devi and Another (supra)***, has been subsequently followed by the Supreme Court in one of its recent opinions in the case of ***Union of India (UOI) and Ors. v. N.K. Sharma, MANU/SC/1341/2023***, wherein, in paragraphs 17, 18, 19, 22 and 23, it has been held as under:

> *"17. Making policy, as is well recognised, is not in the domain of the Judiciary. The Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. Although, it cannot be questioned that disputes in respect of promotions and/or filling up of vacancies is within the jurisdiction of the Tribunal, it cannot direct those responsible for making policy, to make a policy in a particular manner.*
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> *18. It has been observed time and again that a court cannot direct for a legislation or a policy to be made. Reference may be made to a recent judgement of this Court in Union of India v. K. Pushpavanam MANU/SC/0875/2023 : 2023:INSC:701 (2 Judge Bench) where while adjudicating a challenge to an Order passed by a High Court directing the State to decide the status of the Law Commission as a Statutory or Constitutional body and also to consider the introduction of a bill in respect of torts and State liability, observed as under:*

> *..As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted.*
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> *(Emphasis Supplied)*

19. We may further refer to Union of India and Ors. v. Ilmo Devi and Anr. MANU/SC/0808/2021 : 2021:INSC:634 (2 Judge Bench) wherein the Court, while considering with the case concerning regularisation/absorption of part-time sweepers at a post office in Chandigarh observed:

> *The High Court cannot, in exercise of the power Under Article 226, issue a Mandamus to direct the Department to sanction and 17 create the posts. The High Court, in exercise of the powers Under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power Under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.*
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> *(Emphasis Supplied)*

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> *22. Thus, it only stands to reason then, that, a Tribunal subject to the High Court's jurisdiction Under Article 226, cannot be permitted by law, to direct the framing of policy by the Government.*
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> (emphasis supplied)

13. Insofar as, reliance placed by Mr. Chhibber on the judgment of the Supreme Court in the case of ***Union of India and Another v. Ganpati Dealcom Private Limited, (2023) 3 SCC 315,*** more specifically on paragraphs 52 to 54, to contend that the constitutional courts can test the constitutionality of legislative instruments, wherein the Supreme Court has held as under, is concerned, the same will not help the case of the petitioner, at least in the facts of this case:-

> *"52. The law with respect to testing the unconstitutionality of a statutory instrument can be summarised as under:*
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> *52.1. Constitutional courts can test constitutionality of legislative instruments (statute and delegated legislations).*
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> *52.2. The courts are empowered to test both on procedure as well as substantive nature of these instruments.*
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> *52.3. The test should be based on a combined reading of Articles 14, 19 and 21 of the Constitution.*
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> *53. One of the offshoots of this test under Part III of the Constitution is the development of the doctrine of manifest arbitrariness. A doctrinal study of the development of this area may not be warranted herein. It is well traced in Shayara Bano v. Union of India. We may only state that the development of jurisprudence has come full circle from an overly formalistic test of classification to include the test of manifest arbitrariness. A broad formulation of the test was noted in the aforesaid case as under: (SCC pp. 95-96, para 95)*
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> *"95. On a reading of this judgment in Natural Resources Allocation case , it is clear that this Court did not read McDowell as being an authority for the proposition that legislation can never be struck down as being arbitrary.*

Indeed the Court, after referring to all the earlier judgments, and Ajay Hasia in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc."

(emphasis supplied)

54. In Joseph Shine v. Union of India36, this Court was concerned with the constitutionality of Section 497 IPC relating to the provision of adultery. While declaring the aforesaid provision as unconstitutional on the aspect of it being manifestly arbitrary, this Court reiterated the test as under: (SeC p. 87, para 26)

*"26. ... '101. ... The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.' *"*

(emphasis supplied)"

14. At the same time, we may also state, in the facts of this case, the impugned stipulation in the Recruitment Rules of 2011, does not violate Articles 14 and 21 of the Constitution of India. Therefore, the petition being without any merit is dismissed. No costs.

V. KAMESWAR RAO, J

RAVINDER DUDEJA, J

MAY 14, 2024*/jg*