
(2004) 08 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19988 of 2002

Bali Singh Verma

APPELLANT

Vs

Haryana State Seed Certification Agency and Others

RESPONDENT

Date of Decision : 30-08-2004

Acts Referred:

Haryana State Seed Certification Agency Service Rules, 1979 — Rule 9(1)

Citation : (2005) 1 ILR (P&H) 412

Hon'ble Judges : S.S. Nijjar, J;J.S. Narang, J

Bench : Division Bench

Advocate : S.P. Laler, for the Appellant; P.S. Patwalia and Amanpreet Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned Counsel for the parties at length and perused the paper--book.

2. Mr. Laler, learned Counsel appearing for the Petitioner has vehemently argued that the Petitioner's claim for promotion on the post of Director,

Haryana State Seed Certification Agency has been arbitrarily rejected by the Respondents. The Petitioner had filed the present writ petition on 9th

December, 2002 apprehending that the claim of the Petitioner for appointment on the post of Director would be ignored and Respondent No. 3

would be appointed by way of deputation. The apprehension of the Petitioner came true when Respondent No. 3 was actually appointed. Learned

Counsel has submitted that on eight earlier occasions, the post of Director has always been filled by appointing officers on deputation from the

Department of Agriculture. Earlier also, the Petitioner had the occasion to challenge the appointment of S.S. Gill, Director by filing C.W.P. No.

7772 of 1994. The writ petition was allowed on 28th September, 1994 and the appointment of S.S. Gill was quashed. The aforesaid decision is

reported in 1994(4) RSJ 700. Even after the quashing of the appointment of S.S. Gill, the official Respondents appointed one Baljeet Singh as

Director. The Petitioner filed C.O.C.P. No. 1128 of 1995. Although rule was discharged in the aforesaid C.O.C.P., it was observed that it was

open to the Petitioner to challenge the appointment of Baljeet Singh. According to the learned Counsel, the official Respondents have again

adopted the same modus operandi for appointment of Respondent No. 3 by deputation. Learned Counsel has submitted that the appointment of

Respondent No. 3 is not only contrary to the decision taken by the Division Bench in C.W.P. No. 7772 of 1994, but also against the law laid

down by the Supreme Court, in the case of Dilwan Singh and Ors. v. State of Haryana and Ors., rendered in Civil Appeal No. 6887 of 1996.

Copy of the aforesaid judgment is attached to the writ petition as Annexure P--4. The appointment of Respondent No. 3 is also stated to be

contrary to the judgment of this Court rendered in C.W.P. No. 14515 of 1994 (Shri S.P. Singh v. State of Haryana and Ors.). Learned Counsel

has also relied on a judgment of this Court rendered in the case of Babita Rani v. State of Haryana and Ors., 2002 (3) R.S.J. 1999. In support of

his submission that Respondent No. 3 does not fulfil the necessary experience of 10 years on the cut-off date i.e. 11th December, 2002.

Therefore, Respondent No. 3 could not even have been considered for appointment.

3. Mr. P.S. Patwalia, learned Sr. counsel appearing for the Respondents has, however, submitted that the decision has been taken by the

Respondents--Agency strictly in accordance with the Haryana State Seeds Certification Agency Service Rules, 1979 (hereinafter referred to as

1979 Rules"). He submits that the procedure adopted and the appointment of Respondent No. 3 are not contrary to any of the judgments cited

by the learned Counsel for the Petitioner. According to the learned Sr. Counsel, under the rules, appointment on the post of Director is to be made

in accordance with the provisions contained in Appendix-B to the 1979 Rules. These rules enable the Respondents-Agency to make the

appointment on the post of Director from three sources; (i) by promotion from the post of Chief Seed Certification Officer, (ii.) direct appointment

and (iii) by transfer or deputation. Under Rule 9(1) of the 1979 Rules, the appointing authority has to determine in which manner the vacancy is to

be filled. The appointment on the post of Director on the previous eight occasions by deputation would not by itself render the action of the

Respondents--Agency illegal, even if the appointment is again made by way of deputation.

4. We have considered the submissions made by the learned Counsel for the parties. It is accepted by both the sides that the appointment on the

post of Director is to be made in accordance with the 1979 Rules. These rules lay down qualifications for appointment on the post as follows:

Sr. Designation of Academic Qualification and experience Age Method of

No. Posts recruitment

1. Director M. Sc. (Agri.) in Plant 40-50 (i) Promaotion

breeding/Agronomy/Hoticulture (Veg.)/Seed years from the Chief

Technology. At least 15 years experience in Seed

Research /Farm Management Crop Certification

Production/Seed Production/Development and Officer

Extension Activities out of which 10 years

experience in a senior capacity. (ii) Direct

Should be fully conversant for organizing (iii) Transfer or

planning, implementation and knows deputation

Administrative with the seed production.

5. A perusal of the aforesaid rules shows that for appointment on the post of Director, the candidate should possess the necessary Post Graduate

qualification M. Sc. (Agri.) in Plant Breeding/Agronomy/Horticulture/Crop Production/Seed Production/Development and Extension activities. The

candidate must also have at least 15 years experience, out of which 10 years experience shall be experience in a senior capacity. Equally important

are the qualifications that the candidate should be fully conversant for organising planning, implementation and knows Administrative/Technical

affairs connected with the seed production. The aforesaid rules also indicate that the post can be filled by any of the three methods prescribed. The

competent authority would decide as to from which of the sources, the post is to

be filled. In our opinion, the Respondents-Agency would have the jurisdiction to consider suitable candidates for appointment from all the three sources simultaneously. Rule 9(1) of the 1979 Rules is as under:

9(1): Method of Recruitment: Recruitment to the Service shall be made in the manner as specified in Column 4 of Appendix B to these rules.

Where any vacancy occurs or about to occur in the service, the appointing authority shall determine the manner in which such vacancy shall be filled.

Note: All promotions shall be made on the basis of seniority and fitness to the post and no person shall be entitled to claim promotion as a matter of right and on the basis of seniority alone.

6. A plain reading of the aforesaid Rule clearly indicates that the same has to be read with Column No. 4 of Appendix B. As noticed earlier,

Appendix B provides three sources from which, the candidate for appointment on the post of Director can be drawn. When the vacancy occurs or

is about to occur, the appointing authority has the duty to determine the manner in which such vacancies shall be filled. In case the appointment is

to be made by promotion, the criteria of seniority and fitness has to be applied. No person would be entitled to claim promotion as a matter of

right and on the basis of seniority alone. Considering the aforesaid criteria, the Respondents-Agency in the meeting held on 28th October, 2002,

took a decision not to go for direct recruitment for the post of Director. It was decided that only two panels, one each from the Cadre of Chief

Seed Certification Officer and the other from the persons to be taken on transfer or deputation would be called. It was decided not to fill up the

post by direct recruitment because it will take a long time to fill up the post. The departments were directed to send the Panel of names by 7th

November, 2002 as the next meeting had been Scheduled to be held on 13th November, 2002. Because of lack of quorum, the meeting was

adjourned to 17th December, 2002, The relative merits of the candidates were considered in the meeting held on 17th December, 2002.

Respondent No. 3 was selected on the basis of better service record, experience and higher pay scale. The pay scale of the Petitioner was Rs.

10000-325-13900 whereas Respondent No. 3 was in the pay scale of Rs. 10000-325-15900. Respondent No. 3 was clearly in a higher pay

scale. It is also noted that Respondent No. 3 was working as Joint Director Agriculture whereas the Petitioner was working as Deputy Director

Seed Certification. Thus, the status and nomenclature of Respondent No. 3 was on the higher pedestal. Thus, according to the Respondents, the

Petitioner has no parity with the selected candidates in terms of the status, nomenclature, scale of pay, experience, suitability-cum-fitness or

administrative experience in the line of specialisation whatsoever. With regard to the experience, the Respondents have categorically stated that

Respondent No. 3 was having more than 17 1/2 years of experience as on 7th November, 2002. He had served as Assistant Scientist in Haryana

Agriculture University, Hissar from February 1985 to 6th December, 1992 in the grading of Rs. 2200-4000 which was subsequently revised to

Rs. 8000-13500. These grades were equivalent to the Grade of Chief Seed Certification Officers of the Respondents-Agency. It is further stated

in the written statement that Respondent No. 3 joined as Deputy Director Agriculture in the department of Agriculture and served there from 7th

December, 1982 to 2nd August, 1998. He was further promoted as Joint Director Agriculture on 3rd August, 1998 and served till 18th

December, 2002. It is categorically stated that the Petitioner is deliberately making an attempt to state wrong facts and mislead this Court.

7. The Petitioner has, however, filed a replication and has stated that in the Haryana Agriculture University, posts which are in the pay scale not

exceeding Rs. 13500 are Class II/Grade "B" service. Therefore, Respondent No. 3 cannot be considered to be in Class I service or service in

seniority capacity. In our opinion, the facts narrated above make it abundantly clear that the action of the Respondents cannot be said to be either

arbitrary or without jurisdiction. Undoubtedly, the appointment of S.S. Gill was quashed by this Court in CWP No. 7772 of 1994. The Petitioner

has quoted paragraphs 12 to 14 of the aforesaid judgment in the writ petition itself, which are as under:

12. We may now advert to the objection of Respondents No. 1 and 3 regarding eligibility of the Petitioner to be appointment as Director by

promotion. It is not in dispute that academic qualification prescribed in the Rules of 1979 for appointment on the posts of Director, Chief Seed

Certification Officer and Seed Certification Officer is one and the same. The Petitioner has been appointed as Seed Certification Assistant

(Redesignated as Seed Certification Officer) and Chief Seed Certification Officer with his qualification as M. Sc. (Agriculture) in Botany. Selection

on the post of Chief Seed Certification Officer was made by a committee consisting of various officer of the Government, including the

Commissioner Agriculture. The Committee, which selected the Petitioner had the occasion to examine the qualification possessed by the Petitioner

and once the said selection committee took the view that the qualification possessed by the Petitioner made his eligible for appointment on the post

of Chief Seed Certification Officer, the Respondents now cannot turn round and question the eligibility of the Petitioner. We are surprised to note

that Respondent Nos. 1 and 3 have come forward with such a plea though Respondent No. 4, who is also M. Sc. (Agriculture) in Entomology, a

subject relating to insecticide posts and their control has been appointed as Director. In our considered opinion, the objection raised by

Respondent Nos. 1 and 3 to the eligibility of the Petitioner is clearly misconceived and untenable.

13. Before concluding, we cannot but observe that the manner in which the State functionaries have usurped the authority of a duly constituted

body to make appointment on the highest post of the organisation leaves much to be desired. Officers of the Government departments and Ors.,

who have approached the political figures for getting recommendations for appointment on the post of Director, ought to have been discouraged

rather than being encouraged. The government should have taken a serious note of direct pressure on Ministers and other political figures in the

matter of appointment on the post of Director. Neither of the political figures, who made recommendation, had any direct concern with the

department of Agriculture and yet they made recommendation without any hesitation. It need be only reminded to them that appointment to the

highest as well as also to the lowest public post is a public property and every person, who possesses qualification for appointment on a particular

post, has a right to participate in the process of enjoyment of this public property. Appointment on posts in public employment cannot be treated

as a matter of charity, largesse, or concession till the doctrine of "equality" enshrined in Articles 14 and 16 of the constitution remain on the statute

book and any attempt to violate this basic feature of the Constitution would be viewed adversely by the Court.

14. In the result, the writ Petitioner is allowed. Appointment of Respondent No. 4 on the post of Director, Haryana State Seed Certification

Agency, which was subject to the result of this writ petition in terms of order dated 6th June, 1994 of this Court, is declared illegal and is quashed.

Respondent No. 4 is declared as usurper of the office of the Director, Haryana State Seed Certification Agency. The Haryana State Seed

Certification Agency is directed to make appointment on the post of Director in accordance with the provisions of Rules of 1979 within a period of

three months from today. Parties are left to bear their own costs. Petition allowed.

8. A perusal of the aforesaid paragraphs tends to show that the controversy therein has no relevance to the claim put forward by the Petitioner in

the present case. It appears that in that case the Petitioner has been treated as ineligible for the post. This Court, after examining the qualification of

the Petitioner, held that the Petitioner was eligible to be considered for the post of Director. The other point of vital importance in that case was

considered in paragraph 11 of the judgment. The observations of the Division Bench are as follows:

11. It is clear from the above that although under the Rules of 1979, authority to make appointment on the post of Director vests with the

Governing Board, appointment of Respondent No. 4 has, in fact, been made by the Government and not by the Governing Board. No material has

been produced before us to show that the Governing Board of the Respondent-Agency ever met and applied its mind to the question of making

appointment on the post of Director. It is, therefore, obvious that no exercise was undertaken by the competent authority in terms of Rule 9 for the

purpose of deciding as to by which method the post of Director should be filled. It is also clear that the Governing Board of the Respondent-

Agency had at no point of time applied itself to the requirement of eligibility, experience what to say of suitability of a particular person to be

appointed as Director of the Agency. In our opinion, it is a case in which the Governing Board of the Respondent-Agency has abdicated its duty

as well as authority to make appointment on the post of Director and the State Government usurped the power of the Governing Board of making

appointment on the post of Director. Thus, the exercise undertaken by the Government and its action of appointing Respondent No. 4 on the post

of Director cannot but be held as without jurisdiction as Respondent No. 4 is liable to be declared as usurper of high public office of Director of the Respondent-Agency.

9. A perusal of the aforesaid clearly shows that the Division bench was considering a case where the appointment on the post of Director was not made in accordance with Rule 9. It was held that the Governing Board had abdicated its functions. The Court also commented adversely on the conduct of the State functionaries who had usurped the authority of a duly constituted body to make appointments on the highest posts of the Organisation. Ultimately, the Division Bench directed the agency to make appointment on the post of Director in accordance with the provisions of the Rules, 1979. Thereafter, the Agency again did not appoint the Petitioner, but appointed one Baljeet Singh. The Petitioner filed COCP No.

1128 of 1995. But the same was dismissed and the rule was discharged. A perusal of the judgment of the learned Single Judge in the COCP shows that the Petitioner did not even dispute the mode adopted by the Respondents to make appointment. Some observations of the learned Single Judge may be noticed as under:

In contempt proceedings all that is primarily required to be seen is whether the Respondents have given effect to the directions issued by the court.

Therefore, in the instant case it has to be only seen whether the directions of this Court as contained in order dated 28th September, 1994 passed

by a Division Bench has been carried out or not. On a consideration of the entire matter, I am of the opinion that the answer to this question has to

be in the affirmative. In the order dated 28th September, 1994, the only direction given was that Haryana State Seed Certification Agency will

make appointment the the post of Director in accordance with the provisions of 1979 Rules within a period of three months of the said order. It is

an admitted fact on record that the Respondents did comply with the direction by making appointment to the post of Director and that has also

been done within the time allowed by the Court. While doing so, even the name of the Petitioner for appointment to the said post had been

considered. It is a different matter whether the proceedings of the meetings wherein decision to appoint a Director has been taken, had or had not

been conducted in accordance with law. It is also not disputed that the mode

adopted by the Respondents to make appointment of Director was not beyond the purview of the Rules under which it was directed to be made by the order of the Division Bench.

(Emphasis supplied)

10. Having conceded the jurisdiction of the Respondents to adopt the mode of appointment, learned Counsel for the Petitioner now argues that the

three modes of appointment are in a descending order. In other words, the Respondents-Agency have first to make an effort to fill up the post of

Director by promotion, from the post of Chief Seed Certification Officer. If no suitable candidate is available for promotion, the Respondents can

then resort to the method of direct recruitment. If no selection is made by direct recruitment, the Respondents can resort to the third method i.e.

appointment by transfer or deputation. In the alternative, it is submitted that the candidates from three sources of recruitment cannot be considered

for appointment together. In any event, transfer or deputation can only be resorted to, if no candidate is available for appointment by promotion.

We are unable to read any such restrictions in the Rules. A plain reading of the Rules makes it abundantly clear that the appointing authority has the

discretion to choose the source from which the appointment would be made. There is neither any quota nor any rota provided under the rules.

There is also no hierarchy of sources of recruitment. There is also no priority of one source over the other. These added restrictions which have

been strongly advocated by the learned Counsel for the Petitioner, cannot be added by implication. While interpreting the rule, it would not be

permissible for this Court to amend or modify the rule. Whilst interpreting or construing the rule, the Courts cannot reconstruct the Rule. That is the

function of the Legislature or the framers of the Rule. But Mr. Laler has placed strong reliance on the judgment of the Supreme Court rendered in

the case of Dilwan Singh (supra). We are unable to accept the submission of the learned Counsel. The Supreme Court was considering a rule

which had been formulated to rehabilitate Ex-Servicemen in State Services. The Supreme Court has categorically observed as follows:

The object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence services. As per the instructions issued

by the State Government, in the absence of availability of the ex- servicemen

instead of keeping those posts unfilled, the dependent children, namely, son or daughter of ex-servicemen would also to be considered. The object thereby would be that the Selection Board should first consider the claims of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are concerned. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from among the dependent children of the ex-servicemen.

11. A perusal of the aforesaid observations would clearly show that the rule itself envisaged that the claim of Ex-servicemen would be considered first. In case of unfilled posts, the selection should be done from among the dependent children of the Ex-servicemen.

12. It is an accepted position that the claim of the Petitioner has been considered for being appointment by promotion. It is a settled proposition of law that no person can claim promotion as a matter of right. The employees are only entitled to be considered for promotion in accordance with the rules and Regulations. Therefore, we are of the considered opinion that no legal right of the Petitioner has been infringed.

13. In view of the above, we find no merit in the writ petition and the same is dismissed. No costs.