

(2008) 05 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7438 of 2007

Dr. Surinder Singh Dahiya and Another	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:

Chaudhary Charan Singh, Haryana Agricultural University, Hissar Employees Conduct Rules, 1967 — Rule 4
Constitution of India, 1950 — Article 14, 16(1), 226
Haryana State Seed Certification Agency Service Rules, 1979 — Rule 21, 33, 5, 7, 7
Seeds Act, 1966 — Section 10, 2, 8, 8A, 9

Citation : (2009) 1 ILR (P&H) 138 : (2009) 2 SLR 149

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Advocate : Surya Parkash, for the Appellant; D.S. Nalwa, A.A.G. for Respondent No. 1, Preeti Khanna, for Respondent No. 2, R.K. Malik Yashdeep and Satish Chaudhary, for Respondent No. 4., for the Respondent

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order, dated 15th November, 2007 (P-I) appointing Dr. V.S. Pahil-Respondent No. 3 as Director, Haryana-State Seed Certification Agency-Respondent No. 2. The main ground of challenge by the Petitioners is that Dr. V.S. Pahil-respondont No. 3 is ineligible for appointment on the aforementioned post as per the provisions of the Haryana State Seed Certification Agency Service Rules, 1979 (for brevity, "the 1979 Rules"), inasmuch as, he does not possess the educational qualification and is also overage.

2. Brief facts of the case necessary for disposal of the controversy raised in the instant petition are that Dr. Surinder Singh Dahiya-Petitioner No. 1 is working as Deputy Director of Agriculture, Haryana at Karnal. He has done M.Sc. Agronomy and Ph.D. Agriculture in Agronomy from Haryana Agricultural University, Hisar. Shri B.S. Duggal-Petitioner No. 2 is having the qualification of M.Sc. Agriculture in Agronomy. He is stated to have more than 20 years experience as on 20th

June, 2005 in research, farm management, crop production, seed production, development and extension activities with approximately 12 years and 7 months experience in senior capacity as Deputy Director of Agriculture, Joint Director of Agriculture and Additional Director of Agriculture and even Director of Respondent No. 2 Agency.

3. Petitioner No. 2 was selected and appointed as Director of Respondent No. 2 Agency on deputation basis in pursuance to the decision taken by the governing body of Respondent No. 2 in its meeting held on 17th December, 2002. The said selection and appointment was, however, challenged in this Court by one Bali Singh Verma by filing C.W.P. No. 19988 of 2002 (Bali Singh Verma v. Haryana State Seed Certification Agency). The said writ petition was dismissed by this Court,--vide order, dated 30th August, 2004. Thus, Petitioner No. 2 worked as Director of Respondent No. 2 Agency from 18th December, 2002 to 8th June, 2005. It has been asserted that after change of Government in the year 2005, Respondent No. 1 issued instructions, dated 9th March, 2005 directing that all those officers/ officials who were on deputation from out side the State or within the State from one department to another department be repatriated to their parent organisation (P-5). Subsequently instructions, dated 16th March 2005 were issued to the effect that those deputationists who have not completed their tenure in the borrowing department/organisation may be considered for retention by such organisation on merit of each individual case (P-6). However, Petitioner No. 2 was repatriated and joined his parent department on 9th June, 2005.

4. On 13th June, 2005, Respondent No. 2 again invited applications from various institutions/universities for filling up the post of Director, Haryana State Seed Certification Agency, Panchkula, in the grade of Rs. 1200-375-16500 on deputation basis prescribing the academic qualification of M. Sc. (Agriculture) in Plant Breeding etc. 15 years experience in Research Farm Management and age between 40-50 years.

5. It was further stipulated that no application would be entertained after 20th June, 2005 (P-3). The Petitioners and 11 other persons applied in response to the aforementioned requisition as is evident from letter, dated 4th July, 2005 written by the Director of Agriculture, Haryana to the Financial Commissioner and Principal Secretary to Government Haryana, Agriculture Department-Respondent No. 1(P-4). The details of the applicants viz. their names, qualifications, age/date of birth, experience and remarks were tabulated and annexed with letter, dated 4th July, 2005. It is appropriate to mention here that the names of the Petitioners figure at Sr. Nos. 1 and 12 respectively in the list of applicants whereas there is no mention about Dr. V.S. Pahil-Respondent No. 3. It is claimed that Dr. V.S. Pahil-Respondent No. 3 has applied in August, 2006 even without intimation to his parent department i.e. Chaudhary Charan Singh, Haryana Agricultural University, Hisar-Respondent No. 4 (for short "CCS, HAU, Hisar"). It has further been alleged that he is holding the degree of M. Sc. Plant Pathology

and adverse remarks/comments were recorded against him by the then Financial Commissioner Agriculture-cum-Chairman, Haryana Agro Industries Corporation (HAIC) and the Managing Director HAIC(P-7, P.8 & P-9). On 18th September, 2006, the Director of Agriculture, Haryana sent a communication to the Financial Commissioner and Principal Secretary-Respondent No. 1 to the effect that as per the bio-data submitted by Dr. V.S. Pahil-Respondent No. 3 his date of birth-is 15th December, 1954 and he is not eligible for the post of Director because his age is more than the prescribed age of 50 years (P-10). Despite the aforementioned facts, the Principal Secretary to Chief Minister sent the following order on 27th September, 2007 (P-II):

CM has ordered that Dr. V.S. Pahil, Ph.D.(UK), Professor/ Principal Scientist (PP), Ch. Charan Singh Haryana Agriculture University, Hissar be appointed as Director, Haryana State Seed Certification Agency on deputation basis.

Necessary orders be issued immediately.""" (6) In pursuance to order, dated 27th September, 2007, a meeting of the Governing Body of Respondent No. 2 Agency was convened on 16th October, 2007 but the same was adjourned twice for want of quorum firstly for 18th October, 2007 and then to 29th October, 2007. It is claimed that in order to accommodate Dr. V.S. Pahil-Respondent No. 3 the qualification of "M. Sc./Ph.D. Entomology and Plant Pathology" was inserted in the requisite academic qualifications for the post of Director Haryana State Seed-Certification Agency (P-12) in the meeting,--vide Agenda Item No. 8. The following decision was taken in the meeting held on 29th October, 2007 (P-13):

Board decided unanimously that M. Sc. Agriculture in the academic qualification is adequate for the post of the Director. There is no need to mention any particular subject for the post and minimum 10 years active experience in seed production/seed technology is must for the post of Director. Board also decided to increase the upper age limit from the present 50 to 55 years for the post of Director of the Agency and an incumbent should not be given a tenure of more than one year at a time. The Board also delegated the power of appointment of Director to the Government and decided that Director Agriculture would be the ex-officio director of the Agency in the event of any vacancy arises due to some reasons.

7. On 15th November, 2007, Respondent No. 1 issued appointment order of Dr. V.S. Pahil-Respondent No. 3, appointing him as Director of the Haryana State Seed Certification Agency, Panchkula initially for a period of one year on the usual terms and conditions of deputation with immediate effect relieving the Director of Agriculture, Haryana of the additional charge (P-I). The aforementioned order is subject matter of challenge in the instant petition.

8. Though separate written statements have been filed by Respondent Nos. 1, 2 and 3, however, common stand has been taken therein. It has been asserted that the Petitioners have no cause of action to file the instant petition and they have lobbied for appointment to the post of Director. Respondent No. 3 has been

appointed being fully eligible having excellent academic and service record. It has been submitted that he is better qualified and more experienced as compared to the Petitioners. It has been pointed out that Respondent No. 2 Agency is a registered society under the Societies Registration Act, 1860 and has been constituted to act as a Certification Agency u/s 8 of the Seeds Act, 1966 (for brevity, "the 1966 Act"). The bye-laws of the Haryana State Seed Certification Agency have been placed on record as Annexure R-1/2. It has further been asserted that the Governing Board of Respondent No. 2 Agency is competent to take all decisions relating to its affairs viz. laying down the qualification, age limit etc. regarding appointment of its officers and staff. It has been denied that the 1979 Rules prescribe any age limit for appointing a person on deputation. With regard to the objection of the Petitioners that Dr. V.S. Pahil-Respondent No. 3 did not fulfill the qualification it has been asserted that he is Ph.D. in Horticulture (Vegetable) from Horticultural Research International, University of London, UK, which is a qualification higher than the M. Sc. Horticulture (Vegetable) prescribed for the post. The Ph.D. degree and other documents pertaining to Respondent No. 3 have been brought on record as Annexures R-1/4A, R-1/4B and R-1/ 4C, which are attached with written statement filed by Respondent No. 1. The Respondents have further asserted that the deputation of Respondent No. 3 has been duly approved by the CCS, HAU, Hisar (R-1/5). It has been denied that the appointment, subject matter of controversy in the instant petition, has been made on any political consideration. The Respondents have asserted that, in fact, the Petitioners have tried to mislead this Court by confusing about the powers of Respondent No. 2 Agency to amend the 1979 Rules with its powers to amend the Haryana State Seed Certification Agency Rules, 1976 (for brevity, "the 1979 Rules"). It has been stated that the 1979 Rules are not statutory rules but the same have been framed by the Governing Board of Respondent No. 2 Agency in exercise of its power under the 1976 Rules. The 1976 Rules can be modified by the Governing Board because they are not legislative in nature and akin to executive orders/instructions. The Petitioners have not deliberately disclosed the proceedings of the 13th meeting of the Central Seed Certification Board wherein decision was taken that the recommendations of the Central Seed Certification Board are only recommendatory and not binding (R-1/6). It has also been asserted that the post of Director is not a selection post and it is not compulsory to invite applications and the State Government has the right to appoint any one of the candidates eligible/suitable for the post. It has been conceded that although only 13 candidates had applied upto 20th June, 2005 but the claims of all the candidates who had applied upto the date of consideration, were considered, in as much as, other than Respondent No. 3 claims of 4 other applicants who had applied after 20th June, 2005 were also considered.

9. In para 11 of the written statement filed by Respondent No. 1 it has been mentioned that a meeting of the Governing Board was held on 27th February, 2007 but for want of proper quorum no proceedings could be conducted. In the

meantime, during August-September, 2007 certain communications were received from the Chief Minister's Office regarding consideration of certain persons including the petitioners for the post of Director. Other than this, some suggestions and representations were also received from different associations such as Haryana Agricultural University Teachers' Association (HAUTA), Hisar; Haryana Agricultural Officers (Gazetted) Association, Sonapat, to broad-base the qualification, experience and age for the post of Director (R-1/7A to R-1/7D). Keeping in mind the recommendations, suggestions and representations, the Governing Board in its 78th meeting held on 29th October, 2007 decided to amend the qualification, experience and age for the post of Director with a view to select a competent person. After taking the aforementioned decision, the State Government was requested to make the appointment for the post of Director. It has been concluded that the appointment of Respondent No. 3 is perfectly legal, constitutional and in accordance with the provisions of the 1979 Rules as well as in accordance with the decision taken by the Governing Board in its meeting held on 29th October, 2007. The appointment has been made after preparing a panel of eligible candidates with their comparative details, which was submitted to the State Government, who after comparative evaluation on merits, approved the name of Respondent No. 3 (R-I/8).

10. Controverting the common stand taken in the separate written statement filed by Respondent Nos. 1, 2 and 3 a replication has been filed by the Petitioners stating that the written statements filed by the aforementioned Respondents are more or less same and it seems that written statements filed by Respondent Nos. 1 and 2 have been filed as per whims of Respondent No. 3. This is evident from the fact that Respondent No. 1 has placed on record such documents pertaining to Respondent No. 3, which were never submitted by Respondent No. 3 to Respondent No. 1. The Petitioners have placed on record copy of the bio-data of Respondent No. 3 after obtaining the same from Respondent No. 2 under the Right to Information Act, 2005, wherein Respondent No. 3 did not claim himself to be Ph.D. in Horticulture nor has he claimed any experience in Seed Production/Certification etc. (P-15). Besides denying the averments made in the written statements and reiterating various averments made in the writ petition, the Petitioners have also placed on record comparative statement of academic qualification, experience, age, professional recognition, fellowship, awards, achievements and exposurer etc, of Dr. V.S. Pahil-Respondent No. 3 and the Petitioners (P-16), information received from the State Public Information Officer, CCS HAU, Hisar pertaining to Respondent No. 3 (P-17 Colly) and various communications exchanged between Respondent No. 3, CCS HAU, Hisar and other authorities after his appointment to the post of Director (P-19 to P-23) to show that Respondent No. 3 is not eligible to hold the post in question and he has been appointed as such only because of political considerations.

11. In the short reply filed on behalf of CCS HAU, Hisar-Respondent No. 4 it has been conceded that the application of Respondent No. 3 for the post of Director was not sent through the University and on coming to know about the same,

Respondent No. 3 was called to explain his position,--vide letter, dated 18th December, 2007 (R4-1). After considering the explanation furnished by him subsequently(R4-2), the Vice Chancellor, CCS HAU, Hisar, allowed him to join the post of Director on deputation for a period of one year,--vide letter, dated 10th January, 2008 (R4-3).

12. Dr. Surya Parkash, learned Counsel for the Petitioners has raised before us following submissions:

(a) Respondent No. 3 does not possess requisite qualification to answer the requirement of circular, dated 13th June, 2005 (P-3) inviting applications for the post of Director. According to the circular a candidate must have a degree of M. Sc. (Agriculture) in Plant Breeding/Agronomy/Horticulture (Veg.)/Seed Technology. He has emphasised that Rule 7 and Appendix "B" of the 1979 Rules (R-I/3) also required a candidate to fulfill the same qualification for the post of Director. Learned Counsel has highlighted that Dr. V.S. Pahil-Respondent No. 3 is having the qualification of M. Sc. (Agriculture) in Plant Pathology not in Plant Breeding and therefore, he does not answer the description either of the circular, dated 13th June, 2005 or Rule 9 and Appendix "B" of the 1979 Rules. In that regard reliance has been placed on the information furnished under the Right to Information Act, 2005 by the CCS, HAU, Hisar stating that Dr. V.S. Pahil-Respondent No. 3 is not Ph.D. in Horticulture and he is Professor in Plant Pathology and only an eminent scientist who have Ph.D. in Plant Pathology could be appointed as Professor (P-17). He has also referred to his bio-data (P-15), which was submitted by him for his appointment as Professor wherein Dr. V.S. Pahil-Respondent No. 3 did not claim to be Ph.D Horticulture nor has he mentioned the field of his Masters degree or Ph.D degree. Learned Counsel has attacked the stand of the Respondent-State by arguing that the written statement filed by the State is replica of the written statement filed by Dr. V.S. Pahil-Respondent No. 3, which is not as per their record because the documents attached with the written statement have not been available on the record of the Respondent State.

(b) He has further highlighted that the age of Dr. V.S. Pahil-Respondent No. 3 is also not in accordance with the circular dated 13th June, 2005 (P-3) and Rule 9 of the 1979 Rules, which required a candidate to be between the age of 40--50 years. According to the learned Counsel, the date of birth of Dr. V.S. Pahil-Respondent No. 3, as per his own bio-data (P-15) is 15th December, 1954, which means that on the last date of submission of application, he was more than 53 years of age. On 18th September, 2006, the official Respondents themselves concluded that Dr. V.S. Pahil-Respondent No. 3 is overage and, as such, is not eligible (P-10). Learned Counsel has also attacked the so called amendment made in the Rules (P-13) increasing the age from 50 to 55 years as against the requirement of the Rule which provide for age between 40--50 years for the post of Director. Learned Counsel has emphasised that Annexure P-13 does not disclose that the Rules have been amended but it is merely proceedings of the

78th adjourned special meeting of the Governing Board. For amendment of the Rules prior approval of the Central Seed Certification Board is required to be obtained, as is provided by Rule 33 of the 1976 Rules. Learned Counsel has maintained that the 1979 Rules could be amended with the prior approval of the Central Seed Certification Board in Ordinary General Meeting and with the support of more than half of the total strength of the said Board, whereas Annexure P-13 which is the resolution passed by the Governing Board does not fulfil any of the aforementioned conditions. It has not been passed with the approval of the Central Seed Certification Board. In the adjourned meeting, quorum for the Ordinary General Meeting was not complete, which required presence of 8 members whereas only 4 members were present.

(c) The next argument of Dr. Surya Parkash is that Dr. V.S. Pahil-Respondent No. 3 did not even apply within the stipulated time as fixed by the circular dated 12th June, 2005 (P-3). According to the learned Counsel any application received after 20th June, 2005 was not to be considered and the candidates who had applied within the stipulated period have been shown in Annexure P-4 and the name of Respondent No. 3 does not figure in the list, which, itself is sufficient to prove that he did not apply by the last date fixed for receipt of application.

(d) He has then submitted that according to Rule 6 of the 1979 Rules the appointing authority for the post of Director is the Governing Board of the Agency whereas in the present case the order was issued by the Chief Minister. He has ordered that Dr. V.S. Pahil-Respondent No. 3 be appointed as the Director of the Agency (P-11). Learned Counsel has maintained that similar recommendations made in favour of the Petitioners could not be construed as orders of making appointment by the Chief Minister as would be evident from the perusal of written statement of Respondent No. 1 and Annexure R-1/9A and R-1/9B appended therewith. He has argued that the appointment of Dr. V.S. Pahil-Respondent No. 3 is in flagrant violation of Article 14 of the Constitution and is, thus, liable to be set aside by quashing order dated 15th November, 2007 (P-I). In support of his submission learned Counsel has placed reliance on Division Bench judgment of this Court in the case of Bali Singh Verma v. State of Haryana 1995 (1) S.C.T. 75, and the judgments of Hon'ble the Supreme Court in the cases of Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, , and Rekha Chaturvedi v. University of Rajasthan 1993 Supp. (3) S.C.C. 168 He has submitted that the present controversy is squarely covered by the view taken by the Division Bench of this Court in the case of Bali Singh Verma (supra).

(e) Learned Counsel has also asserted that after passing the so called amendment (P-I 3) on 29th October, 2007, no fresh applications were invited from those who became eligible in accordance with the amendment made on 29th October, 2007 (P-I3).

(f) Learned Counsel for the Petitioners then submitted that the appointment of Dr. V.S.-Pahil-RespondentNo. 3 is in flagrant violation of Rule 4(b) of the Chaudhary Charan Singh, Haryana Agricultural University, Hissar Employees

Conduct Rules, 1967 (for brevity, "the 1967 Rules"). According to Rule 4(b) of the 1967 Rules no employee of the University-Respondent No. 4 could apply for any post outside the University except through proper channel, whereas Dr. v. Pahil-Respondent No. 3 has violated the said rule. According to the learned Counsel, Dr. v. Pahil-Respondent No. 3 did not even seek permission of the University-Respondent No. 4 to join Respondent No. 2 Agency. On the contrary he intimated the University-Respondent No. 4 that he is joining Respondent No. 2 Agency as would be evident from the perusal of his communications Annexures P-19 to P-23 (with the replication). Ex-post facto permission was granted by the University-Respondent No. 4 on 10th January, 2008, after the filing of the petition which is unsustainable in the eyes of law because it was obviously done at the directions issued by the State Government, although there is no provision to grant any such ex-post facto permission nor the University was bound by any such direction of the State Government.

(g) He has then highlighted that two IAS Officers under whom Dr. V.S. Pahil-Respondent No. 3 has worked recorded that his performance was very poor and he had brought bad name to Research and Development Centre which has plunged into heavy losses and that Dr. V.S. Pahil-Respondent No. 3 is expert in putting pressure by procuring representations from farmers. Learned Counsel has maintained that resolution (P-13) has been passed to comply with the directions issued by the Chief Minister, Haryana to appoint Dt-V.S. Pahil-Respondent No. 3 because the Chief Minister has ordered to appoint him,--vide order dated 27th September, 2007 (P-I1). It was thereafter that on 3rd October, 2007 agenda for making changes in qualification and age for the post of Director was issued for the meeting fixed for 16th October, 2007. When the meeting took place on 16th October, 2007, quorum of the general meeting, which was required to be of 8 members, was not complete. Accordingly, the meeting was adjourned to 29th October, 2007. The resolution was passed by 4 members appointing Dr. V.S. Pahil-Respondent No. 3 as the Director on the recommendation of the State Government. Accordingly, the appointment letter was issued on 15th November, 2007 (P-I) to him. He has further stressed that resolution Annexure P-13 could not override the rules and the mandatory procedure was required to be followed.

13. Mr. D.S. Nalwa and Ms. Preeti Khanna, learned Counsel for Respondent Nos. 1 and 2 respectively have argued that no prejudice is caused to Petitioner No. 1 because his date of birth is 11th October, 1967 and he was less than 40 years of age on the cut off date i.e. 20th June, 2005, which was the last date of receipt of applications as per circular dated 13th June, 2005 (P-3). He was ineligible because he was yet to attain the age of 40 years. However, Petitioner No. 2 would be eligible as per the circular dated 13th June, 2005 as his age was 47 years and 10 months but he would not fulfill the amended qualification. According to the learned Counsel both the Petitioners had right to be considered for appointment but they did not have any right to be appointed. They have emphasised that both the Petitioners were considered. They have also pointed out that there is no requirement in the rules prescribing minimum or maximum

age. In that regard our attention has been drawn to Rule 5 and 7 of the 1979 Rules. Rule 5 merely shows that no person is to be appointed to the service by direct recruitment unless he attains the age as specified in Appendix "B". According to Rule 7 the qualification is also required to be fulfilled as per Appendix "B". Learned Counsel have then submitted that Dr. V.S. Pahil-Respondent No. 3 in any case has requisite qualification as he is M. Sc. Agriculture in Plant Pathology with Plant Breeding (Crop Improvement, Seed Production and Certification) from CCS. HAU, Hissar. He has also done M. Sc. & M. Phil in Horticulture as Commonwealth Scholar alongwith his Ph.D from HRI, Littlehampton & King's College. University of London, UK. They have also emphasised that he has Ph.D. in Horticulture (Veg.) and have also experience of the subject. Learned Counsel have emphasised that in any case the Governing Board of Respondent No. 2 Agency in its meeting held on 29th October. 2007 has decided that for the post of Director the required qualification would be M. Sc. Agriculture with 10 years experience in Seed Production/Seed Technology and the age limit has been extended from 50 to 55 years. The Governinu Board had further decided that the power to appoint the Director be delegated to the State Government. It is claimed that Dr. V.S. Pahil-Respondent No. 3 was eligible even prior to amendment of qualification, experience and age.

14. Mr. R.K. Malik, learned Senior counsel for Dr. V.S. Pahil-Respondent No. 3 at the outset has stated that the appointment of Dr. V.S. Pahil is for a period of one year, which is to expire on 15th November, 2008. He has offered that he shall not seek any extension because he is being given appointment on a much higher post in his parent department i.e. CCS, HAU, Hissar. He has addressed on merit also by submitting that the allegations of the Petitioners is baseless that worthy Chief Minister recommended his case for appointment. According to the learned Counsel this is a routine affair of a Chief Minister and even receommendations in case of the Petitioners have been made, which would be evident from Annexure R-3/4 in respect of Petitioner No. 1 and R-3/5 in respect of Petitioner No. 2. According to learned Counsel the Chief Minister has expressed the desire to post Petitioner No. 2 as Director, Haryana Seed Certification Agency, Panchkula, who at that time was working as Additional Director, Agriculture. It has been pointed out that Dr. V.S. Pahil-Respondent No. 3 was sent to United Kingdom on Commonwealth Scholarship by the Government of India for research in Horticulture (Cultivation and Strain Improvement of Alternative Agaricus Species) at the University of AFRC Institute of Horticulture Research, Littlehampton. The aforementioned factual position has been brought out by letter dated 18th May, 1989, sent by the Government of India, Ministry of Human Resource Development (Department of Education), New Delhi, to him (R-3/2 at page 280). He pursued the aforementioned course and eventually was awarded Ph.D degree (R-3/2 at page 277). He has then drawn our attention to the transcript of academic record to highlight that Respondent No. 3 has studied Plant Pathology and, therefore, fulfilled all necessary qualifications. According to the learned Counsel the Governing Board of Respondent No. 2 Agency has amended the

qualification as well as requirement of age and in any case Respondent No. 3 meet those parameters. Another argument raised by Mr. Malik is that once the Petitioners have completed in the selection process and having failed they cannot attack the selection of Respondent No. 3 on any ground whatsoever. He concludes by saying that if Respondent No. 3 is permitted to continue till 15th November, 2008 then he would not request for any extension.

15. For various reasons to be noticed hereinafter we are of the considered view that the arguments raised by the learned Counsel for the Petitioners far outweighs the arguments of the learned Counsel for the Respondents. It has come on record that on 13th June, 2005, Respondent No. 2 Agency has issued a circular-cum-advertisement (P-3) inviting applications from all eligible persons. The academic qualification, experience, the requirement of age and the last date for receipt of applications, have been mentioned in that circular/ advertisement. The original circular/advertisement when translated in English reads thus:

On the above cited subject it is informed that Government has decided to fill as the post of Director Haryana State Seed Certification Agency, Panchkula in the grade of 12000-375-16500 on deputation basis. To fill up this post on deputation basis, qualifications, experience and age limit are as under:

Academic Qualification and Experience M. Sc. (Agri) in Plant Breeding/Agronomy/ 40-50 Horticulture (Veg.)/ Seed Technology. Atleast years 15 years experience in Research Farm Management/Crop Production Seed production/ Development and extension Activities out of which 10 years experience in a senior capacity. Should be fully conversant for organizing planning, implementation and knows Administrative/ technical affairs connected with the seed production.

If any officer under your control fulfil above qualifications, experience and age limit, his applicaiton alongwith documents should be forwarded to the Director of Agriculture upto 20th June, 2005. The applicaiton received after this date will not be considered.

16. It is more than evident from the perusal of the circular/ advertisement that the post of Director was to be filled up by way of deputation. An applicant was required to be between 40-50 years of age apparently on the last date of receipt of application i.e. 20th June, 2005. He is further required to have qualification of M. Sc. (Agriculture) in Plant Breeding/Agronomy/Horticulture (Vegetable)/Seed Technology. It further required a candidate to have at least 15 years experience in Research Farm Management/Crop Production/Seed Production/ Development and Extension Activities out of which 10 years experience is required to be in a senior capacity. The candidate is required to be fully conversant for organising planning, implementation and familiar with administrative/technical affairs connected with the seed production. It is further clarified that those who fulfilled qualification, experience and age limit were to apply alongwith documents to the Director of Agriculture upto 20th June, 2005 and any application received after the closing date was not to be considered.

17. It is undisputed that Respondent No. 2 Agency has framed the 1979 Rules, which are applicable for appointment to the post of Director. Under Rule 7 of the 1979 Rules there is prohibition that no person could be appointed to the Service, which include the post of Director, unless he is possessed with the qualification and experience specified in Column 3 of Appendix "B" of the 1979 Rules. Rule 7 alongwith Appendix "B" of the 1979 Rules, are reproduced hereunder for facility of reference:

7. No person shall be appointed to the service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules.

XXX XXX XXX

Sr. No. Designation of posts Academic Qualifications and experience Age Method of recruitment

1 2 3 4 5

1. Director M. Sc. (Agri.) in Plant Breeding/ Agronomy/ Horticulture/(Veg.)/ Seed/ Technology. At least 15 years experience in Research/Farm Management/Crop Production/Seed Production/ Development and Extension Activities out of which 10 years experience in a senior capacity. Should be fully conversant for organizing planning, Implementation and knows Administrative/ technical affairs connected with the seed production. 40--50 years i) Promotion from Chief Seed Certification Officer. ii) Direct.

iii) Transfer or deputation"

18. A perusal of the aforementioned rule with Appendix "B" makes it patent that Respondent No. 2 Agency has issued the qualification, experience and age in the circular/advertisement dated 13th June, 2005 (P-3) in terms of the provisions of Rule 7 read with Appendix "B" of the 1979 Rules.

19. Dr. V. S. Pahil-Respondent No. 3 did not fulfil the requirement of age. According to the circular/advertisement and Rule 7 read with Appendix "B" of the 1979 Rules, a candidate was required to be between the age of 40-50 years on the last date of receipt of application i.e. 20th June, 2005. It remains undisputed that Dr. V.S. Pahil-Respondent No. 3 did not answer this requirement because according to admitted facts he was born on 15th December, 1954, therefore, on the last date of receipt of application he was more than six months older than 50 years. His date of birth has been highlighted in his own bio-data furnished by him to the CCS, HAU, Hissar. Even otherwise, the Director Agriculture, Haryana, has rejected his application on the ground that he was overage when he sent communication dated 18th September, 2006 to the Financial Commissioner and Principal Secretary to Government Haryana-Respondent No. 1.

20. Even the application sent by Dr. V.S. Pahil-Respondent No. 3 was not received by the Director, Agriculture Haryana, before the last date of receipt of application i.e. on or before 20th June, 2005, which is evident from the fact that

the list of applicants was prepared by the Director, Agriculture Haryana, who have sent their applications on or before 20th June, 2005 and the name of Dr. V.S. Pahil-Respondent No. 3 does not find mention in that list. It appears to us that Dr. V.S. Pahil-Respondent No. 3 has not even applied and merely sent his Bio-data in August 2007. This fact is admitted by Respondent No. 3 if we make a reference to letter dated 28th December, 2007 (R-4/2) sent by him to CCS, HAU, Hissar-Respondent No. 4. He has stated that he did not submit any application but he was selected on the basis of his bio-data. It is well settled that if the application is not received by the date specified in the advertisement then such a candidate would lose the chance of consideration of his application. For the aforementioned view we seek support from the judgments rendered in the cases of Rekha Chaturvedi (*supra*); Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, , and Dr. M.V. Nair Vs. Union of India (UOI) and Others, In the case of Bhupinderpal Singh and Others Vs. State of Punjab and Others, , the question of determination of eligibility on a cut off date came up for consideration and while accepting the view expressed by this Court, Hon'ble the Supreme Court has observed as under:

....the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.....

21. The aforementioned principles lead to an irresistible conclusion that in the present case, the cut-off date fixed in the circular/ advertisement is 20th June, 2005. It was by the cut-off date that a candidate was required to fulfil the requirement of age and his application for the post could have been entertained. It is obvious from the preceding para that Dr. V.S. Pahil-Respondent No. 3 did not fulfil the requirement of age nor he sent the application on or before the last date fixed in the circular/advertisement.

22. The qualification of Dr. V.S. Pahil-Respondent No. 3 is also required to be determined in accordance with the circular/ advertisement and the cut-off date given therein. Dr. V.S. Pahil-Respondent No. 3 admittedly has the qualification of M. Sc. (Agricultural) in Plant Pathology, which does not answer the qualification advertised nor the one provided by the rules noticed above. According to the required qualification a candidate must be M. Sc. (Agriculture) in Plant Breeding. The claim of Dr. V.S. Pahil-Respondent No. 3 that he has Ph.D. in Plant Breeding or Horticulture cannot be accepted because the Petitioners have been supplied information under the Right to Information Act, 2005 by the CCS, HAU, Hissar,

showing that Dr. V.S. Pahil-Respondent No. 3 was promoted as Professor in Plant Pathology and Ph.D. qualification for Professor/eminent scientist is essential. They have further pointed out that Dr. V.S. Pahil-Respondent No. 3 possessed a Ph.D. degree but he did not disclose to the university its discipline. However, he had mentioned specialization in Mushroom Production and Technology. It was pointedly clarified that Dr. V.S. Pahil-Respondent No. 3 did not have Ph.D. in Horticulture because the Petitioners have asked particular question as to whether a person holding M. Sc. degree in Plant Pathology and Ph.D. in Horticulture can be promoted as Professor in Plant Pathology. Therefore, Respondent No. 3 does not answer the qualifications, which were required by the circular/advertisement dated 13th June, 2005.

23. The argument of the learned Counsel for the Respondents that there was amendment made by the Governing Board of Respondent No. 2 Agency on 29th October, 2007 and the qualification of M. Sc. (Agriculture) was considered adequate is liable to be rejected for more than one reason. The resolution passed by the Governing Board of Respondent No. 2 Agency, dated 29th October, 2007, flagrantly violates Rule 7 read with Appendix "B" of the 1979 Rules (which has already been noticed in the preceding para) and accordingly by such a resolution passed by the Governing Board no change in the qualification could be permitted. Likewise, the age limit of 40-50 years cannot be raised to 50-55 years nor the Governing Board of Respondent No. 2 Agency could delegate the power of appointment of Director to the Government. It is pertinent to notice that Respondent No. 2 Agency was established on 31st October, 1975 in view of the provisions contained in Section 2 of the 1966 Act. It is a body controlled and managed by the Government of Haryana and Commissioner-cum-Secretary to Government Haryana, Agricultural Department act as its Chairman. Respondent No. 2 Agency started its actual functioning with effect from 1st September, 1976. Under Rule 21 of the 1976 Rules the Governing Board of the Agency has been clothed with the power to frame regulations, which are not inconsistent with the rules and to alter, amend and repeal the regulations from time to time for administrative and management of the affairs of the Agency. It is, thus, evident that the 1979 Rules (Regulations?) have been framed after the approval of the Central Seed Certification Board, which has been established u/s 8-A of the 1966 Act. The Petitioners have made specific averments in paras 16 and 17 of the writ petition to the effect that any amendment could have been made with the prior approval of the Central Seed Certification Board. In the corresponding para of the written statement filed by Respondent No. 1 no satisfactory answer is given. The only contention raised is that these rules have been framed by the Governing Board and are non-statutory in character. However, in the replication the averments made in the petition have been reiterated. Respondent No. 2 Agency has been established u/s 2 of the 1966 Act, as is evident from the perusal of Section 3(a) of the 1966 Act. It is required to discharge the functions as detailed in Sections 9 and 10 of the 1966 Act. A similar matter came up for consideration before a Division Bench of this Court in the case of Bali Singh Verma (supra)

wherein these rules were relied upon to hold that the Government cannot usurp the power of appointment of Director and the appointment of Director made by the Government was set aside. Therefore, we are of the view that the amendment in any case would not govern the applications which were invited in pursuance to circular/advertisement dated 13th June, 2005 (P-5) because the resolution dated 29th October, 2007 (P-13) by the Governing Board of Respondent No. 2 Agency has been passed after more than two years.

24. We are further of the view that if the appointment was to be made on the basis of resolution dated 29th October, 2007 then fresh applications were required to be invited which concededly has not been done. Dr. V.S. Pahil-Respondent No. 3 sent his application in August, 2006, as already noticed. No circular/advertisement has been issued thereafter. If we consider the appointment of Respondent No. 3 in that light then it is violative of Article 14 and 16(1) of the Constitution because no opportunity to apply was given to those who might have qualifications which were laid down in the Resolution or so called amendment dated 29th October, 2007 adopted by Respondent No. 2 Agency.

25. This is fortified by the fact that worthy Chief Minister. Haryana, on 27th September, 2007 expressed the desire that Dr. V.S. Pahil-Respondent No. 3 be appointed as Director of Respondent No. 2 Agency. The note of worthy Chief Minister communicated by his Principal Secretary has been already extracted in para No. 5 above.

26. The sequence of events suggests that the process of appointment of Respondent No. 3 commenced after the note sent by the Chief Minister on 27th September, 2007 (P-I 1). Respondent No. 2 has admitted the receipt of such note as is evident from the perusal of para 11 of the written statement. It was thereafter that on 16th October, 2007, an agenda item was brought (P-I2) and amendment in the qualification, experience and age was sought to be made. In the agenda itself Rule 33 of the 1976 Rules has been quoted, which specifically provides for prior approval of the Central Seed Certification Board and the same reads as under:

33 Amendments to Rules Subject to the provisions of the Society Registration Act, 1860 (XII of 1860) and with the prior approval of the Central Seed Certification Board, these rules may be amended at any time by the resolution passed at an ordinary general meeting of the Board.

27. On account of incomplete quorum no resolution could be adopted and thereafter on 29th October, 2007 resolution was adopted with the amendment. Therefore, it is evident that the so called amendment made in the qualification, experience and age etc. is on account of special interest shown by the worthy Chief Minister and thereafter appointment letter to Dr. V.S. Pahil-Respondent No. 3 has been issued on 15th November, 2007 (P-I) after obtaining approval of the Chief Minister as is evident from para 11 of the written statement of Respondent No. 1.

28. It is true that a note in favour of each of the Petitioners was also sent by the Chief Minister, which have been brought on record as Annexures R-1/9A and R-1/9B. According to the note dated 8th August, 2007 the "CM has desired that Sh. B.S. Duggal, Additional Director, Agriculture Deptt. Panchkula may be posted as Director" of Respondent No. 2 Agency. Likewise a note dated 7th October, 2007 in favour of the Petitioner Shri Surinder Singh Dahiya has also been sent that CM has desired that his case "be considered sympathetically". Writing of notes in favour of the Petitioners does not lead to conclusion that violation of Article 14 and 16(1) of the Constitution is obviated nor would it result in presumption that change in qualification, age etc. (P-11) is not aimed at helping Respondent No. 3. Therefore, we do not find how the writing of notes for the Petitioners could be considered as mitigating factor to uphold the appointment of Respondent No. 3.

29. The matter does not end here because Dr. V.S. Pahil-Respondent No. 3 shelved all rules, regulations of the CCS HAU, Hissar, including Rule 4(b) of the 1967 Rules. The aforementioned rule requires an employee of the CCS HAU, Hissar, to apply for any post outside the University through proper channel. Dr. V.S. Pahil-Respondent No. 3 did not apply through proper channel nor sought permission of Respondent No. 2 Agency. In violation of the 1967 Rules, Dr. V.S. Pahil-Respondent No. 3 simply intimated to the CCS HAU, Hissar that he is joining Respondent No. 2 Agency, as would be evident from the perusal of his communications Annexures P-19 to P-23. The CCS HAU, Hissar sought his explanation for the lapse committed by him (P-22). He sent his reply on 28th December, 2007 stating that he was selected on the basis of his bio-data and no application was ever invited (R-4/2). The explanation is false if advertisement/circular dated 13th June, 2005 (P-3) have been seen. For the CCS HAU, Hissar it was fait accompli and it granted ex-post facto permission.

30. Keeping in view the totality of facts and circumstances we are of the considered opinion that Dr. V.S. Pahil-Respondent No. 3 has been appointed to the post of Director in complete surreptitious and clandestine manner. It is well settled that public offices are not the personal property of any individual or a group of individuals. No State largesse could be distributed in violation of Article 14 and 16 of the Constitution. The emperor like approach has to be condemned. No one could behave like Henry The VIII. The competing claims of eligible candidates in accordance with the amendment have not been considered and Dr. V.S. Pahil-Respondent No. 3 has been appointed virtually on the direction issued by the worthy Chief Minister, Haryana.