
(2010) 09 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 10643 of 2003

Inder Pal Bishnoi

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Citation : (2011) 161 PLR 84

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Heard the learned Counsel for the parties at length.

2. Haryana Public Service Commission through its advertisement issued in October, 1980, invited applications for Haryana Civil Services

(Executive Branch) and other Allied Services Examination 1980-81. The details of the vacancies advertised are as under:-

Category No. General S.C. B.C. Military

Personnel

i) Haryana Civil Services (Ex. Br.) 7 2 2 NIL

ii) Excise and Taxation Officer 9 3 2 1

iii) Assistant Registrar Cooperative 9 2 1 NIL

Societies

iv) ""A"" Class Tehsildar (Apprentices) 2 1 NIL 1

v) Assistant Employment Officer 12 4 2 1

3. The examination for the above posts was held in June, 1981. Before the completion of selection process, the Chief Secretary, Haryana, vide his

letter dated 8/9.11.1982 informed the Haryana Public Service Commission that number of vacancies to be filed for Haryana Civil Services

(Executive Branch) will be 25, i.e. General Category-16; SC-5; BC-3 and Ex-Servicemen-1. Interviews for the advertised and additional posts

were held between 04.11.1982 to April, 1983. Final selection list was forwarded by the Haryana Public Service Commission to the Government

vide letter dated 31.05.1983, category-wise and post-wise. The Petitioner was selected for the post of Excise and Taxation Officer. His name

figured at Serial No. 25 of the combined list of Haryana Civil Services (Executive Branch) and at Serial No. 9 of the Excise and Taxation Officers

list in General Category. It is stated that at the relevant time, 28 vacancies of Haryana Civil Services (Executive Branch) were available. It appears

that before the final selection list could be forwarded, Government vide its letter dated 05/18-01-1983 informed the Haryana Public Service

Commission that the Government desires to fill up eight vacancies of Haryana Civil Services (Executive Branch). Out of these 8 vacancies, one

post was for SC and two posts for BC. Examinations were held in the month of February, 1984 for nine vacancies of Haryana Civil Services

(Executive Branch). Category-wise position of posts was as under:

General Category - 6

SC - 1

BC - 1

Military Personnel - 1

4. The Petitioner joined as Excise and Taxation Officer on 23.02.1984. It appears that the Petitioner again applied in response to the Special

Recruitment and was selected/appointed to Haryana Civil Services (Executive Branch) on 15.05.1994 for which notification was issued on

09.03.1992. The Petitioner joined Haryana Civil Services (Executive Branch) on 16.05.1994.

5. In the meantime, various writ petitions came to be filed in respect to the selection made in the year 1992. Hon'ble the Supreme Court in the

case of Virender S. Hooda and Others Vs. State of Haryana and Another, , issued directions for appointment of the candidates from the waiting

list in view of the government circular dated 22.03.1957 and 26.05.1977. It was directed to adjust them below those who were selected along

with them at the time of recruitment made pursuant to the result declared on 19.06.1992.

6. The Petitioner made a representation dated 09.08.1999 (Annexure P-5) seeking, his pay protection in Haryana Civil Services (Executive

Branch) on the basis of his length of service rendered as Excise and Taxation Officer. The Petitioner made another representation dated

21.02.2005 (Annexure P-8) seeking benefit of the judgment in Virender Singh Hooda's case for his retrospective appointment in Haryana Civil

Services (Executive Branch) from the selection made in the year 1983-1984.

7. It is useful to notice that in the year 2002 after judgments in Virender Singh Hooda and Sandeep Singh's cases of the Supreme Court, the State

of Haryana passed an Act known as Haryana Civil Services (Executive Branch) and Allied Services and other Services, Common/Combined

Examination Act, 2002, where under the appointment to the post/service beyond the advertised posts was prohibited. The Petitioner made another

representation dated 31.01.2005 (Annexure P-9) claiming seniority in Haryana Civil Services (Executive Branch) on the basis of selection made in

the year 1983 claiming that he was at Serial No. 25 of the Combined Merit List and 28 vacancies in Haryana Civil Services (Executive Branch)

were available at the relevant time which representation has been rejected vide order dated 13.12.2006.

8. The Petitioner sought information under the Right to Information Act regarding the grounds for rejection of his representation. A copy of the file

noting has been placed on record as Annexure P-10. From the perusal of paragraph 5(iv), it appears that the claim of the Petitioner has been

rejected on the ground that under the Act of 2002 referred to above, the appointment could only be made upto the advertised vacancies. The Act

of 2002 was enforced with effect from 29.08.1989 and, thus, the Petitioner is not entitled to any relief.

9. The sole contention of the Petitioner is that he is entitled to be appointed to Haryana Civil Services (Executive Branch) on the basis of the

selection made in the year 1983 against the vacancies available at the time of selection notwithstanding the fact that such vacancies were not

advertised. He is further seeking benefit of judgment in Virender Singh Hooda's case wherein the Hon"ble Supreme Court had directed the

adjustment of the writ Petitioners from the select panel prepared in the year 1992 below those who were selected/appointed.

10. The claim of the Petitioner is liable to be rejected on account of the following reasons:

(i) The Petitioner was selected as Excise and Taxation officer in the year 1983 and he joined the said allied services in the years 1984. Upto the year 1999, the Petitioner never claimed any benefit of the selection of the year 1984. Even in the year 1999, his first representation was for seeking protection of the pay and not for his appointment against the vacancy of Haryana Civil Services (Executive Branch) available in the year 1980. It was only in the 2005 that the Petitioner for the first time lodged a claim for his appointment to Haryana Civil Services (Executive Branch) after Virender Singh Hooda's judgment.

(ii) All those persons who were selected and appointed during this period have not been impleaded as parties-Respondents.

(iii) The Petitioner again applied for the selection of Haryana Civil Services (Executive Branch) in the year 1992 and was selected and appointed in the year 1994. He joined Haryana Civil Services (Executive Branch) on the basis of fresh advertisement/selection without any reservation. Thus, he is estopped from claiming his appointment on the basis of selection made in the year 1983.

(iv) The Petitioner made representation in the year 2005 when the Act of 2002 had already come into operation which was applicable with effect from 29.08.1989 and in view of this statutory provision, the Petitioner's case cannot be considered.

(v) It is otherwise settled proposition of law that settled seniority cannot be disturbed after such a long period.

(vi) Virender Singh Hooda's case arises out of selection made in the year 1992 wherein direction was issued by the Hon''ble Supreme Court.

After Virender Singh Hooda in Sandeep Singh's cases, the Hon''ble Supreme Court further directed that no such petition shall be entertained on the basis of selection made in the year 1992. The position in law is also clear that appointment cannot be made beyond the advertised vacancies.

Only 9 vacancies (7 from General, 2 S.C. and 2 B.C.), were advertised. Even before the selection could be made, Haryana Public Service

Commission was informed to make selection only against 8 vacancies (6 General, 1 SC and 1 BC). According to his own admission, the

Petitioner's name was at Serial No. 5 much beyond the advertised vacancies.

(vii) In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, a similar view has been expressed by the Hon'ble Supreme Court.

The aforesaid view has been recently reiterated in the case of *Rakhi Ray and Others Vs. The High Court of Delhi and Others*, wherein following

observations have been made:

A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of

eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to

be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled

up, the selection process came to an end, thus, there could be no scope of any further appointment.

(viii) This writ petition has been filed in the year 2007 claiming appointment on the basis of selection made in the year 1983. At this belated stage,

no relief can be granted to the Petitioner particularly in regard to the seniority wherein a number of persons appointed in subsequent selection are

likely to be affected who are not parties before this Court.

11. In view of the above, I find no merit in the present writ petition and the same is hereby dismissed with no order as to costs.