(1974) 04 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 171 of 1971

K.L. Beakta and Another — APPELLANT

Vs

The State of Himachal Pradesh etc. — RESPONDENT

Date of Decision : 22-04-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309, 320(3)
Himachal Pradesh Tehsildari Rules, 1953 — Rule 2(10), 3, 5, 5(2)

Citation : (1974) 3 ILR HP 364

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : Sushil Malhotra, for the Appellant; B. Sita Ram, General, Sarvshri R.K. Punshi, Ramesh Chand and D.P. Sud, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—In this writ petition filed under Articles 226 and 227 of the Constitution. K.L. Beakta and Mohan Lal Sharma, Naib-Tehsildar Petitioners, have called in question, two notifications dated June 8,1971, one exempting Respondents 4 to 16 who are also Naib-Tehsildars from the requirement of passing the departmental examination of Tehsildars, and the other promoting 12 of them as officiating Tehsildars "as a stop-gap arrangement". The Petitioners further claim the relief of a direction: to Respondents 1 to 3, who are the State of Himachal Pradesh, its Financial Commissioner and the Deputy Secretary (Revenue), to consider the case of the Petitioners for promotion to the post of Tehsildar in accordance with the rules. The case of the Petitioners is founded on the allegations, that they are Class A candidate Naib-Tehsildars and were recruited on July 13, 1964. The Petitioner No. 1 had passed the qualifying examination of Tehsildar in 1970, while the Petitioner No. 2 passed that examination in 1967. According to Petitioners, Respondents 4 to 16 have not passed that examination and as such under Rule 5(2) of the Himachal Pradesh Tehsildari Rules, 1953, they were not qualified to be promoted as Tehsildars. Under the proviso to Rule 5(2), for special reasons to be recorded in writing, the

Financial Commissioner could waive that qualification. The Petitioners contend, that the Lt.-Governor of the Union territory of Himachal Pradesh in the year 1958 constituted a departmental promotion committee (D.P.C.) of which the Secretary (Revenue) was the Chairman and the Commissioner was one of the members. In the month of June, 1971, several vacancies of Tehsildars fell vacant, and the Financial Commissioner being the appointing authority, was to promote Naib-Tehsildars against these vacancies. The Financial Commissioner accordingly exempted the Respondents 4 to 16 from the qualification of departmental examination and their cases were considered in a D.P.C. which, according to the Petitioners, was wrongly constituted. The Commissioner being a member did not participate and in his place the Assistant Commissioner K. N. Sharma and Deputy Secretary and Under Secretary (Revenue) S.R. Mahantan and K.C. Chauhan respectively, took part in the deliberations of the D.P.C. The Petitioners had a right to be considered for promotion by an eligible D.P.C, which was not done. The Financial Commissioner did not give any special reason for exempting the prescribed qualification in the case of Respondents 4 to 16. He was rather influenced by the decision of the D.P.C, although he was required to form an independent opinion of his own. In fact, no special reason existed for granting exemption in the matter of qualification for these Respondents. In this manner, 14 persons were given advantage of the order of the Financial Commissioner and the Petitioners were not promoted. The Secretary (Revenue) or the Financial Commissioner had no power to change the constitution of the D.P.C. and any decision of such D.P.C was ultra vires.

2. The Petitioners further contend, that the State Public Service Commission was not consulted and so the order of appointment is vitiated. The future chances of promotion of the Petitioners have receded and their representations to the authorities were not properly considered. On these grounds the two notifications are sought to be quashed and a direction is solicited from the Court for consideration on merit, of the case of the Petitioners for promotion.

3. The main contention was of the Respondents 1 to 3. It was denied that the composition of the D.P.C was illegal. According to these Respondents, the Commissioner was not a member of the D.P.C. and the composition under the rules could be only of the Secretary (Revenue) as Chairman and one member either the head of the office or any other officer of the department nominated by the Secretary. Shri K.N. Sharma was the Assistant Commissioner and as such he was declared head of office. The Financial Commissioner was the Secretary (Revenue) and he was Chairman of the D.P.C. In this manner the composition of the D.P.C. was valid and under the rules. The exemption was granted by the Financial Commissioner who presided over the D.P.C. and formed an independent opinion of his own. The D.P.C. was only a body supplementary to the decision of the Financial Commissioner. The Financial Commissioner in fact tilted the balance in favour of the Respondents when he held, that considering their length of service, qualification and experience, they deserved exemption from the prescribed qualification of passing the departmental examination. If it was

specified in the order granting exemption that the Financial Commissioner had acted upon the recommendation of the D.P.C. it would not mean anything else than this, that the Financial Commissioner being the Chairman of the D.P.C. himself decided to grant the exemption. At any rate, the minutes of the D.P.C, which the Respondents placed for perusal of the Court, indicate that the Financial Commissioner took active part in the deliberations and whatever decision was arrived at was his opinion being agreed to by other members of the committee. The Respondents contend that it was not required of the Financial Commissioner to have recorded these reasons in his order whereby he granted exemption of qualification. In fact 13 vacancies were to be filled up and only 14 qualified Naib-Tehsildars were on the list. The scope of selection was thus very much narrow and almost every Naib-Tehsildar would have got the appointment. Therefore, in the interest of public service, cases of other Naib-Tehsildars, who had not qualified in the departmental examination but who possessed sufficient experience and qualification due to length and good record of service, were considered. Similarly the case of the Petitioners was also considered on merit. They were not considered at par with these Respondents. Hence the Petitioners were not appointed. In fact, the promotions were made as a stop-gap arrangement and were to be regularised by the Public Service Commission. At any rate, prior approval of the Commission was not required, before making the appointment. Every Respondent appointed is senior to the two Petitioners. In fact the Petitioners could have appealed to the Government, but they did not avail of that remedy. On this ground also, the petition is incompetent.

4. The Respondents 4, 5, 8, 10, 17, 22 and 24 have also filed their returns. Their contentions are more or less similar to the contentions submitted by the Respondents 1 to 3. In addition, they have taken a plea that the Petitioners have no locus standi to file the petition because they are junior in service to these Respondents. The Respondents 17, 22 and 24 have further stated that they have even qualified the departmental examination. As such, according to them, they were rightly promoted in every respect.

5. The Respondents, therefore, pray that the petition is devoid of any merit and should be dismissed.

6. Before considering the grounds alleged by the Respondents, it would be illuminating to make a reference to the statutory rules, notifications and orders, and also to the minutes of the D.P.C. of which the Financial Commissioner was the Chairman, The relevant rules are 3 and 5 of the Himachal Pradesh Tehsildari Rules, 1953, which are quoted below:

3. Authorities empowered to make appointment:

All substantive or officiating appointments to the post of Tehsildar or Naib-Tehsildar the strength of which is shown in Appendix ''B'' shall be made by the Financial Commissioner, Himachal Pradesh.

5. (2) No person shall be appointed directly or by transfer to the service or

promoted from the post of Naib-Tehsildar to that of Tehsildar unless he shall have become qualified by passing the examination and undergoing the training prescribed from time to time in the Standing Orders of the Financial Commissioner, Punjab:

Provided that the Financial Commissioner, may, in special circumstances to be recorded in writing, waive any of the provisions of this rule.

For the constitution of the D.P.C. the Petitioners relied upon Himachal Pradesh Administration Office Memorandum No. A-107-46/51, dated September 22, 1958 of which the relevant part is given below:

Annexure(F)

In super session of this Secretariat Office Memorandum of even number, dated the 8th April, 1953, and subsequental addendum and corrigendum thereto. Departmental Promotion Committee for Class III and Class II posts in Himachal Pradesh are constituted as under:

(a) Departmental Promotion Committee for promotion of a member of Class III from one grade to another in Class III-

1. Secretary of the Department concerned President

2. Head of the Department of the department concerned.

3. Head of office of the department concerned or any other officer of the department to be nominated by the Secretary of the Department Members.

This committee shall also function as Selection Committee for the purpose of selecting candidates for appointment in Class III and for training etc. in certain institutions.

It is, therefore, evident that the D.P.C. was to have either the Secretary or the head of the department as President and only one member, either head of the office or any other officer of the department nominated by the Secretary.

7. A notification (Annexure ''G'') was issued on July 29, 1965 appointing Commissioner as head of department which is given below:

GOVERNMENT OF HIMACHAL PRADESH FINANCE DEPARTMENT NOTIFICATION Dated Simla-4, the 29th July, 1965

No. 12/62/64-Fin (R&E).--In partial modification of item No. 7 of this department''s notification No. 12 16/62-Fin. (R&E), dated the 21st February, 1963, and in exercise of the powers conferred upon him under supplementary Rule 2(10) read with item 43 of Appendix 14 of the P&T Compilation of Fundamental and Supplementary Rules, Vol. II, the Lt.-Governor, is pleased to declare the Commissioner, Himachal Pradesh, as head of department under head "19--General Administration-E-District Administration--excluding the sub-heads E-I--General Establishment-E-I (I) Pay of Officers and E-2--Sub-Divisional

Establishment E-2 (1) Pay of Officers.

By order, S.C. Bhatnagar, Finance Secretary to Himachal Pradesh Government.

Similarly another notification was issued on

August 7, 1964 declaring Assistant Commissioner, Land

Reforms, Himachal Pradesh to be head of office which is reproduced below:

GOVERNMENT OF HIMACHAL PRADESH LAND REFORMS DEPARTMENT OFFICE ORDER Dated the 7th August, 1964

No. 2-28/64-LRC.--In exercise of the powers vested in me under the Delegation of Financial Powers, Rules, 1958 read with Government of India, Ministry of Home Affairs, letter No. 4/5/63-Fin. (pt), dated the 1st May, 1964, I hereby declare the Assistant Commissioner, Land Reforms, Himachal Pradesh, as Drawing and Disbursing Officer (Head of Office) in respect of Class III and IV staff posted at the State headquarters under head 9--Land Revenue.B-4 for Land Reforms (Plan).

2. Further in exercise of the powers vested in me under item 54 of appendix 13 of the Fundamental and Supplementary Rules Vol. II, I hereby declare the Assistant Commissioner, Land Reforms, Himachal Pradesh as controlling officer for the purpose of travelling allowance of Class III and IV staff posted at the State headquarters under the aforesaid head of account.

Sd/-(C.L. Kapila), Land Reforms Commissioner Himachal Pradesh.

8. The relevant extracts from the proceedings of the D.P.C. are given below which indicate the grounds for granting exemption to Respondents 4 to 16, and which also indicate that the cases of the Petitioners were also considered for promotion:

Proceedings of the Departmental Promotion Committee for promotion of eligible Revenue officials to the posts of Tehsildars met on 5th and 6th June, 1971.

The following were present:

1. Shri U. N. Sharma, Financial Commissioner.

2. Shri S.R. Mahantan, Deputy Secretary (Revenue).

3. Shri K.C. Chaulftatt, Under Secretary (Revenue).

4. Shri K.N. Sharma, Assistant Commissioner in the office of the Divisional Commissioner, Himachal Pradesh.

The total number of existing vacancies and the likely vacancies to occur during the coming 12 months is assessed at 13.

....

According to Rule 5(2) of the Service Rules for Tehsildars and Naib-Tehsildars in Himachal Pradesh, only those persons who have passed the Departmental Examination of Tehsildars and undergone prescribed training, are eligible for consideration for appointment as Tehsildars. From the list of Naib-Tehsildars, placed before the Committee (copy enclosed), only 14 Naib-Tehsildars have passed the Tehsildari Departmental Examination. This will Obviously mean that against the 13 vacancies, the cases, of only 14 Naib Tehsildars could be considered. The Committee felt that this would not be fair and equitable.

In view of the above and also taking into consideration the fact that amongst the Naib-Tehsildars, there are many old and experienced officials, the Committee decided to except those Naib-Tehsildars who had crossed the age of 45 years from the requirement of passing the Departmental Examination and consider their case also for appointment as Tehsildars if found suitable otherwise. This incidentally is within the powers of the Financial Commissioner as prescribed in the proviso to Rule 5(2) of the aforesaid rules.

....

Keeping the above in view, the Committee examined the annual confidential reports for 3 years in respect of all the eligible Naib-Tehsildars including those in respect of whom exemption has been given by the Financial Commissioner in exercise of his power contained in the aforesaid rules, and assessed them as under in order of merit:

1 to 19... .... 20. Shri K.L. Beakta "Good" 21. Shri Mohal Lal "Good". ... ... Sd/- Sd/- Sd/- Sd/- (U.N. (S. R. (K. C. (K. N. Sharma). Mahantan). Chauhan). Sharma). Financial Dy.Secy.(Rev.) Under Secy. (Rev.) Asstt. Commr. Commissioner. 6-6-71. 6-6-71. inO/O Div. 6-6-71. Commr. 6-6-71.

9. The two impugned notifications dated June 8, 1971, (Annexures ''C '' and ''D'') are given below:

Annexure ''C'' GOVERNMENT OF HIMACHAL PRADESH REVENUE DEPARTMENT NOTIFICATION Simla-2, the 8th June,1971

No. 1-25/71-Rev.A.--The Financial Commissioner, Himachal Pradesh on the recommendation of the Departmental Promotion Committee is pleased to exempt the following officiating Naib-Tehsildars from the requirement of passing the departmental examination of Tehsildars from the date of the issue of this order:

1. Shri Lajja Ram Dhauta.

2. Shri Dharam Vir.

3. Shri Bidhi Singh.

4. Shri Punnu Ram.

5. Shri Ram Singh.

6. Shri Hari Saran.

7. Shri Kashmiri Lal.

8. Shri Yado Patti.

9. Shri Kesari Lal.

10. Shri Devi Chand Sharma.

11. Shri Harnam Singh.

12. Shri Sharda Nand.

13. Shri Thakur Chand.

14. Shri Mehar Singh.

By order, (S.R. Mahantan) Deputy Secretary (Revenue) to Himachal Pradesh Government.

Annexure ''D'' HIMACHAL PRADESH GOVERNMENT REVENUE DEPARTMENT NOTIFICATION Simla-2, the 8th June, 1971

No. 2-38/65-Rev. I.--On the recommendations of the Departmental Promotion Committee, the Financial Commissioner, Himachal Pradesh, is pleased to order from the date of taking over the promotion of the following Naib-Tehsildars as officiating Tehsildars in the scale of Rs. 350-25-500-30-590/30-800 as a stop gap arrangement:

1. Shri Lajja Ram Dhauta.

2. Shri Inder Singh Chandel.

3. Shri Dila Ram Hazri.

4. Shri Kanshi Ram.

5. Shri H.K. Sharma.

6. Shri R.S. Bali.

7. Shri Surender Mohan.

8. Shri Prem Singh.

9. Shri Amar Nath.

10. Shri Dharam Vir.

11. Shri Bidhi Singh.

12. Shri Mangoo Ram.

The posting orders of the above Tehsildars are being issued separately. The junior most officials shall have to be reverted to their original posts as soon as the other categories of the officials are available for regular promotion according to the prescribed roster.

By order Deputy Secretary (Revenue) to Government of Himachal Pradesh.

10. It is admitted on all hands, that the Himachal Pradesh Tehsildari Rules, 1953, had applied and Rules 3 and 5 were relevant, inasmuch as, the Financial Commissioner was to make the appointment as well as to grant exemption to those Naib-Tehsildars who did not qualify the examination. As to the D.P.C., it is again conceded by the Petitioners as well as the State Government that under the notification (supra) it was a consultative body of which the Financial Commissioner being Secretary was the Chairman. There is, however, a serious dispute between the parties as to the constitution of the D.P.C. It is again an admitted case of the Petitioners as well as the Respondents, that the Financial Commissioner was also the Secretary (Revenue) and as such a member of the D.P.C. The Respondents 4 to 16 were admittedly unqualified because they had not passed the examination. It could not be disputed that there were 13 posts to be filled up and only 14 qualified Naib-Tehsildars were on the roster. The Financial Commissioner was, of course, required to make the appointment. Similarly, he alone could grant exemption to such Naib-Tehsildars who had not qualified the examination.

11. A serious dispute arises as to the exemption granted by the Financial Commissioner. It is submitted by the Petitioners that no reasons were given in the order Annexure ''C '' while the exemption was granted. At the same time, it is evident the D.P.C. was presided over by the Financial Commissioner and sufficient reasons were given in the minutes of that meeting for granting exemption. The important aspect to be borne in mind is, that there were 13 vacancies to be filled up and only 14 qualified Naib-Tehsildars existed on the roster, to be considered. In this manner, almost every Naib-Tehsildar would have got the appointment. That was not clearly in the interest of public service. This actually prompted the Financial Commissioner to grant exemption. In my opinion, it was a special circumstance within the meaning of the proviso to Rule 5 (2) of the Himachal Pradesh Tehsildari Rules, 1953. The length of service, qualification and experience, of the Respondents 4 to 24 were taken regard of and exemption was granted. It is irresistible to conclude, after seeing the report of the D.P.C. that the Financial Commissioner made an independent decision and merely took the assistance of the other members in Sorting out the names of officials and in making the assessment of their previous record. There is every indication from the report of the D.P.C that the Financial Commissioner applied his mind and did not leave the matter entirely in the hands of the members. Thus it could be held that the decision regarding exemption was of the Financial Commissioner. It was not required of the Financial Commissioner, to have given out the "special reasons" in writing in Annexure ''C'', the actual order whereby the exemption was granted. There is enough material otherwise to indicate that there were special reasons which were considered sufficient to grant exemption.

The Financial Commissioner applied his mind and the decision was his, although he was assisted by other members. If the Financial Commissioner specified in his order that he had granted the exemption "on the recommendation of the D.P.C." he did not mean to say that the decision was not his but of the other members of the D.P.C. It was specifically indicated in the minutes, that it was within the powers of the Financial Commissioner to grant exemption and obviously he exercised that power. The D.P.C. Was there only to supplement and not to supplant his decision.

12. It is true that in the rule itself there was no provision for D.P.C. but that fact would be immaterial, as long as it is held, that the decision was nonetheless made by the Financial Commissioner. The learned Counsel further pressed on my attention that as many as 14 officers were exempted and in this manner the rule itself was nullified. No such inference can be drawn, for the obvious reason, that special circumstances existed which justified the grant of exemption to so many officers. Otherwise, the result would have been, that 14 officers would have been straightaway appointed against 13 posts and there would have hardly been a selection. After all the post of Tehsildar was to be filled up after selection on merit. That was only possible if an appreciable number of officials, were available for consideration. In my opinion, therefore, there was more than sufficient reason for granting exemption to experienced officials. This would answer the contention of the Petitioners that the exemption was not granted in a proper manner and hence the case of the Respondents could not be considered for promotion.

13. In this connection the learned Counsel referred to Bharat Raja Vs. The Union of India (UOI) and Others, The ratio of that case has really no bearing on the question presented for determination in this case. In that case which their Lordships were dealing, there was a scrappy or nebulous order to wit "rejected" or "dismissed". It was held, that the Court was placed under a great disadvantage as no reasons were described and hence the order should have been a speaking order. In the present case, there is a record of the D.P.C. and ample reason is given therein for granting exemption. I have already held that a detail of such reasons need not have been given in the order of June 8, 1971.

14. On the question of exemption, the learned Counsel referred to T.C. Sreedharan Pillai and Ors. v. The State of Kerala and Ors. 1973 (1) S.L.R. 478 and Hart Sharma Prem and Anr. v. Union of India and Anr. 1973 (2). S.L.R. 557. The, first case is a Full Bench decision of Kerala High Court, in which Rule 39 of the Kerala State Subordinate Services Rules, 1958, was considered and it was held that while applying that rule, the authority could not act arbitrarily to give special treatment to any officer or officers according to its sweet will and pleasure, by passing an order in direct contravention of the main rule. However, it was held that Rule 39 could be utilised to undo hardship to any officer or group of officers. The ratio of this case will not help the Petitioners, because in public interest the rule was relaxed in the present case, to undo hardship to a group of

officers. Moreover the action of the Financial Commissioner cannot be considered arbitrary but rather it was in the interest of public service. The second case is of this High Court in which a certain rule enabling relaxation in the qualification was considered. It was held that the power was to be exercised in the subjective discretion of the Government. "Within the frame work of that power, when and to what extent it should be exercised is not for objective examination by the Courts. Applying this principle to the present case, what prevailed upon the Financial Commissioner, as long as the ground ascribed was reasonable and germane to the issue, cannot be a subject-matter of decision by the court. Therefore, the authorities relied upon by the Petitioners do not lend them any support.

15. The second important question refers to the promotion of the Respondents. The office memorandum of September 22, 1958, (Annexure ''F'') did provide for the constitution of a D.P.C. for promotion of a member of Class III from one grade to another, in the same class. No doubt under Rule 3 of the Himachal Pradesh Tehsildari Rules, 1953, the Financial Commissioner was the appointing authority. Still he could be assisted by a D.P.C. which was only an advisory body. The office memorandum Annexure ''F'' which was nonetheless a statutory order under Article 309, constituted the D.P.C. and the decision regarding promotion was to be arrived at only in a D.P.C. In this connection, reference need be made to Sant Ram Sharma Vs. State of Rajasthan and Another, There was no specific provision in the rules laying down the procedure for making promotions. For that purpose the administrative order Annexure ''F'' was issued. It laid down that the D.P.C. would consider the case of eligible officers in accordance with a certain defined procedure laid down by the Government. It is true that the Government cannot amend or supersede a statutory rule by administrative instruction, but if the rules are silent on a particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. This has been done in the present case. The instructions regarding D.P.C. are not inconsistent with the rules. Rather a procedure has been prescribed for making selection and promoting officers. This Court in a Full Bench decision of which the report is A.N. Bhoil v. Union of India and Ors. 1973 (2) S.L.R. 726, held that an authority called upon to decide a matter of promotion can appoint a delegate, to advice it so long as the ultimate decision of promotion is taken by that authority, although the preparatory work is undertaken by the advisory body. The power to approve or disapprove the decision of the advisory body is always there with the authority making the promotion. Similar is the situation in this case. The Financial Commissioner did make the appointment under Rule 3, but he took the advice of the D.P.C. for which there was an administrative order. Therefore, no exception can be taken because Rule 5 never provided for D.P.C and the same was constituted under an executive instruction of the Government.

16. As regards the constitution of the D.P.G. there is a serious contest between the pasties. The Petitioners urge that they had a right to he considered by an appropriate D.P.C. According to them, the Commissioner was a necessary

member of the D.P.C. but the Assistant Commissioner took part in the deliberation and a prejudice was caused to them. To me it appears, the controversy is really much ado about nothing, because the constitution of the D.P.C. was perfectly in accordance with the office memorandum Annexure ''F''.

17. The D.P.C. was to comprise the Secretary or the head of the department as President and the second member was the head of office or any other officer nominated by the Secretary. This is clear from paragraph (a) of the memorandum Annexure ''F'' (supra). The Petitioners refer to Annexure ''G'' of July 29,1965, which declares the Commissioner to be the head of the department and on that basis argued that the Commissioner was a member of the D.P.C. Be it as it may, either the Secretary or the head of the department could be the President. In the present case, the Financial Commissioner being the Secretary, was the President and one of the other members was definitely the head of office. The only objection which can be pointed out is that there were two additional members Section R. Mahantan and K.C. Chauhan, Deputy Secretary and Under Secretary (Revenue) respectively. Thus the constitution of the D.P.C. was exactly in accordance with para (a) of Annexure ''F'' with this modification that two additional members were co-opted. It is not shown in what manner these two additional members prejudiced the case of the Petitioners. The D.P.C. was otherwise duly constituted. The Financial Commissioner exercised his discretion and the order of promotion was made by him. In my opinion, therefore, the D.P.C. was rightly constituted and the plea of the Petitioners is thrown over board merely taking regard to this aspect.

18. It is evident from the deliberations of the D.P.C. that the case of the Petitioners was considered on merit. They were not discriminated in any manner. Since the Respondents were senior to them and their efficiency was also found upto the mark, they were promoted as Tehsildars. The Respondents'' plea that only stop-gap

and temporary promotions were made would not be of much avail to them. Even for making stop-gap and temporary promotions, the rules were required to be observed. It would not be a correct argument that junior and inefficient officers can be appointed on the pretext that promotions are only stop-gap or temporary. In the present case, however, such a position does not arise. The Respondents are seniors and they have been considered fit on merit for promotion.

19. It is then urged that the approval of the Public Service Commission was not obtained. The Respondents have contended that they have already moved a case for such approval. At any rate, the order of promotion cannot be held ultra vires because of any such reason. In Tuhi Ram Sharma, District Agriculture Officer, Haryana v. Prithvi Singh, District Agriculture Officer and the State of Haryana 1971 S.L.R. 184, a Full Bench of Punjab and Haryana High Court has held that it is not always necessary that advice should be obtained from Public Service Commission before selection or promotion. Noncompliance of Article 320(3)(b) does not affect validity of appointment. I am in respectful agreement with this

decision.

20. There is no allegation of mala fide or bias against the Respondents and as such the two orders of exemption and promotion cannot be questioned on any such ground. It is submitted by the Respondents that the Petitioners have no locus standi as they are already junior in service as compared to the Respondents 4 to 24. Merely because the Petitioners are juniors, they would not lose their right to file the writ petition. They are directly affected by the appointment and hence in my opinion they have very much a locus standi to file the petition.

21. In the last it is contended by the Respondents, which to my mind is of considerable importance, that a remedy already lay with them to file an appeal to the State Government. They have not availed of this remedy and have rather approached the Court by filing the writ petition. Whatever objections the Petitioners had, could be rectified by filing an appeal and the Government at its own level would have certainly scrutinised the procedure of the D.P.G. and would have also looked up the relevant notifications. The Petitioners should not have hurried to this Court without exhausting that remedy which was sufficiently effective. I am sure, the Petitioners would have got the relief from the Government if they would have succeeded in pointing out any serious defect in the constitution and procedure of the D.P.C. or even in the matter of grant of exemption in qualification. The writ petition is, therefore, premature on that account.

22. In this view of the matter, I must hold that the Petitioners have neither set up a legal right in their favour, nor have pointed out any flaw, constitutional or otherwise, in the order of exemption or of promotion made in favour of the Respondents 4 to 24. The writ petition is devoid of any merit and no relief can be granted.

23. The writ petition is, therefore, dismissed without making any order as to costs.

