

(2012) 11 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22868 of 2012

Lalit Kumar and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2013) 169 PLR 507

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Baltej Singh Sidhu for Mr. Kulwinder Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Petitioners have approached this Court praying for quashing of the instructions dated 15.9.2005 (Annexure-P-7), vide which the earlier instructions dated 22.9.2000 (Annexure-P-3) have been superseded. Challenge has also been posed to the order dated 22.6.2012 (Annexure-P-6), vide which the claim of the petitioners for promotion stands rejected, relying on the instructions dated 22.9.2000. It is the contention of the counsel for the petitioners that as per the statutory Rules, petitioners are entitled to promotion as they fulfil the qualification prescribed thereunder and they passed the departmental examination of Naib Tehsildar in the years 2002 and 2003 respectively. Their claim for promotion should have been considered in the light of the instructions dated 22.9.2000 (Annexure-P-3). The supersession of these instructions by the instructions dated 15.9.2005 (Annexure-P-7) is primarily based upon a judgment passed by this Court in the case of Arjun Dev v. State of Punjab and others, 1997 (4) RSJ 463, where the statutory Rules/Instructions are different from that of State of Haryana. He contends that in the State of Punjab only three chances are provided for qualifying the Naib Tehsildar departmental examination, which is not the case in the State of Haryana, where unlimited opportunities are granted to the Kanungos to pass the examination and, therefore, the supersession of instructions dated 22.9.2000 by the instructions

dated 15.9.2005 being not in consonance with the letter and spirit of the Rules, cannot sustain as the merit has been given go-bye, vide these instructions. He on this basis contends that the impugned instructions dated 15.9.2005 (Annexure-P-7) deserve to be set aside. Assailing the order dated 22.6.2012 (Annexure-P-6), vide which the claim of the petitioners for promotion prior to the persons who had passed the departmental examination subsequent to their passing the departmental examination of Naib Tehsildar has been assailed on the ground that the petitioners were entitled to promotion prior to them in the light of instructions dated 22.9.2000 and non-consideration of claim of the petitioners cannot be sustained. His further contention is that during the period when the instructions dated 20.9.2000 were in force till the promulgation of the instructions dated 15.9.2005, promotions were required to be made as per the then prevalent instructions and the claim of the petitioners should have been considered under those instructions for the posts which were available during the said period.

2. I have considered the submissions made by the counsel for the petitioners and have gone through the records of the case.

3. The relevant Rule, which deals with the recruitment to the service in the case of Naib Tehsildar, is 9(b) of the Haryana Revenue Department, Naib-Tehsildars (Group "C") Service Rules, 1988 (in short "1988 Rules"), according to which, 50% posts are to be filled up by way of direct recruitment, i.e. persons recommended by the Haryana Public Service Commission and the remaining 50% posts are to be filled up by promotion from amongst the Kanungos, District Revenue Accountants or Senior Revenue Accountants of Financial Commissioner's office, Haryana. Source of filling up of the post by transfer or deputation has also been provided. As per Rule 9(b) sub-Rule 2 of the said Rules, all promotions shall be made on seniority-cum-merit basis and seniority alone shall not confer any right of such promotion. Rule 10 of the said Rules provides for training; of candidates and departmental examination, according to which, for promotion to the post of Naib Tehsildar, Kanungos are required to pass the departmental examination of Naib Tehsildars as contained in Appendix "E" of the said Rules. In the statutory Rules, it is nowhere mentioned as to what would be the effect of passing the departmental examination upon the mode of consideration of a candidate for promotion and the effect thereof for promotion in case a senior candidate is available and is fit for promotion. It only lays down a condition precedent for a candidate to be eligible for consideration for promotion. The guiding instructions, therefore, as far as promotion to the post of Naib Tehsildar with effect from 22.9.2000 were that Kanungo who qualifies the departmental examination of Naib Tehsildar, the said date would confer a right of consideration upon such an employee and a separate seniority was to be prepared on that basis. The effect thereof was the date of passing of the departmental examination, determined the seniority under which Kanungo was to be considered for promotion to the post of Naib Tehsildar. This situation changed with the supersession of the instructions dated 22.9.2000 (Annexure-

P-3), vide instructions dated 15.9.2005 (Annexure-P-7), according to which, the benefit of prior passing of the departmental examination of Naib Tehsildar having precedence over the others, who have passed the examination subsequently, was withdrawn. Since there is no limit to the attempts to pass the departmental examination for Naib Tehsildar, the general seniority would be the date of joining the service. All candidates on the date when the consideration for promotion is to be made who have passed the departmental examination have to be considered according to their seniority. If that be so, promotion of candidates who had although, passed the examination subsequent to the petitioners, but are senior to the petitioners, cannot be faulted with. The contention of the counsel for the petitioners that the posts, which fell vacant during the period when the instructions dated 20.9.2000 were in force till supersession by the instructions dated 15.9.2005, have to be filled up as per the then prevalent instructions on principle cannot be doubted, but in the light of the fact that the petitioners did not assert their right at the relevant time and have now approached this Court after a period of seven years, the claim cannot be accepted. That apart, no details of the posts, which had come into existence for promotion during the said period, have been projected or given in the petition nor has it been mentioned as to who all were the candidates who were promoted during this period nor has it been mentioned as to whether there was any violation of the instructions dated 20.9.2000, which were in force during the said period and qua which candidate. The persons, who were promoted during the said period and would be directly effected in case of interference by this Court, have also not been impleaded as party respondents. In the light of this, assertion of the counsel for the petitioners cannot be accepted.

Finding no merit in the present writ petition, the same stands dismissed.