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**(1993) 12 P&H CK 0100**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 13348 of 1992

The Haryana State Cooperative Inspectors and Sub-Inspectors Association

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

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**Date of Decision :** 15-12-1993

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226, 227, 309  
Punjab State Co-operative Service (Class II) Rules, 1958 — Rule 2, 5

**Citation :** (1993) 12 P&H CK 0100

**Hon'ble Judges :** S.K. Jain, J;G.R. Majithia, J

**Bench :** Division Bench

**Advocate :** R.K. Gupta, for the Appellant; P.S. Kadian, D.A.G., M.M. Kumar and Pawan Kumar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

G.R. Majithia, J.—The Haryana State Cooperative Inspectors and Sub-Inspectors Association (Regd.). Head Office, Rohtak, through its President has sought a writ of prohibition to Respondent Nos. 1 and 2 not to give effect to the provisions of the Haryana Cooperation Department Group-C (Executive) Rules, 1980 so far as the post of Statistical Assistant has been included in the definition of "Service" under these Rules in this petition under Articles 226/227 of the Constitution of India.

2. The Punjab State Cooperative Subordinate Services Rules, 1936 (for brevity, the 1936 Rules) consist of three parts. Part I of these Rules is known as General rules applicable to the whole of Punjab Cooperative Subordinate Services. Part II deals with the services of field establishment such as Inspectors of the Cooperative Societies and Sub-Inspectors of the Cooperative Industrial Societies and this is known as executive. Part III deals with clerical staff. These Rules were amended by the Haryana Government,--vide Notification No. FSR-145/Const./Art. 309/Amd/72, dated June 9, 1972 and in Appendix A to the

1936 Rules, the posts of Inspector, Cooperative Societies (including Inspector Cooperative Societies, Publicity and Propaganda) and Sub-Inspectors, Cooperative Societies were substituted. The Governor of Haryana in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India made rules regulating the recruitment and condition of service of persons appointed to the Haryana Cooperation Department Group C (Executive). These Rules were called the "Haryana Cooperation Department Group C (Executive) Rules, 1980" (for short the 1980 Rules) Rule 2 of these Rules deals with definitions. Clause (g) of Rule 2 defines "Service" which means the Haryana Cooperation Department Group C (Executive) Service. Rule 3 says that the Service shall comprise the posts shown in Appendix "A" to these Rules. In Appendix "A" the following posts have been shown:

- (i) Lecturers;
- (ii) Statistical Assistants;
- (iii) Inspector (Statistical);
- (iv) Inspectors; and
- (v) Sub-Inspectors.

Rule 6 envisages that appointment to the posts in the Service shall be made by the Registrar, Cooperative Societies, Haryana in the case of Lecturers, Inspectors, Inspector Statistical and Statistical Assistants, and, in the case of Sub-Inspectors in the Office of Registrar, Cooperative Societies, Haryana by the Additional Registrar, (Headquarters), Cooperative Societies, Haryana and in the case of Sub-Inspectors other than those in the Office of the Registrar, Cooperative Societies, Haryana, by the Deputy Registrar, Cooperative Societies, concerned Rule 9 says that recruitment to the Service shall be made as under:

- (i) 66-2/3 per cent by promotion;
- (ii) 33-1/3 per cent by direct recruitment or by transfer or deputation of an officer/official already in the service of any.

3. State Government or the Government of India. Rule 11 provides for inter se seniority of members of the Service. Rule 21 repeals the corresponding rules applicable to the Service before the commencement of these Rules.

4. The Punjab State Cooperative Service Class II, Rules 1958 (for short the 1958 Rules) regulate appointment to the Punjab State Cooperative Service, Class II. Under Clause (f) of Rule 2 of these Rules, the Service has been defined to mean the Punjab State Cooperative Service, Class II (hereinafter to be referred to as Class II Service). Class II Service under these Rules comprises of posts specified in Appendix "A" to these Rules and the following posts find mention therein:

- (1) Assistant Registrar;
- (2) Lady Assistant Registrar;

(3) Principal of Training Institute;

(4) Tanning and Leather Export Industrial Cooperatives.

Rule 5 of 1958 Rules deals with method of recruitment to Class II Service. It says that the members of the Service shall be recruited as under:

(a) by promotion from the State Service, Class III, or

(b) by direct appointment; or

(c) by transfer of a person already in the service of the State.

5. The post of Statistical Assistant was an Ex-cadre post before its inclusion in the 1980 Rules. By virtue of Rule 5(a) read with Rule 2(g) of the 1958 Rules promotion to the post, of Assistant Registrar, Cooperative Societies has to be made from the State Service Class III. State Service Class III means the Punjab State Cooperative Service Class III (Executive Branch). The State Service, Class III (Executive Branch) has been constituted under the 1980 Rules. For promotion to Class II Service all the incumbents holding posts shown in Appendix "A" to 1980 Rules are eligible for consideration. Statistical Assistants have been included in State Service, Class III (Executive Branch). The Statistical Assistants having become members of the State Service, Class III (Executive Branch) became eligible for consideration for promotion to Class II Service under Rule 5 of the 1958 Rules.

6. The precise grouse of the Petitioners is that Statistical Assistants could not be included in the State Service Class III (Executive Branch). It was urged that Statistical Assistants were eligible for promotion as Statistical Officers. They have their own channel of promotion and could not be brought in State Service, Class III (Executive Branch). The submission is devoid of any merit. The proviso to Article 309 of the Constitution enables the Governor to make Rules for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. The rulemaking function is a legislative function. The Rules made in exercise of the powers under the proviso to Article 309 of the Constitution constitute law and have the same force as an Act passed by the appropriate Legislature. It is not suggested that it was not within the competence of the Governor to make these Rules. The Governor of the State has the power to make Rules regulating recruitment and conditions of service of persons appointed to the Haryana Cooperation Department Group C (Executive). Under the Rules, the Service is defined and also the posts which will be comprised by the Service. The posts of Statistical Assistants comprised the Service. The 1980 Rules being within the rule making power of the Governor and the post of Statistical Assistant having been included in the Service, no fault can be found with it. The Court cannot sit over the wisdom of the rulemaking authority.

7. Learned Counsel for the Petitioner also pointed out that Civil Writ Petition No. 9959 of 1939 was filed by one Labh Singh and three others, all Inspectors of

Cooperative Societies in the State of Haryana challenging the action of the State Government for considering Statistical Assistants for promotion to the post of Assistant Registrar, Cooperative Societies. The State counsel in that case had stated that there was no proposal for promoting Statistical Assistants as Assistant Registrar. The State is bound by the admission made in that case and Statistical Assistants cannot be considered for promotion to Class II Service. The Respondents in their-written statement have explained that a proposal was sent for promoting a Statistical Assistant to the post of Assistant Registrar, but the same was not accepted and the reference was declined. It was in that situation that a communication was addressed to Advocate General, Haryana, stating that the Government had no proposal at that stage for promoting Statistical Assistant to the post of Assistant Registrar. The Government never stated that Statistical Assistants were not eligible for consideration for promotion to Class II Service. The Statement was made in that case as the proposal for promoting Statistical Assistant to the post of Assistant Registrar fell through. We have held that the 1980 Rules are within the legislative competence of the Governor. The post of Statistical Assistant having been included in the Service to which 1980 Rules apply the members of State Service, Class III (Executive Branch) are entitled to promotion to Class II Service. The Statistical Assistants having been brought and encadred in the State Service Class III (Executive Branch) are eligible for consideration for promotion to Class II Service.

8. It is undoubtedly correct that the post of Statistical Assistant was not covered under the 1936 Rules. However, Rule 3 of the said Rules reads as under:

3. Number and character of posts:

The Service shall comprise the posts shown in appendices A and B. A member of the Service holding any appointment specified in appendices A and B shall, from the date of joining his appointment, be entitled to the pay shown in the appendices. Nothing in these rules shall affect the inherent right of Government to make additions or reductions in the cadre of the service, permanently or temporarily and to increase or reduce the scale of pay prescribed in the appendices permanently or temporarily for entrants to the Service after 31st December, 1930.

A bare reading of this rule indicates that the Government has the inherent right to make additions or reductions in the cadre of the Service, permanently or temporarily. Admittedly the Government has created the post of Statistical Assistants in State Service, Class 111. By creation of posts a deemed addition to the cadre of the Service takes place unless the post is specifically created as an ex-cadre post. The Appendix to the Rules, in the above situation, is deemed to be amended and no formal order is required to be passed. Reliance can be placed on a decision of this Court reported as *Anup Singh, Head Draftsman, Zila Parishad v. The State of Haryana and Ors.* 1969 S.L.R. 850, where it was held thus:

It is clear from the above documents, taken as a whole that the sanction to the creation of the post of Head Draftsman in the scale of Rs. 200--300 was accorded by the Government under Rule 3(2) Proviso of the Service Rules. Though the Government have not referred to Rule 3 expressly while conveying the sanction per Annexure "B" yet the other documents to which a reference has been made particularly Annexure H/1" show beyond all manner of doubt that the Petitioner was appointed as Head Draftsman to that newly created post under orders of the Government with the approval of the Public Service Commission and recommendation of the Zila Parishad, in accordance with the various provisions of the Service Rules. Thus, by implication the Government had made an addition of the post of Head Draftsman to the cadre of the Service under the Proviso to Rule 3(2). The foot-note to Appendix "B" further shows that the mere fact that the consequential ministerial changes pursuant to any order of the Government sanctioning or adding a new post are not made in Appendix "A" would be immaterial. That is a ministerial act. As soon as any sanction is accorded by the Government adding a new post to the cadre of the Service Appendix "A" would be deemed to have been automatically modified to the extent of the actual sanctioned strength.

9. The view taken by the learned single Judge in Anup Singh's case (supra) was impliedly affirmed by the apex Court in *Dr. N.C. Shinghal v. Union of India* 1980 (2) S.L.R. 118, where it was held thus:

Once a new post is created and it is an increase in the strength of the cadre in which the post is created, every one in that cadre in which the post is created is eligible to fill in that post and transfer is permissible.

Accordingly the Statistical Assistants are, therefore, deemed to be a part and parcel of Class III Service under the 1936 Rules and hence are eligible for promotion to the Class II Service.

10. Rule 21 of the 1980 Rules saves any order made or action taken under the repealed Rules of 1936 and states that any such order of any action taken under the 1936 Rules shall be deemed to have been issued or taken under the corresponding provisions of the 1980 Rules. Accordingly even any promotion made to Class II Service prior to the 1980 Rules would be saved by Rule 21 of the said Rules as the same would be deemed to have been made under the 1980 Rules.

11. The learned Counsel then submitted that the judgment rendered by R.S. Mongia, J. in *Rameshwar Dass Statistical Assistant and Anr. v. The State of Haryana and Anr.* (Civil Writ Petition No. 4196 of 1983), decided on July 13, 1992 in which it was held that Statistical Assistants were eligible for consideration for appointment to Class II Service does not bind them as they were not arrayed as party Respondents to that writ petition. The submission has no merits. It is well settled that where the interpretation of a statute is prayed for and no relief qua any particular individual, who may be affected by the decision of the case, is

sought no person is a necessary party. In *A. Janardhana v. Union of India and Ors.* 1983 (2) S.L.R. 113, the apex Court held thus:

It was contended that those members who have scored a march over the Appellant In 1974 seniority list having not been impleaded as Respondents, no relief can be given to the Appellant. In the writ petition filed in the High Court, there were in all 418 Respondents. Amongst them, first two were Union of India and Engineer-in-Chief Army Headquarters, and the rest presumably must be those shown senior to the Appellant. By an order made by the High Court, the names of the Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions.

However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this Court by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, Appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from up setting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as Respondents. We may in this connection refer to *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, . Repelling a contention on behalf of the Appellant that the writ Petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this Court observed that the Respondents (original Petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating the seniority of Government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by any one individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the Respondents of this additional reason must also be negated.

12. In fairness to the learned Counsel, his challenge to the rule in the ground that the Petitioners conditions of service have been varied to their disadvantage without prior approval of the Central Government as required u/s 82 of the Punjab Re-organization Act be also noted. The submission is of no merit. The Petitioner herein is the Haryana State Cooperative Inspectors and Sub-Inspectors Association. Details of its members have not been given, nor it has been stated in the writ petition as to whether any of its members were in service prior to November 1, 1966. The protection u/s 82 of the Punjab Re-organization Act, 1966 is only available to such employees as were in service on November 1, 1966. Further, it is well-established that chances of promotion do not constitute a condition of service because chances of promotion are not a condition of service. (See in this connection the apex Court's judgments in *The State of Mysore and Anr. v. G.N. Purohit and Ors.* 1967 S.L.R. 753, *The State of Maharashtra and Anr. v. Chandrakant Anant Kulkarni and Ors.* 1981 (3) S.L.R. 326.

13. On correct analysis of 1980 Rules, we hold that Statistical Assistants form part of Class III Service.

14. For the reasons stated above, we find no merit in this petition and the same is dismissed.