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**(1990) 07 P&H CK 0091**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 4570 of 1979**

Ujjal Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision : 12-07-1990**

**Acts Referred:**

Punjab Agricultural Service (Class I) Rules, 1947 — Rule 13(2), 3(1), 3(1)(2), 3(2), 3(4)

Punjab Soil Conservation and Engineering Service (Class I) Rules, 1978 — Rule 8

**Citation : (1992) 1 ILR (P&H) 193**

**Hon'ble Judges : J.S. Sekhon, J**

**Bench : Single Bench**

**Advocate : R.P. Bali, for the Appellant; Gropi Chand, for Respondents 1 and 2, R.S. Sihata and Hardip Singh for Respondents 3 to 7, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

J.S. Sekhon, J.—The Petitioners joined the Soil Conservation Department as Assistant Soil Conservation Officers (Class II) as direct recruits in the year 1965 and thereafter. Their promotion to Class I Service was then governed by the statutory service rules called the Punjab Agricultural Service, Class I Rules; 1947 (hereinafter called the 1947 Rules), Under Rule 3(2) of the 1947 Rules, appointments to administrative posts in the Service are to be made by direct recruitment as also by promotion as the Government may in each case decide, provided that not less than 50 percent of all permanent appointments are to be made by promotion from Class II Service. The Government issued an order on 19th August, 1968 clarifying that the posts of the Divisional Soil Conservation Officers (Class I) being, administrative posts, the recruitment to these posts is to be made on 50 : 50 basis by direct recruitment and by way of promotion. The 1947 Rules were repealed on 3rd March, 1978 and new rules called the Punjab Soil Conservation and Engineering Service (Class I) Rules, 1978 (hereinafter called the 1978 Rules) were enforced. Under the 1978 Rules, the quota of recruitment to Class I Service was again fixed on 50 : 50 basis from both the

above-referred sources. The Petitioners have been promoted as Divisional Soil Conservation Officers (Class I) on ad hoc basis with effect from the dates given as under:

Petitioner No. 1 Ujjal Singh 19.2.4974

Petitioner No. 2 Baldev Singh Rajput 18.7.1973

Petitioner No. 3 Harchand Singh 28.2.1975

Petitioner No. 4 Mangat Singh 13.1.1977

Petitioner No. 5 Surat Singh Hundal 5.5.1976

Petitioner No. 6 Gurbachan Singh 18.7.1973

2. The Petitioners further contend that although they are holding Class I posts, yet they have not been appointed to Class I Service on regular basis. It is further averred that from 1961 till today there occurred 22 total vacancies in the cadre of Divisional Soil Conservation Officers. Out of these, only 11 posts have been filled up. Only 3 posts are being manned by promotees and the remaining by direct recruits. The break-up of these posts is given in para 7 of the petition as under:

1. S.S. Kalhon 25.10.1961 Direct reemit

2. J.M. Sharma 16.12.1961 --Ditto--

3. D.S. Kang 12.11.1962 --Ditto--

4. Yash Pal Sud 3.10.1967 Promotee

5. J.S. Gill 15.12.1967 --do--

6. Karnail Singh 16.7.4969 Direct recruit

7. Harjit Singh Kanwal 16.2.1972 --Ditto--

8. Mehtab Singh 6.11.4972 Promotee

9. Manjit Singh 5.7.1972 Direct recruit

10. Harbans Singh 21.2.1974 --Ditto--

11. Harfeans Singh Bath 2.1.1974 --Ditto--

3. The State Government issued advertisement for filling up five posts of Divisional Soil Conservation Officers (Class I) by way of direct recruitment in the Daily Tribune, dated 10th November, 1979.

4. Through this petition, the Petitioners challenge the above-referred action of the Respondents in filling up five posts by way of direct recruitment on the ground that it is illegal and violative of the quota rule as out of 22 vacancies of Divisional Soil Conservation Officers (Class I) the direct recruits are entitled to

have 11 posts and as they are already manning 8 posts, only three posts remained to be filled from direct recruits. It is further maintained that similar question regarding filling up of Class II vacancies of this cadre arose in *Tara Singh and Ors. v. The State of Punjab and Ors.* 977 S.L.W.R. 485, wherein the High Court had directed the Respondents to reconsider the whole matter and fill up the vacancies in accordance with Punjab Agricultural Service (Class II) Rules, 1947 till the time those rules remained in force and on the basis of this judgment, the State Government has passed order (Annexure P. 2) directing that all the posts of Assistant Soil Conservation Officers should be treated as administrative posts from the date of their creation and be filled up in accordance with the quota rules as provided under the 1947 Rules for Class II Service. It is maintained that on the same analogy all the posts of Soil Conservation Officers (Class I) should be treated as administrative posts since the creation of these posts in the year 1961 and that the said posts are to be filled up in accordance with the quota rules as provided in 1947 Rules and in 1978 Rules. It is further averred that despite the filing of representations in this regard by the Petitioners, there is no response from the Respondents which has resulted in filing the present writ petition. Further details regarding the creation of various posts etc. are also given in the writ petition. The Petitioners seek the issuance of writ in the nature of mandamus directing the Respondents to fill the posts of Divisional Soil Conservation Officers on regular basis in accordance with the quota fixed by 1947 Rules and 1978 Rules besides directing the Respondents to fill the Class I posts first by way of promotion from amongst the Petitioners before filling the five posts advertised by way of direct recruitment and that the Respondents be restrained from making direct recruitment unless the Petitioners are given their due share in the existing vacancies.

5. In the return filed by Shri G.D. Bhasin, Joint Secretary to Government, Punjab, Development Department on behalf of the Respondents, it is maintained that the posts of Divisional Soil Conservation Officers were treated as Research posts and were required to be filled from direct recruitment in accordance with Rule 3(1) of 1947 Rules, It was decided by the Government on 19th August, 1968 to treat the posts of Divisional Soil Conservation Officers as Specialised Administrative Posts and according to this decision the posts of Divisional Soil Conservation Officers were to be filled up by promotion and direct recruitment in the ratio of 50 : 50 with effect from 19th August, 1968. It was further averred that as per Rule 8 of the 1978 Rules, the promotees including the Petitioners were entitled to 50 percent of the posts of Divisional Soil Conservation Officers from 1st November, 1966 to 1st January, 1979 and that the services of many officers, who were working on ad hoc basis had been regularised,--vide departmental order, dated 29th July, 1981. It is further explained that the case of Petitioner No. 1 Ujjal Singh has been sent by the Government to the Punjab Public Service Commission for his appointment on regular basis. It is also averred that from the year 1961 to 1st November, 1966, when the composite State of Punjab was trifurcated into Punjab, Haryana, Himachal Pradesh and

Union Territory of Chandigarh, the following five officers were appointed as Divisional Soil Conservation Officers by direct recruitment according to Rule 3(1) of 1947 Rules:

1. Shri R.S. Kahlon 7.11.1961
2. Shri D.S. Kang 19.11.1962
3. Shri A.C. Sharma 28.11.1962
4. Shri Bhim Sen Gulati 8.9.1963
5. Shri J.M. Sharma 28.10.1966

Out of these officers, Sarvshri R.S. Kahlon, J.M. Sharma and D.S. Kang were allocated to the State of Punjab and the remaining to the other States. It is further maintained that from 1st November, 1966 to 1st January, 1979, 19 vacancies of Divisional Soil Conservation Officers have occurred and out of these 19 vacancies, 10 had fallen to the quota of direct recruits and 9 to the quota of promotees and that 9 vacancies have already been filled up on regular basis from the promotees as follows:

1. Shri Y.P. Sood 3.10.1967
2. Shri J.S. Gill 15.12.1967
3. Shri Mehtab Singh 6.4.1972
4. Shri G.S. Sahota 20.12.1972
5. Shri Karam Singh Saini 30.5.1973
6. Shri Bachint Singh 11.7.1973
- 7 Shri Baldev Singh Rajput 25.9.1973
- 8 Shri Gurbachan Singh 4.3.1976
- 9 Shri Baldev Singh Brar 25.10.1976

Thus, it is maintained that the advertisement to fill up five posts by direct recruitment is legally correct and it does not violate the quota rule. It was further maintained that the observations of the High Court in Tara Singh's case (supra) regarding the Class II Service have no relevance to the case in hand as different set of rules govern the service conditions of Assistant Soil Conservation Officers and Divisional Soil Conservation Officers. The private Respondents also resisted the present writ petition on almost similar grounds as the official Respondents.

6. During the pendency of this writ petition,--vide order, dated 13th December, 1980, 28th November, 1987, this Court had directed the Respondents to keep two posts out of these five posts reserved for promotees till the decision of the writ petition.

7. I have heard the learned Counsel for the parties besides perusing the record.

8. The sole controversy between the parties is, whether the posts of Divisional Soil Conservation Officers (Class I) governed by 1947, Rules and 1978 Rules are to be treated as administrative posts with effect from the year 1961, when these posts were created for the first time or these had to be treated as Research Posts till 1st November, 1966 in view of the clarification issued by the Government,-- vide order Annexure P. 1, dated 19th August, 1968 treating these posts of Divisional Soil Conservation Officers (Class I) as Specialised Administrative Posts and subsequent decision of the State Government, dated 6th March, 1979. In other words, it can well be said that the controversy between the promotees and direct recruits for filling up the posts of Divisional Soil Conservation Officers (Class I) pertains to 3 posts only which were allocated to the State of Punjab on the trifurcation of the State and were being manned by direct recruits under Rule 3(1)(2) of 1947 Rules read with Appendix "A". The relevant portion of Rule 3(1) of 1947, Rules reads as under:

3(1) All recruitment to research, teaching and engineering posts shown in Appendix "A" to these rules shall be by direct appointment through the Commission. An officer already in the service of the Central or Provincial Government, may with the permission of the Government under which he is serving, apply for an appointment and his claims will be considered with those of the other candidates.

Provided that no relaxation of the academic qualifications, if demanded, shall be made in favour of Government servants who apply for these posts.

Appendix "A" of 1947 Rules simply contains the list of posts in the Punjab Agricultural Service Class I and reads as under:

#### APPENDIX "A"

List of posts in the Punjab Agricultural Service Class I.

Designation of posts Existing No. of posts.

1(a) Research posts

Agricultural Chemist One

Fruit Specialist One

Entomologist One

Economic Botanist for Cereals, Cotton and Oilseeds One

Plant Pathologist One

Economic Botanist for Millets One

1(b) Teaching:

Principal, Government Agri. College, Ludhiana One

Professor of Agronomy One

1(c) Engineering:

11. Other posts-Administrative:

Director of Agriculture One

Assistant Director of Agriculture One

Deputy Director of Agriculture Three

Marketing Officer One

III. Temporary posts in connection with the schemes sanctioned from time to time by the Central Government, State Government,

Indian Council of Agricultural Research and Community Committees such as Indian Central Cotton Committee, Indian Central Oilseeds Committee, Indian Central Sugarcane Committee etc. Classification to be made according to the nature of the posts to be declared by Government viz., Research, Teaching and Engineering or Administrative.

State Biochemist One Economic Botanist for Sugarcane One

Statistician One Cotton Extension One

Vegetable Botanist One officer.

A bare reading of Sub-rule (2) of Rule 3 and Appendix "A" leaves no doubt that appointments to the posts shown in Appendix "A" to these Rules other than Research, Teaching and Engineering Posts shall be by direct appointment or by promotion as the Government may in each case decide with the overriding consideration that not less than 50 percent of all permanent appointments to the posts of Deputy Directors of Agriculture shall be made by promotion from Class II Service. Item 1(a) of Appendix "A" contains the number of Research posts in different specialties while Item 1(b) contains the number of teaching posts in different specialties and 1(c) relates to Engineering. Part II of this Appendix relates to the number of other administrative posts while part III of this Appendix deals with temporary posts in connection with the Schemes sanctioned from time to time by the Central Government or the Indian Council of Agricultural Research and Community Committees, etc. There is no dispute between the parties that the posts of Divisional Soil Conservation Officers (Class II) were created for the first time in the year 1961. The controversy between the parties is, whether these posts have to be treated as Research Posts in accordance with Rule 3(1) of 1947 Rules or these were simply administrative posts. In this regard, it is noteworthy that the actual work meant for the incumbents manning these posts would be the determining factor in concluding whether these posts fall in the category of Research Posts or Administrative

posts. The Respondents had not even alleged that the nature of these posts had become different from 1st November, 1966, onwards than for the period from 1961 to 1966. Thus, there is no escape but to conclude that the nature of work of the posts of Divisional Soil Conservation Officers (Class I) remained the same from the date of creation of these posts in 1961. If that is so, then the State Government,--ride its letter dated 19th August, 1968 had simply clarified the categorization of these posts as Specialized Administrative Posts. It is noteworthy in Appendix "A" to 1947 Rules, it, is simply mentioned in Para 1(a) that posts of Agricultural Chemist, Fruit Specialist, Entomologist, Economic Botanist for Cereals, Cotton and Oilseeds, Plant Pathologist and Economic Botanist for Millets are Research Posts, which, in turn implies that the posts meant for the above-referred research work shall be treated as Research Posts,"" As already pointed out earlier, the Respondents had not even alleged that the working of Divisional Soil Conservation Officers is or was akin to any of these Research Posts. Under these circumstances, there is no option, but to conclude that all the posts of Divisional Soil Conservation Officers (Class I) had to be treated as administrative posts from the date these were created in the year 1961 and had to-be filled up on 50 : 50 basis from the promotees and direct recruits in accordance with Rule 3(2) of 1947 Rules as well as in accordance with Rule 8 of the 1978 Rules.

9. Moreover, the State. Government had failed to place on the file its decision of treating the posts of Divisional Soil Conservation Officers as research posts at the time of the creation of. these posts in the year, 1961. Simply because these posts were filled up from direct/recruitment under Rule 3(4) of 1947 Rules, it cannot be said that State Government had declared these posts as research posts after full application of mind. If that is so, then by analogy, the observations of Bhopinder Singh Dhillon J. in Tarn Singh's case (supra) would be well attracted in this case also.

10. In view of the above findings, the Respondents are directed to fill up all the, posts of Divisional Soil Conservation Officers (Classy I) in accordance with Rule 13(2) of 1947 Rules and Rule 8 of 1978 Rules on 50 : 50 basis from both the sources and the vacancies or direct recruits as advertised through the impugned advertisement should not be filled up on regular basis till the actual position regarding the manner of these posts is ascertained by the department after hearing the Petitioners and private Respondents in the case in hand. The Respondents shall dispose of this matter within three-months of this order.

11. The writ petition is allowed in the above terms. In the peculiar circumstances of the case, there is no order as to costs. This also disposes of CM. Nos. 4333 of 1988 and 4251 of 1989.