

(2021) 04 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 24538, 25000, 26287 Of 2019, 393 Of 2020

Vijay Kumar Yadav

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 23-04-2021

Acts Referred:

Haryana Civil Service (Executive Branch) Rules, 2008 — Rule 5(1)(a), 9, 9(1)(a)(i), 9(1)(a)(iii)

Haryana Civil Services (Punishment And Appeal) Rules, 2016 — Rule 7

Citation : (2021) 04 P&H CK 0085

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Gurminder Singh, R.P.S Bara, R.K. Malik, Sandeep Dhull, Aman Pal, Samarath Sagar

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

This judgment shall decide aforementioned writ petitions as facts are similar and identical questions of law arise therein. Detailed facts are being extracted from CWP-24538-2019.

The petitioner is serving as a District Revenue Officer in the State of Haryana. He was directly appointed as Naib Tehsildar in 1996 and promoted as Tehsildar in 2011. In October 2017, he was promoted as District Revenue Officer (DRO). Prior to his promotion as DRO, the office of Chief Secretary, Haryana, issued a communication dated 26.6.2015, stating that for appointment to the Haryana Civil Service (Executive Branch) [hereinafter referred to as the 'HCS (EB)'] from the source of DROs/Tehsildars, the stipulation of eight years continuous Government service mentioned in Rule 9 (1)(a)(i) of the Haryana Civil Service (Executive Branch) Rules, 2008 (hereinafter referred to as the 'Service Rules') would mean continuous service as DRO/Tehsildar. At that point in time, the petitioner had completed eight years of Government service including that as

Naib Tehsildar and therefore, he challenged the aforementioned communication vide CWP-21845-2015. The said writ petition, however, came to be dismissed vide judgment dated 22.12.2015. Thus, as per the interpretation of the Government of Haryana, service rendered as Naib Tehsildar was not to be counted for appointment to HCS (EB) from the source of DRO/Tehsildar.

The Service Rules were amended vide Notification dated 16.2.2017 and Rule 9 of the Service Rules was amended as follows:-

'9. Selection of candidates for Register A-I:-

(1) The Additional Chief Secretary and Financial Commissioner to Government, Haryana, Revenue and Disaster Management, shall by a date to be determined by the Government, prepare a list of District Revenue Officers/Tehsildars not more than five times of the number of vacancies and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers and members, as may be nominated by the Government from time to time, the name of a person shall be submitted who-

(a) (i) has completed eight years continuous Government Service including service rendered as Naib Tehsildar;

(ii) has not attained the age of fifty years on the first day of November immediately preceding the date of submission of names by the concerned authority;

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

(iv) is clear from vigilance angle;

(b) is a Graduate from a recognized University.

(2) The Committee mentioned in sub-rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered in the Register A-I.'

Thus, as per the amended Rule, a candidate, who had completed eight years continuous Government service including service rendered as Naib Tehsildar, was now eligible for appointment to HCS (EB), provided, he had not attained the age of 50 years on the 1st day of November, immediately preceding date of submission of name, was not facing disciplinary proceedings and against whom action was not being contemplated, was clear from the vigilance angle and was a Graduate from a recognized University. Soon after the amendment, a communication dated 17.4.2017 was issued by the Government of Haryana in the Revenue and Disaster Management Department, intimating that it was

intending to fill up nine vacancies in HCS (EB) from the source of DRO/Tehsildar and that employees with eight years continuous Government service including that rendered as Naib Tehsildar would be eligible. Consequently, CWP-8502-2017 was filed in this Court challenging the amended Rule 9 of the Service Rules and vide order dated 26.4.2017, a Division Bench of this Court issued notice and directed that service as Naib Tehsildar would not be considered while forwarding names. For two years thereafter, no action was taken by the Government pursuant to communication dated 17.4.2017. The process was re-commenced by issuance of communication dated 30.5.2019, directing the Additional Chief Secretary and Financial Commissioner, Revenue and Disaster Management and Consolidation Department, to recommend the names of DROs/Tehsildars for filling up 23 vacancies in HCS (EB). According to this communication, eligibility in accordance with Rule 9 of the Service Rules was to be seen as on 01.11.2018, however, service as Naib Tehsildar was not to be considered while computing the period of eight years of continuous Government service in deference to order dated 26.4.2017 passed by this Court in CWP-8502-2017. This was followed by communication dated 9.7.2019 clarifying that the date i.e. 01.11.2018 mentioned in the previous communication was only for the purpose of determining age of 50 years. The Revenue and Disaster Management and Consolidation Department then sent names of 16 candidates to the Committee mentioned in Rule 9 of the Service Rules vide communication dated 12.7.2019. The Committee then sent its recommendations to the Haryana Public Service Commission (hereinafter referred to as the 'HPSC') who, published an announcement dated 20.8.2019 that interview were to be held on 23.8.2019.

As has been noticed hereinabove, CWP-8502-2017 challenging the legality of amendment of Rule 9 of the Service Rules, permitting inclusion of service as Naib Tehsildar while computing eight years continuous Government service, was pending consideration before this Court and an interim stay had been granted therein. The private respondents therein moved an application seeking vacation/modification of the interim order, so that their candidature may also be considered on a provisional basis. Vide order dated 21.8.2019, a Division Bench of this Court modified the stay order and issued directions that candidature of private respondents be also considered. This order was further clarified on 29.8.2019, making all candidates, who had completed eight years Government service by including service rendered as Naib Tehsildar, eligible, provided they fulfilled the other eligibility conditions. The name of the petitioner was not sent by the department as according to a report of the Public Accounts Committee, he had registered a number of under-valued sale deeds, because of which, disciplinary action had been recommended. Details of the same were supplied to the petitioner by the office of Deputy Commissioner, Faridabad vide communication dated 26.8.2019. The petitioner responded vide his communication dated 27.8.2019 giving his explanation and requesting that he be not charge-sheeted. A perusal of these communications show that based on the report of the Public Accounts Committee, the Comptroller and Auditor General of

India (CAG) had submitted a report for the period ending 31.3.2013 and allegations of registration of under-valued sale deed was also the subject matter thereof. Thus, disciplinary action was contemplated.

Soon thereafter, the HPSC published announcement dated 3.9.2019 intimating that interviews were to be held on 4.9.2019. The present writ petition was thus, filed and vide interim order dated 4.9.2019, direction was issued to provisionally consider the petitioner eligible and his complete record be sent to the HPSC for the purpose of interview. The service record of the petitioner was thus, sent to the HPSC, albeit after some delay and after the concerned Secretary was summoned, and the candidature of the petitioner was considered. His result was produced in a sealed cover and upon opening the same, it was revealed that he had secured a total of 74.25 marks. Meanwhile, the final result dated 17.11.2019 of the selection was declared. 21 eligible candidates were declared selected against 23 vacancies and marks of the selected candidates were also reflected therein. A perusal of the said marks shows that the petitioner had performed better than 75% of the selected candidates.

The petitioner has also placed on record a copy of a Government noting dated 30.8.2019 to show that the petitioner was being treated ineligible as disciplinary proceedings were contemplated against him. A noting dated 3.9.2019 has come on record, which records that the petitioner was being treated as ineligible on account of the fact that disciplinary proceedings were contemplated against him and that a draft charge-sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 (hereinafter referred to as the 'Punishment Rules') was being prepared and that the Hon'ble Chief Minister had already approved the proposal for charge-sheeting the officials mentioned therein. Noting dated 28.11.2019 of the Additional Chief Secretary and Financial Commissioner, Revenue and Disaster Management and Consolidation Department is also on record, which shows that it was proposed that the petitioner may not be charge-sheeted and be only warned to be careful. Thereupon, the Hon'ble Deputy Chief Minister not only approved the proposal, but also directed that even, warning was not necessary.

To complete the sequence of events, it is necessary to record that CWP-8502-2017 (wherein, 2017 amendment to Rule 9 of the Service Rules was challenged), was dismissed vide judgment dated 13.11.2019. Against the same, SLP-5291-2020 titled as Raj Kumar Vs. State of Haryana and others is pending disposal and no stay has been granted therein. Thus, candidates with eight years continuous service including that rendered as Naib Tehsildar, are eligible.

In the aforementioned factual backdrop, learned senior counsel for the petitioner has argued that as on the date of recommendation, no disciplinary proceedings were pending against the petitioner and no action was contemplated against him. By referring to the language of Rule 9 (1)(a)(iii) of the Service Rules, it has also been submitted that the requirement thereof is that disciplinary proceedings must not be pending and the same are also not contemplated. According to him,

the requirement of the Rule is that twin conditions of non-pendency of disciplinary proceedings and non-contemplation thereof must co-exist for a candidate to be eligible. In the instant case, it is apparent that leave alone a charge-sheet, even a draft charge-sheet had not been received before proceedings were ultimately dropped on 11.12.2019. The report of the CAG is for the year ending 31.3.2013 and more than six years have elapsed without issuance of a charge-sheet. Thus, the Government was not serious about taking any disciplinary action based on the said report. The allegation against the petitioner is not at all serious as is evident from proceedings dated 11.12.2019 and the same have ultimately been dropped because of this reason. The issue has been played up by employees, who would be adversely affected, in case, the petitioner is appointed and hence, the petitioner deserves to be granted relief. The learned senior counsel has also made reference to Rule 5 of the Punishment Rules to submit that in case, proceedings were contemplated against the petitioner, he would have been placed under suspension as Rule 5 (1)(a) of the said Rules prescribes so. The same not having been done, clearly shows that the State did not intend to act upon the report of the CAG for the year ending 31.3.2013. The final result of the petitioner also shows that he is more competent than most of the selected candidates and he deserves to be appointed. Judgment of the Supreme Court in *Union of India and others Vs. K.V. Jankiraman and others* (1991) 4 SCC 109 has been cited in support of the proposition that disciplinary proceedings can be lawfully said to be pending only after a charge-sheet had been issued. *State of Madhya Pradesh Vs. Bani Singh and another* 1990 (supplementary) SCC 738 and *New Bank of India Vs. N.P. Sehgal and another* 1991 (2) SCC 220 have been cited to argue that pendency of disciplinary proceedings or contemplation thereof can have no impact upon the right of an employee to be considered for promotion. *Illachi Devi (Dead) by LRs and others Vs. Jain Society, Protection of Orphans India and others*, 2003 (8) SCC 413 has been cited to submit that the golden rule of interpretation of a statute is that it must be given its literal natural meaning.

Learned State counsel as well as learned counsel for the HPSC have submitted that amended Rule 9 of the Service Rules is clear and unambiguous. According to the said Rule, even an employee, against whom action is being contemplated, is not eligible. The date of determination of eligibility was 1.11.2018 as is evident from communication dated 30.5.2019 and on the said date, disciplinary action was contemplated against the petitioner, which is evident from the fact that proceedings were ultimately dropped on 11.12.2019. Thus, there is no merit in the writ petition. Reference has also been made to para 30 of the written statement, wherein, averments regarding the Public Account Committee report for the year ending 31.3.2013 have been made, to reinforce the argument that disciplinary proceedings were contemplated against the petitioner on the cut-off date on account of registration of under-valued sale deeds. In support of interpretation of Rule 9 (1)(a)(iii) of the Service Rules, reliance has been placed upon a Division Bench judgment of this Court dated 29.11.2019 passed in

LPA-1523-2019 titled as Manbir Singh Vs. State of Haryana and others.

Learned senior counsel for respondent No.6 has supported the case of the State regarding interpretation of Rule 9 (supra). Further, he has argued that the Rule itself is not under challenge and therefore, it is fallacious to argue that a candidate should be considered for promotion, even if, disciplinary proceedings are contemplated. Finally, it has been submitted that the selection of his client is not under challenge in this writ petition and even though, the petitioner may have secured higher marks his selection cannot be set aside.

In rebuttal, learned senior counsel for the petitioner has reiterated his argument regarding interpretation of Rule 9 (supra). He has also reiterated his submission regarding consideration for the purpose of promotion, even though, disciplinary proceedings are contemplated. He seeks to distinguish the Division Bench judgment in Manbir Singh (supra) by submitting that Rule 9 (supra) has not been interpreted in the said judgment and that observations regarding the same are merely obiter. He has also referred to noting dated 28.11.2019 to submit that the petitioner has been discriminated against. According to him, a perusal of the said noting shows that Sh. Dheeraj Chahal and Sh. Anil Doon, who are amongst the selected employees, were identically situated as the petitioner. The said noting makes it clear that vide the same, it has been proposed that disciplinary proceedings against them also deserve to be dropped. Ultimately, it has been argued that two vacancies still exist and the same is clear from the final result. Against 23 vacancies, only 21 names have been recommended for appointment and thus, the petitioner can be accommodated without dislodging the last selected candidate.

The facts of the case and the submissions made are lengthy, but decision of the controversy centers around interpretation of Rule 9 (1)(a)(iii) of the Service Rules. The complete Rule 9 has been reproduced hereinabove, but for consideration of the question, the said sub-rule is being reproduced once again:-

'(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and' Use of the conjunction 'and' in the given setting is inconsequential. The various clauses under sub-rule 9 (1)(a) mention the conditions to be possessed for being eligible. Thus, clause (iii) has to be interpreted to mean that only an employee, not facing any disciplinary proceedings and against whom none is contemplated, only will be eligible. His slate must be clear and as on the date of consideration, no disciplinary proceeding is under consideration. This is the logical and literal interpretation, which is in conformity with the golden rule of interpretation as stated in Illachi Devi (supra), accepting the submission of learned senior counsel for the petitioner would lead to an illogical result. Thus interpreted, the clause would mean that disciplinary proceedings should have been initiated and should have either been dropped or resulted in exoneration and in addition, no further disciplinary proceedings are being considered. Such an interpretation would render an employee with a clear service record, ineligible. Such can never be the

intention behind an enactment meant for prescribing eligibility conditions. The Division Bench in Manbir Singh (supra) has also held so, because, that is the only logical conclusion upon a plain reading of the relevant rule. Even though, Rule 9 (supra) was not being interpreted therein, the observation made regarding the same, supports my conclusion.

Hence, it is to be seen, whether, an action was being contemplated against the petitioner on the relevant cut-off date.

Rule 9 of the Service Rules is regarding selection of candidates for register A-1, which is a source for appointment to HCS (EB) from DROs/Tehsildars. The concerned department is required to forward names equal to five times the number of the vacancies by a date to be determined by the Government. Obviously, the date to be determined by the Government would be the relevant cut-off date as eligibility cannot be seen beyond the said date. Letter dated 30.5.2019, was issued by the office of the Chief Secretary inviting names to fill up 23 vacancies. The last para of the said letter states that the recommendations be sent by 28.6.2019. The said letter also mention that eligibility was to be considered as on 1.11.2018. However, the said letter was superseded vide letter dated 9.7.2019, whereby, clarification was given that the date i.e. 1.11.2018 was only for determination of age and that the list be sent by 12.7.2019. A list of 16 candidates was in fact sent on 12.7.2019 and thus, the said date has to be taken to be the cut-off date for determination of eligibility.

Was there any disciplinary proceeding contemplated against the petitioner on 12.7.2019 ? The record indicates that the petitioner wrote a letter dated 22.8.2019 to the Deputy Commissioner, Faridabad, asking for information with reference to report of CAG for the year ending 31.3.2013. Information was supplied vide letter dated 26.8.2019, a copy of which is on record as Annexure P-15, which shows that a total of eight sale deeds registered in the year 2011 and 2012, had been under-valued by him and the same were a part of the report pertaining to the year ending 31.3.2013. On account of the same, the Government was treating the petitioner as ineligible as disciplinary proceedings were contemplated against him. This becomes clearer from noting dated 30.8.2019, a copy of which is on record as Annexure P-16. It has been stated therein, names of ineligible persons are also to be forwarded because of orders passed by this Court and a list is given in which the name of the petitioner is at serial No.1. The reason for ineligibility mentioned is contemplation of disciplinary proceedings. The contemplation came to an end on 11.12.2019 as is evident from communication of even date, a copy of which is on record as Annexure P-20, as it states that disciplinary action on the basis of CAG report for year ending 31st March, 2013, was being dropped. This is beyond the cut-off date. The situation of the petitioner cannot improve, even if, noting dated 28.11.2019, a copy of which is on record as Annexure P-18, recommending that proceedings against the petitioner be dropped is taken into consideration. The argument based on Rule 5 of the Punishment Rules, that the petitioner had not been

suspended, also cannot help his case, because, the power of suspension in contemplation of disciplinary proceedings is a discretionary power which may or may not be invoked. The argument that the allegations against the petitioner were not at all serious and that the same had been played up only so that, he may not be promoted, also deserves to be rejected, because, the argument is based upon presumptions. There is no proof of the same.

The argument of discrimination based upon recommendation of candidature of Sh. Dheeraj Chahal and Sh. Anil Doon, is an argument of desperation. No relief has been sought by the petitioner on the ground of discrimination as is evident from the prayer clause. The only substantial relief sought is that the candidature of the petitioner be also considered and that Government noting dated 30.11.2018, showing the petitioner to be ineligible deserves to be quashed. That apart, a perusal of the last para of letter dated 27.8.2019, a copy of which is on record as Annexure P-15, written by the petitioner shows that the name of Sh. Dheeraj Chahal had already been excluded from the report pertaining to the year ending 31.3.2013. Government noting dated 3.9.2019 also shows that Sh. Dheeraj Chahal and Sh. Anil Doon had been excluded from the list of personnel against whom disciplinary proceedings were pending, because, it was found that they had not registered the sale deeds in question. The concerned department had decided not to proceed further in their matter and hence, no proceedings were contemplated against them. It is not clear whether, their names continued to be reflected in the list of erring officials and thus, I refrain from delivering deeper into this issue.

The judgment in K.V. Jankiraman (supra) relied upon by the learned senior counsel for the petitioner is not applicable as the question herein is not regarding pendency of disciplinary proceedings, but regarding pendency thereof. There is no gain-saying that disciplinary proceedings can be said to be pending only after a charge-sheet has been issued. The judgments in Bani Singh (supra) and New Bank of India (supra) also cannot help the petitioner. It is not the contention of the petitioner that sub-rule 9 (1)(a)(iii) is illegal and ultra vires and that being the situation, contemplation of disciplinary proceedings could not make the petitioner eligible for consideration. The sub-rule not having been challenged nor having been shown to be illegal in any manner, the judgments relied upon cannot come to the aid of the petitioner.

Since, the petitioner was not eligible on the date of consideration of eligibility, the consideration of his candidature by the Commission on the basis of interim directions given by this Court and the fact that he has secured higher marks than some of the selected candidates, will also not come to his rescue.

In view of above, the writ petition has no merit and is dismissed.

A photocopy of this order be placed on the files of other connected cases.