

***Before Mehtab S. Gill and Augustine George Masih, JJ.***

**SUMER SINGH MALIK,—*Petitioner***

*versus*

**STATE OF HARYANA AND OTHERS,—*Respondents***

C.W.P. No. 16596 of 2006

30th October, 2008

***Constitution of India, 1950—Art. 226—Haryana Veterinary Headquarter and Field (Group C) Service Rules, 1999—Appendix ‘A’—Respondents reducing pay scale to post of Feed Analytics through executive instructions though statutory rules provide more pay scale—Whether an employee can be assigned lower pay scale of a post than what has been provided under rules applicable to Department and post concerned—Held, no—Action of respondents not sustainable, impugned order dated 7th August, 2006 passed by Director General quashed.***

*Held*, that the statutory rules provide for the pay scale of Rs. 5500—9000 for the post of Feed Analytics. The said fact has not been disputed by the respondent that till date the said scale hold the field. It is the stand of the respondents that the correction process stands initiated by respondent No. 2,—*vide* his letter dated 7th August, 2006 but till date, the said correction has not come into effect,—*vide* which the pay scale on the post of the Feed Analytics is sought to be corrected to Rs. 5450—8000 from 5500—9000. The conditions of service of the petitioner are governed by the statutory rules which have been framed under Article 309 of the Constitution of India which has the force of the Statute and till the said rules hold the field, the petitioner is entitled to the claim based on the said rules. In view of the fact that the statutory rules provide for the pay scale of Rs. 5500—9000 to the post of Feed Analytics, the respondents cannot take a contrary stand and through executive instructions reduce the pay scale of the said post of Rs. 5400—8000. The said action of the respondents, thus, cannot be sustained and the impugned order dated 7th August, 2006 passed by the Director

General, Animal Husbandry and Dairying Department, Haryana cannot be sustained.

(Paras 6 & 7)

Ravi Verma, Advocate *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana.

**AUGUSTINE GEORGE MASIH, J.**

(1) The only question which needs to be decided in the present petition is whether an employee can be assigned lower pay-scale of a post than what has been provided under the Rules applicable to the Department and the post concerned ?

(2) It is the contention of the petitioner that he is working as Feed Analytics in the Department of Animal Husbandry and Dairying, Haryana. According to the petitioner, earlier there were no statutory Rules governing service of the said post. However, the Government of Haryana for the first time framed the Haryana Veterinary Headquarter and Field (Group C) Service Rules, 1999, which came into effect on 22nd September, 1999 on their publication in the Official Gazette with regard to the post of Feed Analytics, the same were provided in Appendix A to the said Rules which reads as follows :—

Sr. No.	Designation	Number of Posts			Scale of Pay
		Permanent	Temporary	Total	
1	2	3	4	5	6
2.	Feed Analytics	—	01	01	Rs. 5500—175— 8300—EB— 175—9000

(3) A perusal of the above would show that the scale of pay granted is Rs. 5500—9000. In accordance with the said Rules, the pay of the petitioner was fixed as he was holding the post of Feed Analytics. Now,—*vide* order/letter dated 7th August, 2006, the pay-scale of the petitioner has been reduced to Rs. 5450—8000 on the ground that the

said pay-scale has been wrongly given in the Service Rules and as a matter of fact, the revised pay scale of the post of Feed Analytics was Rs. 5450—8000 with effect from 1st January, 1996 as notified in the notification dated 7th January, 1998 issued by the Finance Department. *Vide* this letter/order, apart from reducing the pay-scale of the petitioner, recovery has also been ordered to be effected from the petitioner.

(4) Upon notice having been issued, the respondents have put in appearance and filed written statement stating therein that in the year 1999, the departmental Rules were framed wherein it has been inadvertently shown that the post of Feed Analytics carries the pay-scale of Rs. 5500—9000 whereas the correct scale of the said post is Rs. 5450—8000. It has further been submitted that respondent No. 2 has already initiated the process of rectifying the typographical error,—*vide* letter No. 7.1.1998 Estt. III/3 dated 7th August, 2006. It has further been stated that the petitioner has been wrongly granted the pay-scale of Rs. 5500—9000 and that too without the sanction/verification of the Director General, Animal Husbandry and Dairying, Haryana -respondent No. 2. It is not disputed that the departmental Rules governing the service of the petitioner till date provide for the pay-scale of Rs. 5500—9000 for the post of Feed Analytics.

(5) We have heard counsel for the parties.

(6) The facts are not in dispute in the present case. The statutory Rules provide for the pay-scale of Rs. 5500—9000 for the post of Feed Analytics. The said fact has not been disputed by the respondent that till date the said scale hold the field. It is the stand of the respondents that the correction process stands initiated by respondent No. 2,—*vide* his letter dated 7th August, 2006 but till date, the said correction has not come into effect,—*vide* which the pay-scale on the post of the Feed Analytics is sought to be corrected to Rs. 5450—8000 from Rs. 5500—9000. The conditions of service of the petitioner are governed by the statutory Rules which have been framed under Article 309 of the Constitution of India which has the force of the Statute and till the said rules hold the field, the petitioner is entitled to the claim based on the said Rules.

(7) In view of the fact that the statutory Rules provide for the pay-scale of Rs. 5500—9000 to the post of Feed Analytics, the respondents cannot take a contrary stand and through executive instructions reduce the pay-scale of the said post to Rs. 5450—8000. The action of the respondents, thus, cannot be sustained and the impugned order dated 7th August, 2006 (Annexure P-5) passed by the Director General, Animal Husbandry and Dairying Department, Haryana-respondent No. 2, cannot be sustained.

(8) In view of the above, this writ petition is allowed and the order dated 7th August, 2006 (Annexure P-5) is hereby quashed.

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**R.N.R.**

*Before Mehtab S. Gill and Augustine George Masih, JJ.*

**RAMNIK KUMAR AND ANOTHER,—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

C.W.P. No. 13709 of 2007

31st October, 2008

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.18—Instructions dated 2nd July, 2007 and clarification dated 13th November, 2007 issued by State of Haryana—Registration of FIRs against petitioners—Non-consideration for appointment as Constable—Cl. 2(a) of instructions 13th November, 2007 provides that debarment for allotment of constabulary number would be applicable to those who are facing investigation/trial or have been acquitted in offences involving moral turpitude only—Case of the petitioners fully covered under Para 2(a) of instructions dated 13th November, 2007—Petitioners could not be debarred for allotment of constabulary number—Action of respondents in not allotting constabulary number to petitioners contrary to Rl. 12.18 as well as instructions dated 13th November, 2007—Petitioners held entitled to allotment of constabulary number.*