

Before S. S. Sandhwalia, C.J. and S. S. Kang, J.

PREM SINGH MALIK and others,—Petitioners

versus

STATE OF HARYANA,—Respondent.

Civil Writ Petition No. 3901 of 1974

August 4, 1980.

Punjab Agricultural Service (Class II) Rules 1947—Rules 3, 5, 6 and Appendix A—Part III of Appendix 'A' empowering Government to create more posts in the service to meet certain exigencies—Such newly created posts—Whether governed by the Rules—Executive instructions prescribing additional qualification of experience for promotion—Such instructions—Whether violate the Rules.

Held, that vide Part III to Appendix A of the Punjab Agricultural Service Class II Rules, 1947, the State Government has been empowered to create temporary posts in Class II Service to meet certain given situations and as such these posts are governed by the Rules. (Para 7).

Held, that the proficiency mentioned in sub-rule (b) of rule 5 refers to the degree or diploma in a particular branch of Science or subject which is germane for a particular post. From the use of the word "proficiency" it cannot be inferred that rule making authority had any practical experience in mind. As such where the State by executive instructions provides practical experience as an additional qualification for eligibility for promotion such instruction violates the rules. (Para 9).

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondent :—

- (i) to produce the complete records of the case ;*
- (ii) the order at Annexure P-4 be quashed ;*
- (iii) it be declared that the petitioners are not bound by the decision in Civil Writ Petition No. 2435/1972 and that the decision actually applicable to the present case is that in Civil Writ Petition No. 1008/1009 ;*

- (iv) *this Hon'ble Court may also pass any other Order which it may deem just and fit in the circumstances of the case and grant all the consequential reliefs in the nature of seniority, arrears of salary etc etc. ;*
- (v) *it is further prayed that pending the disposal of the writ petition, the implementation/operation of the order at Annexure P-4 be stayed ;*
- (vi) *the costs of this petition also be awarded to the petitioners.*

R. S. Mongia, Advocate, for the Petitioner.

U. D. Gaur, A. G., Haryana, for the State.

JUDGMENT

Sukhdev Singh Kang, J.

(1) Since common questions of law and fact arise in Civil Writ Petitions Nos. 2440 of 1967, 3901 of 1974, 4035 of 1974 and 4101 of 1974, they are proposed to be disposed of by a common judgment.

(2) These writ petitions initially came up for hearing before Goyal, J. The learned counsel for the parties stated that there was an apparent conflict between the two decisions of this Court in *Teja Singh Sandhu versus State of Haryana and others* (1) and *Manmohan Singh Ahlawat versus The State of Haryana and others* (2) and both these judgments have a bearing on the controversy raised in the present petitions. The learned Single Judge directed the cases to be placed before my Lord the Chief Justice for being referred to a Division Bench. This is how these petitions have come up before us.

(3) A thumb-nail sketch of the facts will be appropriate at this stage:

In Civil Petition No. 3901 of 1974 : The petitioners were appointed to different posts in Class III Service in the Punjab Agricultural

(1) C.W. 1008 of 1969 decided on 18th May, 1970.

(2) C.W. 2543 of 1972 decided on 18th May, 1970.

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Department before the reorganization of joint Punjab. The members of Class III Service are eligible for promotion and appointment to Punjab Agricultural Service, Class II. The recruitment to the Class II Service is governed by the Punjab Agricultural Service (Class II) Rules, 1947 (hereinafter called the Rules).

(4) Rule 3 of the Rules lays down the principles for appointment and the character of posts. Various posts in the service have been specified in Appendix 'A' to the Rules. Nevertheless the Government has been empowered by Part III of Appendix 'A' to create other posts in the service to meet certain exigencies. Rule 5 of the Rules prescribes the qualifications for appointment. Sub-rule (b) of Rule 5 is relevant for our purposes and it reads as under:—

“Rule 5.—No person shall be appointed to be a member of the service:—

- (a)
 (b) If he is not already in Government Service, unless he
 (i) is more than 22 years and less than 25 years of age ;
 (ii) has obtained Diploma or a Degree of a recognised Institution in the particular branch of Science or subject in which proficiency is required of a candidate for the particular scientific or technical post for which he is to be recruited, (iii) has obtained a certificate of character from the Principal Academic Officer of his University, College, School or Institution and also Certificates of Character from two responsible persons, not being his relatives, who are well acquainted with him in private life and unconnected with University, College, School or Institution

Rule 6 lays down the method for recruitment. Sub-clause 3 of Rule 6 of the Rules is reproduced below :—

“Appointment to the Service by promotion from the Subordinate Service shall be made by strict selection and no Member of the Subordinate Service shall be deemed to have had his promotion withheld by reasons of not being selected for such appointment or to have any claim to such appointment as a right.”

The case of the petitioners is that the Governor of Punjab issued orders by which qualifications and experience etc., were prescribed for the posts created in the service, but not specifically enumerated in Appendix 'A'. After the reorganization of the Joint Punjab State, Haryana Government issued orders, dated the 30th of March, 1971, laying down educational qualifications and experience for promotion to the Haryana Agricultural Service Class II (Soil Conservation Section). A copy of the same has been appended to this petition. By this order two years' field experience on the designs and execution of Soil Conservation Works has been prescribed along with the educational qualifications and training in Soil Conservation.

(5) Some vacancies arose in the Soil Conservation Section. The petitioners along with their other colleagues in Class III Service were considered for these posts in 1972. The petitioners were selected, but some of the persons, who though were senior to the petitioners in Class III Service, yet did not possess the two years' experience on the designs and execution of Soil Conservation Works, were ignored. Since then the petitioners are continuing on these posts. Since the work of Soil Conservation had not been undertaken by the State at the time of the promulgation of the Rules, in 1947, the posts in the Soil Conservation Section had not been created. They were created later on and for this reason do not find mention in Appendix 'A'. For this reason, the Government was called upon to fix the qualifications for the posts in Class II, not mentioned in Appendix 'A' by executive instructions. After the reorganization, the same position has been reiterated by the State of Haryana in the form of orders, dated the 30th of March, 1971. According to the petitioners, the order prescribing the qualifications does not in any manner repeal, alter or add to the statutory qualifications. It only supplements the statutory provisions and has been issued to fill in the gaps.

(6) In the meantime, Manmohan Singh Ahlawat filed Civil Writ Petition No. 2543 of 1972 in this Court, challenging the authority of the State Government to add to the qualifications of the officers of Haryana Agricultural Service Class II. This writ petition was allowed. Consequent upon this decision, the Governor of Haryana reverted 45 officers including the petitioners *vide* his orders, dated the 22nd of July, 1974. Petitioners have challenged this order in this writ petition. Similar are the facts in

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Civil Writ Petitions No. 4035 and 4101 of 1974. The only difference is that Tara Singh, petitioner, in Civil Writ Petition No. 4035 of 1974, was appointed Assistant Plant Protection Officer and Ishwar Singh, petitioner, in Civil Writ Petition No. 4101 of 1974 had been appointed as Agricultural Economist. In Civil Writ Petition No. 2440 of 1976, petitioners have challenged the appointment of private respondents to Class II. These respondents had earlier been superseded when the petitioners had been appointed to Class II.

(7) The learned counsel for the petitioners have argued that though the posts to which the petitioners were appointed are in Haryana Agricultural Service Class II, yet they are not governed by the Rules, because their posts are not included in Appendix 'A'. Their conditions of service are governed by the executive instructions by which the educational and other qualifications were prescribed by the Haryana Government in relation to these posts. There is no merit in his contention. The State Government has been empowered by part III of Appendix 'A' to create temporary posts in Class II Service to meet certain given situations. These posts to which the petitioners were appointed were created in exercise of these powers and the Rules are applicable to the incumbents holding these posts. The letters of appointment of the petitioners show that they were appointed to Haryana Agricultural Service Class II. This service is governed by the Rules. So, the Rules are applicable to the petitioners also.

(8) It was then contended by the learned counsel for the petitioner that the executive instructions by which the qualifications of different tenures of experience have been laid down do not in any way repeal, alter or amend the statutory rules. These instructions only supplement the Rules. They are meant to fill in the gaps in these Rules. So, the State had rightly adhered to the criteria laid down by these instructions, while making promotions of the petitioners and others to Class II. The persons senior to the petitioners in Class III Service, but without the practical experience prescribed by the executive instructions, were ineligible for promotion to the Class II and were rightly ignored. The orders passed by the Governor reverting them are wholly illegal.

(9) The petitioners were promoted to Class II Service and posted to different posts on *ad hoc* basis for a period of six months.

In fact they had not been promoted on regular basis. So, the petitioners could be reverted at any time. The reversion order has been passed because the condition laying down a qualification of experience by executive instructions for promotion to the Class II Service have been struck down by this Court in *Manhoman Singh Ahlawat's case* (supra). The petitioners had been promoted and their seniors in class III service had been ignored because of this condition of experience.

(10) It was argued on behalf of the petitioners that the executive instructions have not added anything to the Rules. The executive instructions only more clearly and eloquently state the objective of Rule 5 of the Rules. The words "in which proficiency is required" in sub-rule (b) of Rule 5 of the Rules indicate that apart from the academic qualifications mentioned in the earlier part of the sub-rule, the State can insist that the candidates of the service should be proficient in the speciality in which the post falls. The interpretation put forward by the learned counsel to sub-rule (b) is not logical. The proficiency in this Rule refers to the degree or diploma in a particular branch of Science or subject which is germane for a particular post. From the use of the word "proficiency" it cannot be inferred that Rule making authority had any practical experience in mind. In case *Joginder Singh Grewal v. The State of Punjab and others* (3), the condition of experience was quashed. Joginder Singh Grewal belonged to Class II of the Punjab Agricultural Service. Members of this service were eligible for promotion to the Agricultural Service Class I. Statutory rules governed the recruitment to this service. They prescribed academic qualifications etc. However, they did not prescribe any qualification of experience. By executive instructions, the State laid down academic qualifications of M.Sc. Agriculture and at least five years practical experience in agricultural research or extension as necessary requisites for promotion to the posts in Class I. Joginder Singh Grewal possessed the qualifications prescribed by the statutory rules. However, he did not have five years experience as laid down by the executive instructions. He was not appointed to Class I. His juniors in Class II possessing the qualifications laid down by the executive instructions were selected and promoted to Class I. He challenged the orders and the executive instructions. A. N. Grover, J. (as his Lordship then was) referred

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the case for decision by a Division Bench. In the referring order it was observed:—

“I am of the view that since Class I Rules did not lay down any such limitation or qualification, the executive Government could not amend or alter the rules or add to them by prescribing any particular qualifications.”

The Division Bench affirmed these observations and further held:—

“The word ‘merit’ does not include the prescribing of qualifications. If it was so, it was hardly necessary for the Government to issue the letter of the 24th April, 1959. At the time, when the petitioner entered service, the 1947 Rules held the field. No rule could be altered by executive directions so as to adversely affect the petitioner.”

The similar questions arose in case *Uttam Singh versus The State of Punjab and others* (4). The State by executive instructions prescribe five years’ minimum experience for the purpose of promotion, though the statutory rules did not prescribe any such condition. This condition was struck down and it was observed by Tuli, J.:—

“No length of service is prescribed. Fitness for the higher post cannot be determined only on the basis of length of service. It has necessarily to be determined on the merits of the incumbent of the post who is to be promoted. It is not an uncommon phenomenon that an official with much less experience is far abler than an official with a longer experience and if selection has to be made on the right criterion, then the performance of the candidate must be considered rather than his length of service in a particular post”.

These cases were noticed in *Manmohan Singh Ahlawat’s case* (supra) and it was held by Sandhawalia, J. (as my Lord the Chief Justice then was) :

“It is manifest from a plain reference to the above quoted provisions of rules 5 and 6 that the rule making body has

adverted to the prescription of the qualifications and the mode of the selection by way of promotion into the Class II Service. Nevertheless no peculiar kind of experience or the length of tenure in a particular kind of post was prescribed by the rules for the purpose of promotion from the subordinate service into the Class II Service. Therefore, the conflict and the inconsistency between the statutory rules and the relevant portion of the executive instructions R-1 are manifest. The relevant part of Annexure R-1 which pertains to the case of the petitioner chooses to do what the statutory provisions had not done. By way of executive instructions, therefore, an attempt is made to amend or alter the rules or in any case to overrule the same by prescribing particular qualifications where none had existed."

The condition of minimum experience prescribed by the executive instructions was struck down. The present case is fully covered by the ratio of *Manmohan Singh Ahlawat's case* (supra) and in fact the impugned order of reversion has been passed in compliance with this decision.

(11) Lastly, learned counsel for the petitioner relief on *Teja Singh Sandhi's case* (supra), in attempting to contend that the observations in the penultimate paragraph thereof ran counter to the ratio in *Manmohan Singh Ahlawat's case* (supra). This submission of the learned counsel for the petitioner seems to be unfounded. It deserves recalling that in *Teja Singh Sandhu's case* (supra), the basic challenge laid was to the promotion of three private respondents to posts in particular specialities like the Subject-Matter Specialist (Plant Protection), Assistant Soil Conservation Officer and the Assistant Marketing Officer. A perusal of the judgment would show that the gravamen of the attack on behalf of the petitioner was on the twin ground of seniority and lack of consideration. Both these grounds were repelled categorically on the finding that since these posts were to be filled by selection, seniority alone would not entitle the petitioner to appointment thereto and further that the name of the petitioner had been fully considered at all stages. In passing, lastly the counsel for the petitioner had faintly attempted to argue that the qualifications for the three posts to which the respondents had been appointed were varied arbitrarily. It stands expressly

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noticed in the judgment that on behalf of the petitioner, no part of the relevant rule or even a government instruction could be pointed out which prescribed the qualifications for promotion to the specific three posts held by the respondents, which were under challenge. Since no prescribed statutory qualifications for the three specific posts could be indicated at all, therefore, no question of any arbitrary variation thereof could arise.

(12) Again what calls for pointed notice is that in *Manmohan Singh Ahlawat's case* (supra), what was sought to be done by government instructions was the variation of academic qualifications by super-imposing thereon the prescription of experience for a specified number of years. The rules did not make the least mention of any requirement of experience. It was this that was struck down as violative of the statutory rules, but this was not even remotely the position or the case in *Teja Singh Sandhu's case* (supra). What further calls for notice is that rule 5(b) (ii) of the Rules merely lays down the basic academic qualification of a diploma or degree of a recognised institution, but does not, and indeed cannot, prescribe the particular branch of science or subject in which proficiency is required for a specific scientific or technical post for which a member of service is to be recruited. Therefore, the specific speciality qualification can obviously be taken into consideration for appointment to a particular post in the service.

(13) It would, therefore, be plain that a close analysis discloses no conflict of precedent and the case of *Teja Singh Sandhu* (supra) is plainly distinguishable from *Manmohan Singh Ahlawat's case* (supra), whose ratio governs the present one.

(14) No other contention was raised and in the light of the aforesaid discussion, the writ petitions are without merit and are hereby dismissed without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

H. S. B.