
Before S.S. Nijjar & J.S. Narang, JJ

BALI SINGH VERMA,—*Petitioner*

versus

HARYANA STATE SEED CERTIFICATION AGENCY &
OTHERS,—*Respondents*

C.W.P. No. 19988 of 2002

30th August, 2004

Constitution of India, 1950— Art. 226—Haryana State Seeds Certification Agency Service Rules, 1979— Appendix 'B' Rule 9(1)— Appointment to the post of Director— 1979 Rules prescribe three sources for making appointment on the post of Director— Consideration of the claim of petitioner by promotion—Rejection of— Challenge thereto— Appointing authority has discretion to choose the source from which the appointment would be made—Rules do not provide any restriction to resort to the method of recruitment—Neither any quota nor any rota provided under the rules— Appointing authority has jurisdiction to consider suitable candidates for appointment from all three sources simultaneously—No priority of one source over the other—Selection of respondent 3 as Director by deputation on the basis of better service record, experience and higher pay scale—Action of respondents neither arbitrary nor without jurisdiction—No person is entitled to claim promotion as a matter of right and on the basis of seniority alone—Employees only entitled for consideration for promotion in accordance with rules and regulations—Petition liable to be dismissed.

Held, that a reading of the 1979 Rules makes it abundantly clear that the appointing authority has the discretion to choose the source from which the appointment would be made. There is neither any quota nor any rota provided under the rules. There is also no hierarchy of sources of recruitment. There is also no priority of one source over the other. These added restrictions which have been strongly advocated cannot be added by implication. While interpreting the rule, it would not be permissible for the Court to amend or modify the rule. Whilst interpreting or construing the rule, the Courts cannot reconstruct the rule. That is the function of the Legislature or the framers of the rule.

(Para 10)

Further held, that the claim of the petitioner has been considered for being appointed by promotion. No person can claim promotion as a matter of right. The employees are only entitled to be considered for promotion in accordance with the rules and regulations. Therefore, we are of the considered opinion that no legal right of the petitioner has been infringed.

(Para 12)

S.P. Laler, Advocate, for the petitioner.

P.S. Patwalia, Senior Advocate with Amanpreet Singh, Advocate, for Respondent No. 3.

JUDGMENT

S.S. NIJJAR, J, (ORAL)

(1) We have heard the learned counsel for the parties at length and perused the paper—book.

(2) Mr. Laler, learned counsel appearing for the petitioner has vehemently argued that the petitioner's claim for promotion on the post of Director, Haryana State Seed Certification Agency has been arbitrarily rejected by the respondents. The petitioner had filed the present writ petition on 9th December, 2002 apprehending that the claim of the petitioner for appointment on the post of Director would be ignored and respondent No. 3 would be appointed by way of deputation. The apprehension of the petitioner came true when respondent No. 3 was actually appointed. Learned counsel has submitted that on eight earlier occasions, the post of Director has always been filled by appointing officers on deputation from the Department of Agriculture. Earlier also, the petitioner had the occasion to challenge the appointment of S.S. Gill, Director by filing C.W.P. No. 7772 of 1994. The writ petition was allowed on 28th September, 1994 and the appointment of S.S. Gill was quashed. The aforesaid decision is reported in 1994(4) RSJ, page 700. Even after the quashing of the appointment of S.S. Gill, the official respondents appointed one Baljeet Singh as Director. The petitioner filed C.O.C.P. No. 1128 of 1995. Although rule was discharged in the aforesaid C.O.C.P., it was observed that it was open to the petitioner to challenge the appointment of Baljeet Singh. According to the learned counsel, the official respondents have again

adopted the same *modus operandi* for appointment of respondent No. 3 by deputation. Learned counsel has submitted that the appointment of respondent No. 3 is not only contrary to the decision taken by the Division Bench in C.W.P. No. 7772 of 1994, but also against the law laid down by the Supreme Court in the case of Dilwan Singh and others Versus State of Haryana and others, rendered in Civil Appeal No. 6887 of 1996. Copy of the aforesaid judgment is attached to the writ petition as Annexure P—4. The appointment of respondent No. 3 is also stated to be contrary to the judgement of this Court rendered in C.W.P. No. 14515 of 1994 (Shri S.P. Singh *versus* State of Haryana and others). Learned counsel has also relied on a judgment of this Court rendered in the case of **Babita Rani versus State of Haryana and others, (1)**. In support of his submission that respondent No. 3 does not fulfil the necessary experience of 10 years on the cut-off date i.e. 11th December, 2002. Therefore, respondent No. 3 could not even have been considered for appointment.

(3) Mr. P.S. Patwalia, learned Sr. counsel appearing for the respondents has, however, submitted that the decision has been taken by the respondents—Agency strictly in accordance with the Haryana State Seeds Certification Agency Service Rules, 1979 (hereinafter referred to as “1979 Rules”). He submits that the procedure adopted and the appointment of respondent No. 3 are not contrary to any of the judgments cited by the learned counsel for the petitioner. According to the learned Sr. Counsel, under the rules, appointment on the post of Director is to be made in accordance with the provisions contained in Appendix-B to the 1979 Rules. These rules enable the respondents-Agency to make the appointment on the post of Director from three sources; (i) by promotion from the post of Chief Seed Certification Officer, (ii) direct appointment and (iii) by transfer or deputation. Under Rule 9 (1) of the 1979 Rules, the appointing authority has to determine in which manner the vacancy is to be filled. The appointment on the post of Director on the previous eight occasions by deputation would not by itself render the action of the respondents—Agency illegal, even if the appointment is again made by way of deputation.

(4) We have considered the submissions made by the learned counsel for the parties. It is accepted by both the sides that the appointment on the post of Director is to be made in accordance with

(1) 2002 (3) R.S.J. 1999

the 1979 Rules. These rules lay down qualifications for appointment on the post as follows :—

"Sr. No.	Designation of Posts	Academic Qualification and experience	Age	Method of recruitment
1.	Director	M.Sc. (Agri.) in Plant breeding/Agronomy/Horticulture (Veg.)/Seed Technology. At least 15 years experience in Research/Farm Management Crop Production/Seed Production/Development and Extension Activities out of which 10 years experience in a senior capacity. Should be fully conversant for organising planning, implementation and knows Administrative/Technical affairs connected with the seed production."	40—50 years	(i) Promotion from the Chief Seed Certification Officer. (ii) Direct. (iii) Transfer or deputation

(5) A perusal of the aforesaid rules shows that for appointment on the post of Director, the candidate should possess the necessary Post Graduate qualification M.Sc. (Agri.) in Plant Breeding/Agronomy/Horticulture/Crop Production/Seed Production/Development and Extension activities. The candidate must also have at least 15 years experience, out of which 10 years experience shall be experience in a senior capacity. Equally important are the qualifications that the candidate should be fully conversant for organising planning, implementation and knows Administrative/Technical affairs connected with the seed production. The aforesaid rules also indicate that the post can be filled by any of the three methods prescribed. The competent authority would decide as to from which of the sources, the post is to be filled. In our opinion, the respondents-Agency would have the jurisdiction to consider suitable candidates for appointment from all the three sources simultaneously. Rule 9 (1) of the 1979 Rules is as under :—

“9(1) : Method of Recruitment : Recruitment to the Service shall be made in the manner as specified in Column 4 of Appendix B to these rules. Where any vacancy occurs or about to occur in the service, the appointing authority shall determine the manner in which such vacancy shall be filled.

Note : All promotions shall be made on the basis of seniority and fitness to the post and no person shall be entitled to claim promotion as a matter of right and on the basis of seniority alone."

(6) A plain reading of the aforesaid Rule clearly indicates that the same has to be read with Column No. 4 of Appendix B. As noticed earlier, Appendix B provides three sources from which, the candidate for appointment on the post of Director can be drawn. When the vacancy occurs or is about to occur, the appointing authority has the duty to determine the manner in which such vacancies shall be filled. In case the appointment is to be made by promotion, the criteria of seniority and fitness has to be applied. No person would be entitled to claim promotion as a matter of right and on the basis of seniority alone. Considering the aforesaid criteria, the respondents-Agency in the meeting held on 28th October, 2002, took a decision not to go for direct recruitment for the post of Director. It was decided that only two panels, one each from the Cadre of Chief Seed Certification Officer and the other from the persons to be taken on transfer or deputation would be called. It was decided not to fill up the post by direct recruitment because it will take a long time to fill up the post. The departments were directed to send the Panel of names by 7th November, 2002 as the next meeting had been scheduled to be held on 13th November, 2002. Because of lack of quorum, the meeting was adjourned to 17th December, 2002. The relative merits of the candidates were considered in the meeting held on 17th December, 2002. Respondent No. 3 was selected on the basis of better service record, experience and higher pay scale. The pay scale of the petitioner was Rs. 10000-325-13900 whereas respondent No. 3 was in the pay scale of Rs. 10000-325-15900. Respondent No. 3 was clearly in a higher pay scale. It is also noted that respondent No. 3 was working as Joint Director Agriculture whereas the petitioner was working as Deputy Director Seed Certification. Thus, the status and nomenclature of respondent No. 3 was on the higher pedestal. Thus, according to the respondents, the petitioner has no parity with the selected candidates in terms of the status, nomenclature, scale of pay, experience, suitability-cum-fitness or administrative experience in the line of specialisation whatsoever. With regard to the experience, the respondents have categorically stated that respondent No. 3 was having more than 17 1/2 years of experience as on 7th November, 2002. He had served as

Assistant Scientist in Haryana Agriculture University, Hissar from February 1985 to 6th December, 1992 in the grading of Rs. 2200-4000 which was subsequently revised to Rs. 8000-13500. These grades were equivalent to the Grade of Chief Seed Certification Officers of the respondents-Agency. It is further stated in the written statement that respondent No. 3 joined as Deputy Director Agriculture in the department of Agriculture and served there from 7th December, 1982 to 2nd August, 1998. He was further promoted as Joint Director Agriculture on 3rd August, 1998 and served till 18th December, 2002. It is categorically stated that the petitioner is deliberately making an attempt to state wrong facts and mislead this Court.

(7) The petitioner has, however, filed a replication and has stated that in the Haryana Agriculture University, posts which are in the pay scale not exceeding Rs. 13500 are Class II/Grade "B" service. Therefore, respondent No. 3 cannot be considered to be in Class I service or service in seniority capacity. In our opinion, the facts narrated above make it abundantly clear that the action of the respondents cannot be said to be either arbitrary or without jurisdiction. Undoubtedly, the appointment of S.S. Gill was quashed by this Court in CWP No. 7772 of 1994. The petitioner has quoted paragraphs 12 to 14 of the aforesaid judgment in the writ petition itself, which are as under :—

"12. We may now advert to the objection of respondents No. 1 and 3 regarding eligibility of the petitioner to be appointment as Director by promotion. It is not in dispute that academic qualification prescribed in the Rules of 1979 for appointment on the posts of Director, Chief Seed Certification Officer and Seed Certification Officer is one and the same. The petitioner has been appointed as Seed Certification Assistant (Redesignated as Seed Certification Officer) and Chief Seed Certification Officer with his qualification as M.Sc. (Agriculture) in Botany. Selection on the post of Chief Seed Certification Officer was made by a committee consisting of various officer of the Government, including the Commissioner Agriculture. The Committee, which selected the petitioner had the occasion to examine the qualification possessed by the petitioner and once the said selection committee took the

view that the qualification possessed by the petitioner made his eligible for appointment on the post of Chief Seed Certification Officer, the respondents now cannot turn round and question the eligibility of the petitioner. We are surprised to note that respondent Nos. 1 and 3 have come forward with such a plea though respondent No. 4, who is also M.Sc. (Agriculture) in Entomology, a subject relating to insecticide posts and their control has been appointed as Director. In our considered opinion, the objection raised by respondent Nos. 1 and 3 to the eligibility of the petitioner is clearly misconceived and untenable.

13. Before concluding, we cannot but observe that the manner in which the State functionaries have usurped the authority of a duly constituted body to make appointment on the highest post of the organisation leaves much to be desired. Officers of the Government departments and others, who have approached the political figures for getting recommendations for appointment on the post of Director, ought to have been discouraged rather than being encouraged. The government should have taken a serious note of direct pressure on Ministers and other political figures in the matter of appointment on the post of Director. Neither of the political figures, who made recommendation, had any direct concern with the department of Agriculture and yet they made recommendation without any hesitation. It need be only reminded to them that appointment to the highest as well as also to the lowest public post is a public property and every person, who possesses qualification for appointment on a particular post, has a right to participate in the process of enjoyment of this public property. Appointment on posts in public employment cannot be treated as a matter of charity, largesse, or concession till the doctrine of "equality" enshrined in Articles 14 and 16 of the constitution remain on the statute book and any attempt to violate this basic feature of the Constitution would be viewed adversely by the Court.

14. In the result, the writ petitioner is allowed. Appointment of respondent No. 4 on the post of Director, Haryana State Seed Certification Agency, which was subject to the result of this writ petition in terms of order dated 6th June, 1994 of this court, is declared illegal and is quashed. Respondent No. 4 is declared as usurper of the office of the Director, Haryana State Seed Certification Agency. The Haryana State Seed Certification Agency is directed to make appointment on the post of Director in accordance with the provisions of Rules of 1979 within a period of three months from today. Parties are left to bear their own costs. Petition allowed.”

(8) A perusal of the aforesaid paragraphs tends to show that the controversy therein has no relevance to the claim put forward by the petitioner in the present case. It appears that in that case the petitioner has been treated as ineligible for the post. This Court, after examining the qualification of the petitioner, held that the petitioner was eligible to be considered for the post of Director. The other point of vital importance in that case was considered in paragraph 11 of the judgment. The observations of the Division Bench are as follows :—

“11. It is clear from the above that although under the Rules of 1979, authority to make appointment on the post of Director vests with the Governing Board, appointment of respondent No. 4 has, in fact, been made by the Government and not by the Governing Board. No material has been produced before us to show that the Governing Board of the respondent-Agency ever met and applied its mind to the question of making appointment on the post of Director. It is, therefore, obvious that no exercise was undertaken by the competent authority in terms of Rule 9 for the purpose of deciding as to by which method the post of Director should be filled. It is also clear that the Governing Board of the respondent-Agency had at no point of time applied itself to the requirement of eligibility, experience what to say of suitability of a particular person to be appointed as Director of the Agency. In our opinion, it is a case in which the Governing Board of the respondent-

Agency has abdicated its duty as well as authority to make appointment on the post of Director and the State Government usurped the power of the Governing Board of making appointment on the post of Director. Thus, the exercise undertaken by the Government and its action of appointing respondent No. 4 on the post of Director cannot but be held as without jurisdiction as respondent No. 4 is liable to be declared as usurper of high public office of Director of the respondent-Agency.”

(9) A perusal of the aforesaid clearly shows that the Division bench was considering a case where the appointment on the post of Director was not made in accordance with Rule 9. It was held that the Governing Board had abdicated its functions. The Court also commented adversely on the conduct of the State functionaries who had usurped the authority of a duly constituted body to make appointments on the highest posts of the Organisation. Ultimately, the Division Bench directed the agency to make appointment on the post of Director in accordance with the provisions of the Rules, 1979. Thereafter, the Agency again did not appoint the petitioner, but appointed one Baljeet Singh. The petitioner filed COCP No. 1128 of 1995. But the same was dismissed and the rule was discharged. A perusal of the judgment of the learned Single Judge in the COCP shows that the petitioner did not even dispute the mode adopted by the respondents to make appointment. Some observations of the learned Single Judge may be noticed as under :—

“In contempt proceedings all that is primarily required to be seen is whether the respondents have given effect to the directions issued by the court. Therefore, in the instant case it has to be only seen whether the directions of this Court as contained in order dated 28th September, 1994 passed by a Division Bench has been carried out or not. On a consideration of the entire matter, I am of the opinion that the answer to this question has to be in the affirmative. In the order dated 28th September, 1994, the only direction given was that Haryana State Seed Certification Agency will make appointment the the post of Director in accordance with the provisions of 1979 Rules

within a period of three months of the said order. It is an admitted fact on record that the respondents did comply with the direction by making appointment to the post of Director and that has also been done within the time allowed by the Court. While doing so, even the name of the petitioner for appointment to the said post had been considered. It is a different matter whether the proceedings of the meetings wherein decision to appoint a Director has been taken, had or had not been conducted in accordance with law. It is also not disputed that the mode adopted by the respondents to make appointment of Director was not beyond the purview of the Rules under which it was directed to be made by the order of the Division Bench." (Emphasis supplied).

(10) Having conceded the jurisdiction of the respondents to adopt the mode of appointment, learned counsel for the petitioner now argues that the three modes of appointment are in a descending order. In other words, the respondents-Agency have first to make an effort to fill up the post of Director by promotion, from the post of Chief Seed Certification Officer. If no suitable candidate is available for promotion, the respondents can then resort to the method of direct recruitment. If no selection is made by direct recruitment, the respondents can resort to the third method i.e. appointment by transfer or deputation. In the alternative, it is submitted that the candidates from three sources of recruitment cannot be considered for appointment together. In any event, transfer or deputation can only be resorted to, if no candidate is available for appointment by promotion. We are unable to read any such restrictions in the Rules. A plain reading of the Rules makes it abundantly clear that the appointing authority has the discretion to choose the source from which the appointment would be made. There is neither any quota nor any rota provided under the rules. There is also no hierarchy of sources of recruitment. There is also no priority of one source over the other. These added restrictions which have been strongly advocated by the learned counsel for the petitioner, cannot be added by implication. While interpreting the rule, it would not be permissible for this Court to amend or modify the rule. Whilst interpreting or construing the rule, the Courts cannot reconstruct the Rule. That is the function of the Legislature or the

framers of the Rule. But Mr. Laler has placed strong reliance on the judgment of the Supreme Court rendered in the case of **Dilwan Singh** (*supra*). We are unable to accept the submission of the learned counsel. The Supreme Court was considering a rule which had been formulated to rehabilitate Ex-Servicemen in State Services. The Supreme Court has categorically observed as follows :—

“.....The object of reservation of the ex-servicemen is to rehabilitate them after their discharge from the defence services. As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those posts unfilled, the dependent children, namely, son or daughter of ex-servicemen would also to be considered. The object thereby would be that the Selection Board should first consider the claims of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are concerned. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from among the dependent children of the ex-servicemen.....”

(11) A perusal of the aforesaid observations would clearly show that the rule itself envisaged that the claim of Ex-servicemen would be considered first. In case of unfilled posts, the selection should be done from among the dependent children of the Ex-servicemen.

(12) It is an accepted position that the claim of the petitioner has been considered for being appointment by promotion. It is a settled proposition of law that no person can claim promotion as a matter of right. The employees are only entitled to be considered for promotion in accordance with the rules and regulations. Therefore, we are of the considered opinion that no legal right of the petitioner has been infringed.

(13) In view of the above, we find no merit in the writ petition and the same is dismissed. No costs.