

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.18262 of 2009 (O&M)
Date of decision: 15.05.2015**

Dharam Singh Yadav and another ... Petitioners

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Raj Kapoor Malik, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G,Haryana.

AMIT RAWAL J. (Oral)

Petitioners have approached this Court for quashing the departmental proceedings dated 22.07.2009 (Annexure P-7) of the Promotion Committee, whereby respondent No.1 has recommended the name of respondent No.3 for promotion to the post of Deputy Director Horticulture.

Mr. Raj Kapoor Malik, learned counsel for the petitioners submits that both the petitioners possess qualifications of B.Sc. Hon's Agriculture. In pursuance to requisition sent by the Horticulture Department Haryana to Haryana Public Service Commission and on

recommendation of the Haryana Public Service Commission, the petitioners were appointed as District Horticulture Officers, a Gazetted Class-II post in the Department of Horticulture, Haryana by way of direct recruitment. The petitioners were appointed on 27.05.2003 and 16.05.2003 respectively. Both of them successfully completed their probation period and presently, respondent No.3 is holding the post of District Horticulture Officer by way of promotion from lower cadre of the respondent department.

He further submits that the Horticulture Department was initially part of Agriculture Department and a separate department of Horticulture came into existence in 1990. There were 16 sanctioned posts of Class-II officers at the time of creation of the Horticulture Department. No separate rules governing appointment and conditions of service of employees have been made at the time of creation of the Department. The employees were governed by provisions of the Punjab Agriculture Service (group-B) Rules 1947 (hereinafter referred to as 'Rules 1947'). It was provided that appointment shall be made in the ratio of 66-2/3% by promotion and 33-1/3 % by direct recruitment.

He also submits that aforementioned split of percentage viz-a-viz promotion and direct recruitment is in accordance with Rules 1947. In the year 1992, new posts of State Horticulture Officer were created, therefore, number of posts were increased to 17 and thereafter, on creation of 4 (four) new District in Haryana and as a

consequence thereto, post of 4 District Horticulture Officers were kept vacant and thus, number of posts of the District Horticulture Officers swelled to 22. However, from time to time, number of posts were increased and finally they rose to 19.

In response to the requisition submitted by the Horticulture Department to the Haryana Public Service Commission, i.e. on 21.1.1995 for filling up of two posts of District Horticulture Officer only one name of Dr. B.S.Sehrawat was recommended and he joined the department on 25.05.1996. The said Dr. Sehrawat, filed writ petition bearing No.6999 of 2008 claiming seniority on the premise that since the post of District Horticulture Officer was lying vacant, therefore, he was entitled to the promotion w.e.f. 1993. The aforementioned writ petition was disposed of vide order dated 29.04.2008 with a direction to the respondents to consider and dispose of the legal notice by passing a speaking order as per law.

In response to the aforementioned directions, the Haryana Government vide order dated 03.09.2008, fixed the seniority of Dr. B.S.Sehrawat being a direct recruit, below Shri Harpal Singh Ahlawat and above Shri Fateh Singh against a newly created post of District Horticulture Officer w.e.f.27.10.1993.

Learned counsel for the petitioners further submits that since the petitioners were appointed in the year 2003, therefore, they are entitled to promotion w.e.f.1996 and 1997 when another post of District Horticulture Officer had fallen vacant on the same footing as

given to Dr. B.S.Sehrawat. He also submits that as per tentative seniority list of Class-II Officer as on 31.03.2004, Annexure P-4, the petitioners were shown at serial numbers 9 and 10 respectively and respondent No.3 is junior to the petitioners. The copy of the proceedings of Department Promotion Committee has been annexed as Annexure P-7, such action of respondents has compelled petitioners' to knock the doors of this Court. He also submits that one Ved Parkash Goel was promoted to the post of Deputy Director Horticulture.

Mr. Hitesh Pandit, Additional Advocate General, Haryana submits that as per tentative seniority list of Class-II Officers as on 31.03.2004, Annexure P-4, which was circulated amongst the officers objections were invited and as per seniority list as on 1.6.2009, the respondent No.3 has been placed at serial number 6 while the petitioners have been placed at serial numbers 16 and 17 respectively. After considering the objections Government was requested to fix the seniority list and petitioners were shown at serial numbers 9 and 10 respectively and in the said proposed list, Dr. B.S.Sehrawat was given the seniority from the date of joining beyond the persons who had already been promoted. The tentative/proposed seniority list (Annexure P-4) was recalled vide letter dated 4.6.2008 and the another tentative seniority list as on 1.6.2009 was sent to the Government for approval vide letter dated 22.6.2009.

As per written statement, it has been admitted that Dr. B.S.Sehrawat was recommended by the Haryana Public Service Commission and after recommendation he joined on 25.10.1996 and the remaining posts of District Horticulture Officer were advertised in the year 2002 and the selection against the requisition was made in the year 2002-2003, therefore, availability of Class-II Posts and the claim of the petitioners for seeking promotion cannot be ascertained at this belated stage.

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that in pursuance to the order dated 03.09.2008 (Annexure P-3), the Financial Commissioner & Principal Secretary to Government Haryana, Agriculture Department issued a promotion order of Dr. B.S.Sehrawat was even promoted as Deputy Director Horticulture w.e.f.27.10.1993 notionally and he was not held entitled to arrears. This order was passed on 3.09.2008 whereby Dr. B.S.Sehrawat was given the benefits of promotion since the year 1993 though he joined the department on 25.05.1996. Since the petitioners joined in the year 2003, therefore, the claim qua seniority on the same footing as has been granted to Dr. B.S.Sehrawat is justified. Thus, both the petitioners shall be entitled to seniority notionally w.e.f.1996-97 but they would not be entitled to arrears.

In view of the aforementioned facts, the seniority of the

petitioners is directed to be fixed w.e.f.1996-1997 and they shall be entitled to all other consequential benefits, if any permissible under the rules.

Accordingly, writ petition stands allowed.

(AMIT RAWAL)
JUDGE

May 15, 2015
savita