

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.21845 of 2015 (O&M)
DATE OF DECISION : 22.12.2015

Vijay Kumar Yadav and another

PETITIONERS

VERSUS

State of Haryana and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

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

Present:- Shri Gurminder Singh, Senior Advocate with Shri R.P.S.Bara,
Advocate for the petitioners.

Shri D.S.Nalwa, Additional A.G. Haryana.

Shri H.N.Mehtani, Advocate for respondent-3.

MAHESH GROVER, J.

The petitioners who are working as Tehsildars claim a right to be considered for promotions to the administrative service of the Haryana cadre from the feeder source which is generally constituted of the various officers such as Under Secretary, Deputy Secretaries, Sub Divisional Officers, Secretary Regional Transport Authority, Executive Magistrate(Tehsildar), Deputy Principal Secretary to the Chief Minister, Additional Deputy Commissioner etc.

Four sources of appointment are provided as per Rule 8 of the Haryana Civil Service (Executive Branch) Rules, 2008 (hereinafter referred to as the 2008 Rules) which may be extracted here below :-

“Register A-I	District Revenue Officers/Tehsildars
Register A-II	Members of Group C Service
Register-B	Direct recruitment as a result of the competitive examination held for Haryana Civil Service(Executive Branch).
Register-C	District Development and Panchayat Officers, Block Development and Panchayat Officers.

The rules further clarify the manner of entering the names of persons in these Registers. Rule 9 of the said rules provides for the process of selection of candidates of Register A-I, rule 10 provides for the process of selection of candidates of Register A-II, while Rules 11 to 13 provide for the process of selection of candidates of Register-B and Rule 14 provides for the process of selection of candidates of Register-C.

The final selection is made by the Haryana Public Service Commission when the recommendations are forwarded to it by the State Government. Rule 17 would provide a roster of 28 vacancies out of which 19 posts have been allocated to Register-B for direct recruitment, 4 to Register A-I, 3 to Register A-II and 2 to Register-C.

Five times the number of posts are to be drawn for consideration. These issues are admitted and in dispute is the provision pertaining to Register A-I regarding nomination from amongst the District Revenue Officers/Tehsildars. Rule 9 would thus govern the process which is extracted here below :-

“9. (1) The Financial Commissioner and Principal Secretary 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 as members, as may be nominated by the Government from time to time providing that unless the Government otherwise directs regarding the age, the name of a person shall be submitted who -

- (a)(i) has completed eight years continuous Government service ;
- (ii) has not attained the age of forty five years ; on or before the date on which the names are required to be submitted before the Committee.
- (iii) is not facing disciplinary proceedings/against whom action is being contemplated ; and
- (iv) is clear from vigilance angle.
- (v) is a graduate of 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-1. 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-1, and thereafter the names of the persons so selected shall be entered in the Register A-1.”

The controversy in brief is the claim of the petitioners on an

interpretation placed by them on Rules 9(1)(a)(i).

A perusal of Rule 9 extracted above mandates that Financial Commissioner and Principal Secretary to the Government of Haryana 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 constituted of Chief Secretary as the Chairman and two such other officers as its members which may be nominated by the Government from time to time. The names would be drawn out from persons who have completed '8 years continuous government service'.

The word 'Government' is defined in Rule 2(C) to mean the Government of Haryana in the Administrative Department. The word 'Service' has been defined in Rule 2(F) to mean the Haryana Civil Service (Executive Branch). The petitioners want Rule 9(1)(a)(i) to say that 8 years continuous government service should imply government service on a post and not necessarily as a District Revenue Officer or a Tehsildar which interpretation is placed by the respondents to exclude the petitioners from being brought on the list of accepted candidates and hence consideration for H.C.S. (Executive Branch).

The respondents have issued a clarification appended to the petition as Annexure P-7 the relevant portion of which is extracted here below :-

“It is informed that under the proviso to Rule 9 of the Haryana Civil Service (Executive Branch) Rules, 2008, a list of District Revenue Officers/Tehsildars not more than five times of the number of vacancies shall be submitted before the Committee who has completed eight years continuous government service. **This continuous government service is required rendered as District Revenue Officers or Tehsildars or combined as District Revenue Officers and**

Tehsildars. Furthermore, the same stand has been taken by the State Government (A.D.) in their written statement filed in S.L.P. No.21527 of 2006 – Daljit Singh v. State of Haryana and others”.

The contention of the petitioners is that once the rules provide 8 years continuous government service, no other interpretation can be placed except to mean a government service of any nature provided the last post held is that of a Tehsildar or a District Revenue Officer from which source the names are to be shortlisted for the purpose of Register A-I. The clarification according to them cannot be read into the rules as neither the executive instructions, nor such clarification can be a substitute to a provision that has to be incorporated by way of an amendment by a legislative process only.

The respondents in their reply have stated that since the inception of 1930 rules, the State has always taken into consideration the service rendered by an officer on the post mentioned in Rule 7 of the 1930 rules and rule 9 of the 2008 rules. The clarification which the petitioners find offensive and obstructive to their cause was also interpreted by the Department more than eight decades back and service rendered by an officer on the post mentioned in rule 7 of the 1930 rules and rule 9 of the 2008 rules was interpreted to mean the post which is specifically mentioned in the rules itself. They have also referred to the practical difficulty that they are likely to be confronted with in case of accepting the interpretation placed by the petitioners, for a person who may be working as a Naib Tehsildar for 7 years but promoted only a year back, would be entitled for consideration whereas a person who has put in 7 years as Tehsildar and promoted way back, would be clubbed with his junior.

It has further been argued by the respondents that prior to 2008 rules,

Naib Tehsildars were also eligible which resulted in a piquant situation where Naib Tehsildars who had worked under District Revenue Officers and Tehsildars became senior to these officers even though they had earlier served under them. It is with this purpose that 1930 rules were repealed to be substituted with the present rules. Naib Tehsildars were specifically excluded from consideration altogether.

During the course of arguments, this Court summoned the records to satisfy itself about the decision which had led to the clarification.

Learned counsel for the petitioners contends that the rules only talk of continuous 8 years government service and it cannot be read to mean 8 years service as a Tehsildar or District Revenue Officer only for no other language can be read into the rules which have to be read as they are. Reliance has been placed on a decision of the Hon'ble Supreme Court in **J&K Public Service Commission and others v. Dr.Narinder Mohan and others** (1994) 2 S.C.C. 630 and the attention of this Court was drawn to para-7 where it has been observed as follows :-

“7. Existence of statutory rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law.”

Similarly, in **R.Prabha Devi and others v. Government of India,**

through Secretary (1988) 2 S.C.C. 233, it was observed as follows :-

“15. The rule making-authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of CSS. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority.”

In General Manager, Uttranchal Jal Sansthan v. Laxmi Devi and others (2009) 7 S.C.C. 205, the Hon'ble Supreme Court discarded the circular issued by the State upon which it had placed reliance to read into the rules when it was not provided therein, and it was held that a mere circular/letter which has no force of law, cannot prevail over the statutory rules from which reasoning the learned counsel for the petitioners draws a parallel to the present proceedings and

say that it is impermissible since a clarificatory circular is being relied upon by the respondents to read into the rules. Their further argument was that no other interpretation can be placed by the respondents or for that purpose, even this Court by watering down the statutory provisions created under Article 309 of the Constitution of India.

The respondents, on the other hand state that rule 9(1)(a)(i) has to be read with the principal provision of rule 9(1) and prescription of 8 years continuous service would thus relate to a post of District Revenue Officers/Tehsildars which is provided therein.

Reliance has been placed on a decision of the Hon'ble Supreme Court in **S.B.Bhattacharjee v. S.D.Majumdar and others** 2007(4) S.C.T. 153 where it was observed as below :-

“24. It may be that in a given case, the court can with a view to give effect to the intention of legislature, may read the statute in a manner compatible therewith, and which would not be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. But, however, it is also necessary for us to bear in mind the illustration given by the executive while construing an executive direction and office memorandum by way of executive construction cannot be lost sight of. It is in that sense the doctrine of *contemporanea expositio* may have to be taken recourse to in appropriate cases, although the same may not be relevant for construction of a model statute passed by a legislature.”

In **G.P.Singh's 'Principles of Statutory Interpretation 10th Edn.** at p.319, it is stated :

“But a uniform and consistent departmental practice

arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice result from its departure and the approval that it has received in judicial decisions or in legislation.”

In **Ajay Gandhi v. B.Singh**, A.I.R. 2004 S.C. 1391 it was observed as below :-

“For construction of a statute, it is trite, the actual practice may be taken into consideration.”

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea expositio* to interpret not only ancient but even recent statute both in England in India.”

In **Shambhu Nath Mehra v. The State of Ajmer** AIR 1956 S.C. 404, the Hon'ble Supreme Court considered the interpretation of the word 'especially' contained in Section 106 of the Indian Evidence Act, 1872, which was an exception to Section 101 thereof, vis-a-vis Sections 112 and 113 of the Railways Act and it was observed as below :-

“13. We recognize that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit ; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be “especially” within the knowledge of the accused.”

Likewise, in **Commissioner of Income-Tax, Bombay and others v. Podar Cement Pvt.Ltd. and others** (1997) 5 S.C.C. 482, it was observed as below :-

“ An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.”

In **Allied Motor (P) Ltd. v. Commissioner of Income Tax, Delhi** (1997) 3 S.C.C. 472, it was observed as below :-

“13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary ; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In case of **R.B.Jodha Mal Kuthiala v. Commissioner Income Tax** AIR 1972 SC 126, this Court said that one should apply the rule of reasonable interpretation. A provision which is inserted to remedy

unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.”

In S.Sundaram Pillai and others etc. v. V.R.Pattabiraman and others etc. (1985) 1 S.C.C. 591, it was observed as below :-

“53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a

statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”

Reliance was also placed on a decision of the Hon'ble Supreme Court in **Life Insurance Corporation of India and others v. Retired L.I.C. Officers Association and others** 2008(2) S.C.T. 150 wherein it was observed as follows :-

“24. Each word employed in a statute must take colour from the purport and object for which it is used. The principle of purposive interpretation, therefore, should be taken recourse to.”

After hearing the learned counsel for the parties, I am of the considered view that rule 9(1)(a)(i) has necessarily to be read with the main provision of Rule 9 and that the word 'government service' as contemplated in rule 9(1)(a)(i) has to relate back to the posts which have been specified in main rule 9 i.e. District Revenue Officers and Tehsildars. it cannot mean government service in isolation to mean any other post than the ones mentioned in the principal section.

The legislative intent becomes clear if one reads Rule 10 (Register A-II) where posts are not prescribed and it is merely stated that for bringing a person from members of Group-C Service, the persons who have completed 8 years continuous service, may be considered. For the purpose of reference, Rule 10 is extracted here below :-

“10. (1) Each of the authorities specified in the first column of the table below may, by a date to be specified by

the Government, submit to the Government in Form I attached to these rules the recommendations regarding such number of persons as is specified in each case in the second column of the said table from amongst persons who are members of Group C service in his office or in the offices subordinate to him :-

TABLE

RECOMMENDING AUTHORITY	NUMBER OF RECOMMENDATIONS
1. Chief Secretary to Government of Haryana.	3
2. Financial Commissioner and Principal Secretary Revenue and Disaster Management, Haryana.	2
3. All the remaining Heads of Department.	1 each

Provided that any nomination already submitted by any of the aforesaid authorities with the existing rules shall be deemed to be a recommendation validly made.

(2) Unless the Government otherwise directs regarding the age, the name of a person shall be submitted under the provision of Sub-Rule (1) who

(a) (i) **has completed eight years continuous Government service ;**

(ii) has not attained the age of forty-five years on or before the date on which the Government has asked for recommendations.

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

(iv) is clear from vigilance angle.

(v) is graduate of a recognized university.

(3) The recommendations so received shall be submitted before a Committee with Chief Secretary as Chairman and such other two officers as members as may be nominated by the Government from time to time. This Committee shall examine all the recommendations received from various authorities and shall prepare a list equal to twice the number of vacancies of persons considered suitable for being entered in Register A-II. 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-II, and thereafter the names of the persons so selected shall be entered in Register A-II.”

It is for this reason that Rule 9 contemplates two categories of persons to be considered for bringing them on A-I List i.e. the District Revenue Officers and Tehsildars having completed 8 years of continuous government service. The records of the case produced before this Court also fortify a conscious decision by the State leading to the repeal of the 1930 rules and formulation of 2008 rules. The post of Naib Tehsildar which was being considered in the 1930 rules was specifically excluded with a justified rationale that these officers who might at some point of time be working under the Tehsildars or the District Revenue Officers would also be clubbed with them if the interpretation placed by the petitioners is accepted to say that the government service would include any service regardless of the post.

The plea of the petitioners that rules are silent and the State cannot place any other interpretation thereon, cannot be accepted as the State has issued merely a clarificatory order which gives perfect meaning to the rules. It is not in

the nature of any amendment, but only enables to clear the ambivalence in the rules and falls short of substituting it. In one of the judgments relied upon by the petitioners in **Gurpreet Singh Bhullar and another v. Union of India and others** (2006) 3 S.C.C. 758, the Hon'ble Supreme Court has acknowledged exercise of executive power to fill in the gaps. In the considered view of this Court, the present clarificatory letter issued by the State merely intends to obviate the vagueness and put an end to the obscurity of the rules and does not by any means, incorporate anything which is not intended by the Legislature.

A proper reading therefore, of the rules would be to say 8 years continuous government service as envisaged in rule 9(1)(A)(i) would mean government service as a District Revenue Officer or a Tehsildar and none other. Since the petitioners concededly do not fulfill this condition, they would not be entitled to consideration for being brought in Register A-I.

The petition is therefore, dismissed.

December 22, 2015
GD

(MAHESH GROVER)
JUDGE