

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17314 of 2010 (O&M)

Date of Decision: 23.5.2016

Dharam Raj

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.K.Chopra, Sr.Advocate with
Ms.Amrit Grewal, Advocate for the petitioner

Mr.Harkesh Manuja, Addl.A.G., Punjab

Mr.S.P.Garg, Advocate for respondents no.3 to 7

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. On 24th April, 2016, this Court by an interim order formulated the issues involved in the case for determination and called upon the State to file an additional affidavit explaining with supporting documentary evidence the responses to the four queries put to it for clarification. The interim order dated 24th April, 2016 is reproduced:-

“1. While adjourning the case to 4.5.2016 by reason of absence of learned arguing counsel for the private respondents (which has been duly explained on behalf of Mr. SP Garg and accepted by the Court) the following directions are issued to the respondent-State:-

2. State would file an additional affidavit explaining with supporting documentary evidence:-

(i) Whether there are separate cadres of Malis and Beldars in the Horticulture Department, Punjab.

(ii) Whether posts of Beldars are sanctioned an always

have been. If they are sanctioned, the orders be produced to indicate sanctioned cadre strength of Beldars.

(iii) When the Department adjusted Har Sarup and Nazar Singh [the private respondents and others] from Malis to Beldars, did they call for options from the Malis given that the post of Malis and Beldars are in Class IV service and included in a common gradation/seniority list. Both the posts are in the same pay scales with the same initial start. What is the prescribed experience and qualifications required for the post of Sub-Inspectors and how are promotions/appointments to be made from the feeder category which consists jointly of both Malis and Beldars. Meaning thereby the department would produce the rules under which separate seniorities are maintained for Beldars, if any.

(iv) Whether non-inviting options from all eligible candidates amongst Malis and Beldars [when some Malis were favourably treated on their own requests for change of cadre or transition from Malis to Beldars] is an action in the view of the Department compliant of the equality principles in Articles 14 and 16 of the Constitution of India or does it infringe them?

3. State also to produce the seniority rules of Malis and Beldars for promotion to the post of Horticulture Sub-Inspector. State to also explain in the additional affidavit what is meant by term 'adjustment' from Malis to Beldars and what criteria was laid down for considering the cases while promoting persons to the higher post in the higher pay scale of Horticulture Sub-Inspectors. Let the affidavit be filed with copy served 3 days in advance to the counsel opposite.”

2. Pursuant to the aforesaid interim order, the State has filed an additional affidavit. In the affidavit, the Department has made an attempt to disassociate itself from common seniority of Malis and Beldars by referring to

Rule 9 of the Punjab State (Group “D”) Service Rules, 1963 which prescribes the method of determination of seniority and lays down that seniority *inter se* of members of the service holding the posts in the same grade, shall be determined with reference to the date of their appointment to such posts.

3. In the main written statement filed by the Department at page 39 of the paper-book, there is an admission that the posts of Malis and Beldars fall in Group D cadre in the same pay scale. No promotion is involved if the incumbent of the post of Mali is adjusted against the post of Beldar, at his own request and no financial benefit accrues to him. Rather, he loses the seniority of his previous post of Mali, and is placed at the tail-end of the seniority of Beldars of that District. It is further averred by the Department that the petitioner, while working on the post of Mali, never made any request for his adjustment to the post of Beldar, which is the feeder cadre post for appointment by promotion to the post of Horticulture Sub Inspector. It is the claim of the petitioner to this post that is the corpus of this petition.

4. The stand of the department, to say the least, proceeds on an incorrect premise. If Malis and Beldars belong to the same Group D cadre and if one of them requests inter-changing positions from Malis to Beldars, he may lose his seniority of the previous post as Mali but would secure a positional advantage for being promoted as Horticulture Sub Inspector by way of rule which provides such ladder but not from the post of Mali, the post not being a feeder post to the higher post of Horticulture Sub Inspector. This statement if believed to be true would appear to make the posts of Mali and Beldar promotional in hierarchy, a position not sanctioned in the rules since the rules of service do not talk either the post of Mali or Beldar but of Mukaddam and Head Mali. Rule 6 (1) (b) of the Punjab Subordinate Agriculture Service Rules, 1933 prescribes the qualifications for appointment to the post of Mukaddam. These

rules framed for the Agriculture Department, Punjab has been adopted in the Horticulture Department vide Notification dated 29th August, 1998 w.e.f. 16th April, 1979.

5. Mr.Manuja, learned counsel for the State points out to the rules wherein a Mali earns promotion to the post of Head Mali while a Beldar can be promoted as Horticulture Sub Inspector and this is the distinction which should be kept in mind while deciding this case. If this argument is accepted, as it should be, and taken to its logical ends, then this Court cannot also lose sight of the admitted fact that Mali and Beldar belong to the same cadre in the same pay scale and because of the admitted position of interchangeability on request basis, a Mali can get converted into Beldar and secure promotion to Horticulture Sub Inspector by stealing a march over the right of a Mali who has never been asked to exercise option whether he wishes to come over to the posts/vacancies on the Beldar side. This vital option was not sought from the petitioner or any other Mali to be deputed as Beldar. The other Malis are not before this Court nor have they litigated for transfer/adjustment as Beldar and promotion to higher post while the petitioner alone amongst all the Malis battles out his case in court against the State. It was for all these reasons that the additional affidavit was sought from the Department by the interim order reproduced above to throw light on the issues crystallised especially in query (iii) and (iv) supra. There is no satisfactory explanation in the additional affidavit of why options and requests were entertained to single out a few for preferential treatment.

6. Now coming to the next question of interchangeability of a Mali and a Beldar and posting having been accorded once to Malis to become Beldar, as indisputably in the case of the private respondents, then the petitioner would also have a legal and valid right to parity of consideration and equal treatment

in the matter of changing over by accelerated promotion via Beldar which

principle of equality and prevention of unfair discrimination is the hallmark of Articles 14 and 16 of our Constitution. Both Malis and Beldars would have equal rights.

7. The State has been hard pressed at the hearing to explain promotions made on request with a Mali transforming to Beldar on the asking to be fast tracked to the post Horticulture Sub Inspector. This, to say the least, is arbitrary and wrongful exercise of discretion in the competent authority to hand-pick a Mali one day, accept his request pronto, make him Beldar on the next day and promote him as a Horticulture Sub Inspector in a short span of time no more than in a few days thereafter. It is not the case of the Department that there was error in the judgment of the then competent authority with respect to the rules to have resorted to this method of promotion from one post to another post and then promotion to the higher post of Horticulture Sub Inspector. It is also not the case of the Department that any irregularity or illegality was committed by the then competent authority in promoting the private respondents as Horticulture Sub Inspector after their requests were accepted to be made Beldars. Therefore, the department is precluded from taking the stand it has in the additional affidavit which falls short of a valid and proper explanation to the queries put forth by this Court for a better understanding of the case.

8. In view of the above facts and circumstances, the only conclusion which can be drawn is that the petitioner was denied the valuable right of being offered opportunity of exercising option by putting him to notice at the time when the private respondents were promoted as Horticulture Sub Inspector. The denial of consideration is held to be in breach of doctrine equal opportunity and is thus an infringement of Articles 14 and 16 of our Constitution.

9. For the foregoing reasons, this petition is allowed. The Department will invite option from the petitioner and in case he opts himself for changing

his designation from Mali to Beldar, then his case would be considered for promotion to the post of Horticulture Sub Inspector “as per his request” and seniority and in accordance with Rule 6 (1) (b) of the Punjab Subordinate Agriculture Service Rules, 1933 from the due date when the private respondents were promoted. Consideration in terms of this order should take place within two months.

23.5.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE