

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

CWP No. 19023 of 2014

Date of decision : 31.03.2016

Balbir Singh Duggal

...Petitioner

versus

State of Haryana & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Gupta, Advocate
for the petitioners.

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

1. Whether Reporters of Local papers 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 ?

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for issuance of direction to the respondents to consider him for promotion as Director of Agriculture in the State of Haryana as he is duly eligible for the post of Director of Agriculture in accordance with the Haryana Agricultural (Group-A) Service Rules, 1996 (for short 'Rules 1996') and further

prayer is for issuance of direction to the respondents to grant him higher pay scale on his appointment as Managing Director, Haryana Seeds Dev. Corpn. Panchkula as he is performing the higher responsibilities.

Petitioner was working as Assistant Scientist/Assistant Professor in the Chaudhary Charan Singh Agricultural University and remained there from 23.02.1985 to 06.02.1992 prior to his appointment as Depy. Director, Agriculture HAS-1, vide order dated 08.10.1992. Thereafter, petitioner was promoted as Joint Director by the respondents vide order dated 31.07.1998 and was posted at Sirsa in the pay scale of Rs.3000-5000. Subsequently, he was appointed as Director, Haryana Seeds Certificate Agency, Panchkula on deputation vide order dated 19.12.2002. During his deputation period, he was promoted as Addl. Director vide order dated 12.02.2004 by respondent No. 2 in the pay scale of Rs.13500-375-17250, which was refixed as Rs.15600-39100-8000G.P w.e.f January, 2006. Vide order dated 03.12.2009 (P-5), petitioner was given additional charge of Additional Director (Admn) while the petitioner was discharging his duties on the post of Addl. Director Agriculture (Extension).

In the present petitioner, petitioner is seeking promotion to the post of Director of Agriculture and further he be granted higher

pay scale on his appointment as Managing Director, Haryana Seeds Dev. Corpn. Panchkula as he is performing the higher responsibilities.

Petitioner was performing the duties of Managing Director (on deputation), but he was drawing the salary of Addl. Director of Agriculture and was never offered the salary of Managing Director of HSDC. A representation dated 17.04.2013 (P-8) was made by the petitioner for grant of higher pay scale, which was declined by the State Government vide letter dated 21.10.2013 on the pretext that the officers on deputation are appointed in their own pay scale in the parent department (P-9). Another representation was made by the petitioner for promotion to the post of Director of Agriculture. Reference has been made to the Director of Horticulture who has also been appointed from the member of services and not from the member of Indian Administrative Service as is being done in case of Director Agriculture. (P-10). Petitioner duly represented that Satyavir Singh who was simply a Deputy Director Horticulture in the pay scale of Rs.10000-325-15200 (old) in the Central Public Works Department, New Delhi in the year 2006 was appointed as Director, Horticulture, Haryana Panchkula on deputation basis in the pay scale of Rs.15100-400-18300 (old) vide order dated 08.03.2006 (P-11) and further up scaled to Rs.37400+67000+Grade Pay of Rs.1000/- on being promoted on the

post of Director General Horticulture on deputation basis vide order dated 21.01.2011 (P-12).

On notice, a written statement has been filed on behalf of respondent Nos. 1 to 4 admitting the date of appointment of the petitioner and further promotions made from time to time. However, reference has been made to Rules 1996 to contend that even if an officer fulfills the criteria of qualification as well as experience for appointment to the post of Director Agriculture Haryana, the same does not create any constitutional right or any other legal right in favour of that officer. The discretion in the said matter lies with the State Government to appoint an officer either by promotion from amongst Addl. Director of Agriculture (Extension), Addl. Director of Agriculture (General), Addl. Cane Commissioner or by transfer of any officer already in the service of any State Government or the Government of India or a member of IAS in selection grade (R-1).

Further as per notification dated 13.10.2010, Indian Administrative Officer is to be appointed as Director General Agriculture (R-2).

With regard to higher pay scale being sought by the petitioner, it has been submitted that the petitioner was appointed as Managing Director vide order dated 04.04.2013 on deputation in his

own pay scale which he was getting in his parent department prior to his appointment as Managing Director, Haryana Seeds Dev. Corpn. Panchkula. Thereafter, the petitioner is not entitled to higher pay scale, as per terms and conditions issued by the Government vide letter dated 05.09.2014 (R-3).

Further Agriculture Department in Haryana is headed by an officer of Indian Administrative Service for the last about 30 years and during the said period, the State has achieved remarkable success in the agriculture sector. Under the supervision of an IAS as Director Agriculture/Director General Agriculture, Haryana, the State of Haryana was awarded “KRISHI KARMAN AWARD” for being the best performing state in wheat and achieving the highest production (116.30 lakh MTS) and productivity (46.24 quintals per hectare) for rabi 2010-11. The award was presented by the President of India and carries Rs.1 crore in cash, a citation and trophy.

So, the prayer of the petitioner that he promoted to the post of Director of Agriculture in the State of Haryana is hereby rejected, as for the last about 30 years, Agriculture Department in Haryana is being headed by an officer of Indian Administrative Service for the last about 30 years and during the said period, the State has achieved remarkable success in the agriculture sector.

With regard to second prayer, that petitioner be given higher pay scale, reference at this stage can be made to a judgment of this Court in a case of **Deep Singh Sahota vs. State of Punjab, 2013 LIC 3800** wherein the petitioner was holding the charge of director Agriculture and this Court that the petitioner was discharging duties of higher post with greater difficulties and as such, he was held entitled to get the salary of such post along with consequential benefits. Reference has been made to judgment of Hon'ble the Supreme Court in a case of **Smt. P. Grover v. State of Haryana, AIR 1983 SC 1060** wherein it has held that once the person is discharging duties of higher post, he would be entitled to pay an emoluments of such higher post.

The above said judgment is directly applicable to the claim made by the petitioner with regard to grant of higher pay scale as he is performing the higher responsibilities. However, the prayer of the petitioner promoted to the post of Director of Agriculture in the State of Haryana is hereby rejected, in view of notification dated 13.10.2010 whereby Indian Administrative Officer is to be appointed as Director General Agriculture (R-2).

As per Annexure R-3, the petitioner was deputed as Managing Director, Haryana Seeds Dev. Corpn. Panchkula from 04.04.2013 to 03.04.2014 i.e for a period of one year in his own pay

scale but the petitioner is continuing after that date as well.

Following the ratio of the judgment passed by this Court mentioned above, the present writ petition stands disposed of and the petitioner is held entitled to the payment of salary to the post of Managing Director from 04.04.2013 to 03.04.2014.

(RITU BAHRI)
JUDGE

31.03.2016

G Arora