

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

CWP No.16556 of 2012 (O&M)

Date of Decision: 21.09.2017

Tejinder Singh & another

--Petitioners

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The two petitioners herein while serving as Beldars under the Department of Agriculture, State of Punjab filed the instant writ petition in the year 2012 seeking issuance of a writ of mandamus directing the respondent/authorities to consider and promote them to the post of Agriculture Sub Inspector w.e.f. the years 2003-04. Challenge has also been laid to Memo dated 13.12.2011 (Annexure P-12) issued by the office of Director, Agriculture, Punjab, whereby such claim was declined.

Brief facts which are not in dispute may be noticed at the outset.

Names of the petitioners having been sponsored by the District Employment Exchange/District Social Welfare Officer, Ropar, petitioner No.1 was appointed on the post of Beldar and petitioner No.2 was appointed on the post of Peon vide order dated 10.05.1979. Such appointments were on ad hoc basis. Petitioners joined the posts w.e.f. 14.05.1979. Services of the petitioners were regularized vide order dated 19.01.1980. One Tara Chand S/o Sh. Ram Gopal joined the office of the Chief Agriculture Officer,

District Ropar as Beldar on 18.05.1979 on transfer having foregone his seniority earned in District Hoshiarpur. A seniority list of Beldars in District Ropar was circulated on 01.01.1980 (Annexure P-3), wherein names of the petitioners were reflected at Sr. Nos.28 and 30 respectively and the name of Tara Chand was shown at Sr. No.33. In the cadre of Beldars, petitioners herein were senior to Tara Chand. Tara Chand was promoted to the post of Agriculture Sub Inspector ignoring the claim of the petitioners in spite of being senior. Aggrieved of their supersession, petitioners herein along with one similarly situated employee, namely, Nirmal Singh S/o Khushi Ram filed **CWP No.14115 of 2000 titled as Nirmal Singh & others Vs. State of Punjab & others**. During pendency of the writ petition, petitioner No.1 therein, namely, Nirmal Singh was promoted to the post of Agriculture Sub Inspector vide order dated 03.07.2001 but w.e.f. 26.08.1991. The writ petition thereafter came up for final hearing before a Division Bench of this Court on 12.05.2003 and was disposed of in the following terms:

“CWP No.14115 of 2000

Nirmal Singh & others

Versus

The State of Punjab & others

Present: Mr. R.M. Advocate, for the petitioners.

Mr. BS Sewak, DAG, Punjab.

Swatanter Kumar, J. (Oral).

We have heard learned counsel for the parties at some length.

Learned counsel for the petitioners submits that the petitioner No.1 has now been promoted to the post of Agriculture Sub-Inspector from the post of Baidar, vide order dated 3rd July, 2001 but with effect from 26th August, 1991. On this premises, he contends that the petitioners No.2 and 3, who

were appointed as Baildars on the same date would also be entitled to promotion in their own turn as the vacancies were lying since 1991, as is apparent from the pleadings of the respondents and the order passed in relation to petitioner No.1. This submission is being made dehors the fact that the respondent No.4,, who is otherwise junior to the petitioners have been promoted out of turn.

Learned counsel for the State contends that in view of the issuance of the order of promotion of respondent No.4, the competent authority shall consider the case of the petitioners No.2 and 3 for promotion to the post of Agriculture Sub Inspector, in accordance with law and depending upon the availability of the vacancies. Let the needful be done within a period of two months from today.

In view of the above statements, the writ petition is disposed of accordingly, parties to bear their own costs.

*Sd/ Swatanter Kumar
Judge*

*Sd/ Hemant Gupta
Judge”*

12.05.2003

After passing of the order dated 12.05.2003 by this Court, petitioners moved a representation to the Chief Agriculture Officer staking their claim for promotion to the post of Agriculture Sub Inspector. The benefit of promotion was however denied to the petitioners by passing an order dated 16.09.2003 (Annexure P-7) on the premise that no vacancy in the promotional cadre of Agriculture Sub Inspector in the quota of Beldar was available.

Three posts of Agriculture Sub Inspectors fell vacant in the respondent/department due to supannuation of employees, namely, Pawan Kumar, Jarnail Singh and Dharam Pal in the years 2003-04 and the

petitioners consequently again raised their claim seeking promotion as Agriculture Sub Inspectors and towards compliance of the Division Bench order dated 12.05.2003.

In the year 2010, the State Government promulgated the new Rules, namely, the Punjab Agriculture Department (Field Office) Group-C Service Rules, 2010 (for short 'the 2010 Rules'). Under the 2010 Rules, qualifications for appointment to the post of Agriculture Sub Inspector were changed and in the educational qualifications, the word 'matric' was inserted in the place of word 'literate'. In other words, only Beldars, who were matric were eligible to be promoted to the post of Agriculture Sub Inspectors under the new Rules, whereas under the old Rules i.e. the Punjab Subordinate Agricultural Services Rules, 1933 (for short 'the 1933 Rules'), a 'literate' Beldar was also eligible to be so promoted.

Acting upon 'the 2010 Rules', a number of Beldars junior to the petitioners were promoted. Aggrieved thereof, petitioners served upon the respondent/department a legal notice dated 25.07.2011 (Annexure P-10) giving out the entire backdrop of the case including their eligibility for consideration of promotion to the post of Agriculture Sub Inspector under the 1933 Rules as also on the strength of order dated 12.05.2003 passed by the Division Bench of this Court in CWP No.14115 of 2000. Claim was rejected vide order dated 13.12.2011 (Annexure P-12) ostensibly on two counts:

(i) That Beldars already stand promoted as Agriculture Sub Inspectors 'in excess of their quota' and

(ii) Under the 2010 Rules, benefit of promotion can be

accorded only to a matriculate Beldar.

It is against such brief factual backdrop that the instant writ petition was instituted.

On a previous date of hearing i.e. on 25.05.2015, State counsel had furnished an order dated 08.04.2015 and vide which both the petitioners were promoted to the post of Agriculture Sub Inspectors. Since the petitioners were seeking such promotional post w.e.f. the years 2003-04, this Court passed the following orders on 25.05.2015:

“Learned Senior counsel for the petitioners contends that in CWP No.14115 of 2000, filed by the petitioners, learned State counsel had maintained that the competent authority shall consider the claim of the petitioners for promotion to the post of Agricultural Sub Inspector, in accordance with law and depending upon the availability of the vacancies.

That being so, the Division Bench, vide order dated 12.05.2003 (Annexure P6) disposed of the matter, with an observation that the needful be done within a period of two months from the date of the order. As, despite that being so, claim of the petitioners was kept in abeyance for no tangible reason, the petitioners preferred this petition.

Learned State counsel has produced an order dated 08.04.2015, vide which both the petitioners have since been promoted to the post of Agricultural Sub Inspector. Learned senior counsel for the petitioners submits that though petitioners have indeed been promoted but nothing is indicated in the order as to from which date they have been assigned promotion. Particularly, when petitioners claim promotion to the post of Agricultural Sub Inspector w.e.f. the year 2003-04. He refers to a letter dated 17.07.2012 (Annexure P13) to demonstrate that two vacancies were available even on 01.07.2003 to consider the claim of the petitioners. In short, it

is submitted that the order dated 12.05.2003 passed by this Court, to consider the claim of the petitioners subject to the availability of the vacancies, has attained finality. And two vacancies being available on 01.07.2003, there could hardly be any ground, least plausible, to still not promote the petitioners w.e.f. 01.07.2003.

Learned State counsel prays for, and, is granted four weeks' time to furnish a specific affidavit to demonstrate as to what was the vacancy position post passing of the order dated 12.05.2003 (Annexure P6) by this Court. And if indeed two vacancies existed on 01.07.2003, how could the petitioners be still denied promotion from the said date.

Adjourned to 17.08.2015.”

In purported compliance of the order dated 25.05.2015 passed by this Court, an additional affidavit dated 14.08.2015 of the Chief Agricultural Officer, Roopnagar along with Annexure R-2-T has been filed and placed on record.

Insofar as the vacancy position is concerned, it stands admitted that two posts of Agriculture Sub Inspectors were available in the years 2003-04. However, claim of the petitioners seeking promotion as Agriculture Sub Inspectors w.e.f. the years 2003-04 is being resisted in the light of Memo dated 13.12.2004 (Annexure R-2-T) issued by the Director, Agriculture, Punjab stating that at the time of promotion from the post of Beldar to the post of Agriculture Sub Inspector, it should be ensured that the number of employees appointed by promotion from the post of Beldar should not exceed the 20% quota as fixed by the Government.

In the considered view of this Court, the stand taken on behalf of the State is wholly untenable.

CWP No.14115 of 2000 filed at the hands of the present

petitioners and another had been disposed of by a Division Bench of this Court vide order dated 12.05.2003 (Annexure P-6) with the directions that the competent authority would consider the case for promotion to the post of Agriculture Sub Inspector as per availability of the vacancies and in accordance with law. It has been conceded in the additional affidavit filed on behalf of the State that two vacancies in relation to the post of Agriculture Sub Inspector were indeed available in the years 2003-04. The rights of the petitioners for consideration for promotion as Agriculture Sub Inspectors stood crystallized as on such date in the light of the Division Bench order. The 2010 Rules had not even been promulgated on such date. It was the 1933 Rules that as such would hold the field. Rule 7 (c) of the 1933 Rules would regulate the method of recruitment to the post of 'Mukaddam' since redesignated as Agriculture Sub Inspector and is in the following terms:

Rule 7 (c)-in the case of Mukaddams-

- (i) by promotion from amongst experienced literate Beldars in the Inferior Service of the Department, or;*
- (ii) by direct appointment.*

State is now placing reliance upon Memo dated 13.12.2004 (Annexure R-2-T) issued from the Director, Agriculture, Punjab to contend that the employees appointed by promotion to the post of Agriculture Sub Inspector from the post of Beldar should not exceed 20% quota as fixed by the Government. No such quota is contemplated under Rule 7(c) of the 1933 Rules. Accepting the stand taken on behalf of the State and as contained in the Memo dated 13.12.2004 (Annexure R-2-T) would virtually amount to reading a quota for Beldars for purposes of consideration for promotion to the post of Agriculture Sub Inspector in the 1933 Rules. The same is impermissible in law.

Under such circumstances, the claim of the petitioners, who already stands promoted as Agriculture Sub Inspectors in terms of order dated 08.04.2015 to be considered for promotion w.e.f. the years 2003-04 is well founded. Such a prayer deserves to be accepted against the backdrop of the Division Bench order dated 12.05.2003 passed in CWP No.14115 of 2000 (Annexure P-6) as also the eligibility of the petitioners under the relevant statutory Rules i.e. the 1933 Rules. Held accordingly.

For the reasons recorded above, the present writ petition is allowed. The impugned order dated 13.12.2011 (Annexure P-12) is set aside. Petitioners are held entitled to be promoted as Agriculture Sub Inspectors w.e.f. the dates the post of Agriculture Sub Inspectors became vacant upon retirement of Sh. Dharam Pal and Joginder Lal i.e. 30.06.2004 and 31.10.2004 respectively. Necessary orders in such regard be issued within a period of two months from the date of receipt of a certified copy of this judgment. The petitioners upon having been accorded the benefit of such ante dated promotion would also be entitled to all consequential benefits in the nature of seniority, pay fixation etc. The financial benefits emanating from the grant of benefit of ante dated promotion on the post of Agriculture Sub Inspectors would however be granted on a notional basis.

Petition is allowed in the aforesaid terms.

21.09.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | No |

