

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CM No. 4269 CWP of 2017 and
CWP No. 2408 of 2017 (O&M)
Date of decision: March 22, 2017

Sutantar Kumar Airi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. K.S. Dadwal, Advocate,
for the petitioner.

Mr. T.N. Sarup, Additional Advocate General, Punjab.

Mr. Puneet Jindal, Senior Advocate with
Ms. N.A. Mahajan, Advocate,
for respondent No.4.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed, inter-alia, with the prayer for issuance of appropriate writ, order or direction especially in the nature of Certiorari for quashing the order dated 30.1.2017, which was endorsed vide No. 3/41/2016-Ag. 1 (1)/1980-83, Chandigarh dated 31.1.2017 (Annexure P/10), whereby the respondent No.4, in the order of extension has been given the (look after) charge of promotional post of Director, which is contrary to the provisions of Punjab Civil Services Rules (2nd Amendment) Rules, 2015, which provides as to how the extension can be granted.

2. The petitioner is aggrieved against Annexure P/10 by which

extension in service has been granted to respondent No.4—Shri Jasbir Singh Bains from 1.2.2017 to 31.1.2018 with (look after) charge of Director Agriculture. In para 2 of the writ petition, it was submitted *“but the petitioner at the moment is aggrieved against the grant of look after charge of the promotional post of Director to which the petitioner is fully eligible and, therefore, the petitioner is restricting the pleadings concerning to the said relief, which would be apparent from the narration of the factual position, which would certainly show that undue favour is being given to respondent No.4 at the official level and for that purpose, the Rules as well as Instructions have been totally side tracked.”*

3. The claim of the petitioner further is that he joined the Agriculture Department on 28.6.1982 through selection process held by the Punjab Public Service Commission, Patiala, and after holding various posts, he was ultimately promoted to the post of Joint Director Agriculture on 18.12.2015. It is contended that the Government of Punjab notified the rules regulating the recruitment, and conditions of service of person appointed to the Punjab Agricultural (Group-A) Services Rules, 2013 on 26.8.2013, in which the post of Director Agriculture was to be filled up by 100% by promotion from amongst the Joint Directors of the Agriculture of administrative Wing/Cane Commissioner. It further provided that in case the Government feels that no Joint Director of the Administrative Wing is suitable on merit for promotion as Director, it shall then consider the Joint Directors of the other Wings of the Department for promotion to the post of Director Agriculture who have an experience of working as such for a minimum period of 3 years. Since the rules have been promulgated, the

petitioner contends that he is only person who is entitled to to be promoted on the post of Director Agriculture being the senior most Joint Director of administrative wing. However, respondent No.4 has been given charge (look after) to the post of Director Agriculture by the impugned, while granting him extension in service. It is argued that the rules do not permit a person to be promoted to a higher post while on extension.

4. Notice of motion was issued by this Court on 9.2.2017, while granting interim prayer, by noting the contention of the petitioner, which is reproduced as under:-

“Learned counsel for the petitioner contends that after superannuation on 31.01.2017 respondent No.4 Jasbir Singh Bains, who had retired as Joint Director, Agriculture, could not have been given look after charge of promotional post of Director, Agriculture during the period of his extension.

Notice of motion returnable by 17.04.2017.

Issue notice re: stay as well.

Process dasti.

In the meanwhile, effect of the impugned order to the extent of granting 'look after' charge on the promotion post of Director, Agriculture is stayed till the next date of hearing.”

5. An application has been filed by the learned counsel appearing on behalf of respondent No.4 for vacation of the interim order on the ground that there has been concealment of facts and misrepresentation in the writ petition.

6. Mr. Puneet Jindal, learned Senior Counsel, assisted by Ms. N.A. Mahajan, appearing on behalf of respondent No.4, contends that there has been concealment of facts in the writ petition. It has been projected in the

writ petition as if Shri Jasbir Singh Bains—respondent No.4 was given the (look after) charge of post of Director Agriculture by the impugned order dated 30.1.2017, whereas the fact of the matter is that respondent No.4 was already working on the post of Director with effect from 4.4.2016 and order 30.1.2017 (Annexure P/10) only granted him extension in service, which would necessarily mean that he would continue to discharge duties of (look after) the post of Director Agriculture, which had been entrusted to him as far back as on 4.4.2016. It is argued that Annexure P/10, as translated, would not reflect true order that was passed. It is further argued that the petitioner's claim to be promoted on the post of Director Agriculture under the Rules of 2013 cannot be granted since a writ petition is pending before a Division Bench of this Court i.e. CWP No. 7205 of 2001 whereby a direction had been issued not to fill up the post of Director Agriculture on regular basis, leaving it open to the Department to make “working arrangement” till such regular appointment is made. It is also argued that the petitioner would be aware of the order passed by this Court on account of the fact that an arrangement was made to appoint the senior most person in the Department to continue on the post of Director Agriculture.

7. I have heard learned counsel for the parties and with their assistance gone through the record of the case.

8. The first issue that needs to be determined is, as to whether there was misrepresentation on behalf of the petitioner and deliberate concealment of true and correct facts, as alleged.

9. The entire tone and tenor in the writ petition which seeks to challenge Annexure P/10 (in both the body and the prayer clause of the writ

petition) is as if respondent No.4 had been granted (look after) charge to the post of Director Agriculture after extension was granted to him. For the sake of clarity, it can be said that by the impugned order (Annexure P/10), respondent No.4 on his extension had been given the higher post, that is to (look after) the post of Director Agriculture. Learned counsel for the petitioner urges that in para 11 of the writ petition, it is mentioned that respondent No.4 was having look after charge, however, on superannuation this charge has wrongly been given to him. It is argued that there no concealment of this fact. However, this Court is of the opinion that the pleadings, as made out in the writ petition, are not specific to substantiate the plea that respondent No.4 had been given the (look after) charge as Director Agriculture prior to his retirement.

10. In para 11, it is averred *“However, while granting extension, he has further been given the look after charge of Director Agriculture.”* A plain reading of these averments would mean, that while granting extension to respondent No.4, who was a Joint Director, he has also been given (look after) charge of Director Agriculture, which is a higher post. The petitioner ought to have brought to the notice of this Court that respondent No.4 prior to his retirement had been given this charge as on 4.4.2016, which order was not placed in the writ petition, for the reasons best known to the petitioner. No doubt, the Punjab Civil Services (Second Amendment) Rules, 2015 clearly provides that a government employee, whose service is extended, shall not be entitled to promotion; the benefit of Assured Career Progression; an annual increment and any revision of pay made by the State Government, but in the instant, case as has been brought on record,

respondent No.4 was not given promotion in the true sense during his extension period. In fact, he was already working and discharging the duties of Director Agriculture as far back as on 4.4.2016. This was on account of the fact that no regular appointment to the post of Director Agriculture could have been made by the Department by virtue of the stay order that had been issued in CWP No. 7205 of 2001, which is still pending consideration. Therefore, on account of working arrangement, the senior most Joint Director at the relevant time was discharging the duties of Director Agriculture. As per the written statement filed, one Gurdial Singh, Joint Director Agriculture being the senior most was given the charge of Director Agriculture and allowed to continue to hold the same post during his extended service till his retirement i.e. on attaining the age of 60. Admittedly, respondent No. 4, being the senior most was granted (look after) charge of the post of Director Agriculture and thereafter extension was granted to him.

11. Under orders of this Court, learned counsel for the petitioner has placed on record another translated copy of Annexure P/10 which reads as *“Shri Jasbir Singh Bains, Joint Director Agriculture (look after) charge of Director Agriculture, who was to retire on 31.1.2017, after attaining the age of 58 years is hereby granted extension in services from 1.2.2017 to 31.1.2018.”* From another reflection of Annexure P/10, it is clear that the impugned order only grants extension in service from 1.2.2017 to 31.1.2018 to Shri Jasbir Singh Bains, Joint Director Agriculture with (look after) charge of Director Agriculture. The said order does not under any circumstances promote Shri Jasbir Singh Bains to the post of Director

Agriculture, while on extension. He was already holding the charge of Director Agriculture on the date he was to superannuate. Therefore, amendment in the Punjab Civil Services (Second Amendment) Rules, 2015 specifying that no person would be granted promotion during the extension period has not be violated in the instant writ petition. If the petitioner has any grievance regarding promotion or the post held by respondent No.4, he was always at liberty to move an appropriate application in the writ petition which is pending before this Court and place before the said Bench the rules that had been promulgated which specify that promotion to the post of Director Agriculture be made by 100% by promotion from the post of Joint Director Agriculture belonging to the administrative wing.

12. In view of the fact that respondent No.4, who was the senior most in hierarchy, was already working on the post of Director Agriculture and on extension he was only ordered to continue to hold the charge of Director Agriculture and he was never promoted to the post of Director Agriculture and there was no violation of the Punjab Civil Services Rules (2nd Amendment) Rules, 2015, the interim stay granted by this Court is hereby vacated and the writ petition is dismissed being bereft of merit.

March 22, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No