

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

120

**CWP-9951-2017 (O&M)
Date of decision:30.05.2017**

Ramesh Kumar Jha and others

....Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Anurag Goyal, Advocate for the petitioners.

P.B. Bajanthri, J. (Oral)

In the present petition petitioners have prayed for the following relief:

1. a writ in the nature of certiorari quashing the impugned order dated 05.07.2016 (P-32), whereby the guidelines issued by the Government of India specifically clause 4.2 has not been followed and the claim of the petitioners has been rejected despite all orders issued by Government of India denying different benefits to the employees of DRDAs like merger/absorption and pension etc. as done in different states
2. further for the issuance of a writ in the nature of mandamus directing the respondents to absorb the petitioners from the date of issuance of guidelines itself or the period enumerated

in the guidelines in the line departments with all consequential benefits of pension etc.

2. The petitioners have questioned the validity of the order dated 05.07.2016. Petitioners were appointed under Central Government Scheme District Rural Development Agency. Their grievance is relating to merger of District Rural Development Agency with Rural Development Department of State of Haryana. The petitioners have no right for the purpose of merger of their scheme or their services in the Rural Development Department. If such merger is permitted then the rules of recruitment in respect of rural development would be violated and further rights of the persons and service conditions who are in Rural Development Department would be affected.

3. It is matter of policy whether to merge certain categories of post in certain department from one department to another department or from organization to another. Supreme Court in the case of ***PU Joshi, and others versus The Accountant General, Ahmedabad and others***, reported in 2003 (2) SCC 632 held as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions

envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Supreme Court in the case of ***Union of India versus Pushpa Rani*** reported in 2008(9) SCC 242 held as under:-

“35. A careful reading of the policy contained in Letter dated 9.10.2003 shows that with a view to strengthen and rationalize the staffing pattern, the Ministry of Railways had undertaken review of certain cadres. The basis of the review was functional, operational and administrative requirement of the Railways. This exercise was intended to improve the efficiency of administration by providing incentives to the existing employees in the form of better promotional avenues and at the same time requiring the promotees to discharge more onerous duties. The policy envisaged that additional posts becoming available in the higher grades as a sequel to restructuring of some of the cadres should be filled by promotion by considering such of the employees who satisfy the conditions of eligibility including the minimum period of service and who are adjudged suitable by the process of selection. This cannot be equated with upgradation of posts which are required to be filled by placing the existing incumbents in the higher grade without subjecting them to the rigor of selection.

36. In view of the above discussion, we hold that the Railway Board did not commit any illegality by directing that the existing instructions with regard to the policy of reservation of posts for Scheduled Castes and Scheduled Tribes will apply at the stage of effecting promotion against the additional posts and the Tribunal committed serious illegality by striking down para 14 of letter dated 9.10.2003.

37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal

position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

4. In view of the above principle laid down by the Supreme Court, the petitioner's have not made out a case. CWP stands dismissed.

30.05.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons
Whether Reportable:

Yes/No
Yes/No