

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

I.

LPA No.43 of 2015 (O&M)

Haryana Cooperative Sugar Mills Limited

... Appellant

Versus

Manoj Kumar Singh and others

... Respondents

II.

LPA No.75 of 2015 (O&M)

Pradeep Kumar Tomar

... Appellant

Versus

Manoj Kumar Singh and others

Decided on : 29.8.2017

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr. Anil Ghanghas, Advocate,
for the appellant in LPA No.43 of 2015.

Mr. Anurag Goyal, Advocate,
for the appellant in LPA No.75 of 2015.

Mr. Kuldeep Sheoran, Advocate,
for respondent No.1.

Mr. C.P.Tiwana, Advocate,
for respondent No.2.

MAHESH GROVER, J. (Oral)

CM No.3018-LPA-2017 in LPA-43-2015

CM is allowed and the affidavit along with annexures are
taken on record subject to all just exceptions.

Main case

This order shall dispose of the aforesaid two writ petitions as they are interconnected with each other. The facts are taken from LPA No.43 of 2015 for convenience.

The appellant is in appeal against the judgment of the learned Single Judge dated 11.11.2014. Respondent No.1 is desirous of being promoted as Chief Chemist for which he fulfilled the necessary qualifications. He was, however, not promoted and the post was advertised for direct recruitment in view of note appended to Rule 6 pertaining to methods of recruitment which we may extract hereinbelow : -

“6. Methods of Recruitment:- The method of recruitment will be as under : -

- (a) By promotion
- (b) On Deputation
- (c) Direct Recruitment
- (d) By Promotion : - By promotion from the permanent/temporary employees of the Societies fulfilling the qualification and experience of the post and having good work and conduct.
- (b) On Deputation : By taking on deputation from the Govt. or Coop., Sugar Mills in the State of Haryana.
- (c) Direct Recruitment : - Direct recruitment through advertisement/Employment Exchange as per instructions of Govt. issued from time to time.

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Note VI: In case, no candidate under consideration for promotion is found fit for the promotion post, then post be advertised for direct recruitment. Management must ensure the availability of best manpower for efficient results.”

Since respondent No.1 did not appear before the Board at the time of consideration, the post was advertised for direct recruitment and respondent No.1 was inducted as a direct recruit. Respondent No.1 pleaded before the writ Court that he could not appear on account of his illness and the learned Single Judge accepted the plea and granted another opportunity to him to appear before the Selection Committee. The writ petition was disposed of and the following observations were made : -

“ Further, no plausible reasons are forthcoming as to why petitioner No.1 could not be granted another opportunity to appear before the selection committee for considering him for promotion to the post of Chief Chemist, despite the fact that he submitted his medical certificate, giving sufficient reasons for his non appearance. In this view of the matter, it is unhesitatingly held that respondent authorities acted without jurisdiction, while passing the impugned order dated 15.3.2013 (Annexure P-14), so far as it pertains to the post of Chief Chemist and they also acted in most arbitrary manner,

while denying the right of consideration to petitioner No.1 for promotion. Thus, the impugned order dated 15.3.2013 (Annexure P-14) passed by respondent No.2 cannot be sustained, for this reason as well.

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Consequently, respondents are directed to consider petitioner No.1 for promotion to the post of Chief Chemist as per the abovesaid Service Rules, in accordance with the law laid down by this Court in Sandeep Malik's case (supra). Let needful be done within a period of two months from today. Natural consequences to follow and petitioner No.1 shall be granted all the consequential service benefits without any further delay.”

Pursuant to the above, the appellant granted consideration and promoted respondent No.1 subject to the outcome of the LPA as also subject to the approval of the Board of Administration. This decision was taken almost two years back and in fact, the decision was also taken to withdraw the appeal for which a legal opinion was solicited. This is on record as Annexure R-1/3.

Mr. Anurag Goyal, learned counsel appearing for Pradeep Kumar Tomar, direct recruit has preferred LPA No.75 of 2015 and contends that after the decision by the learned Single Judge, his client has left the services of Haryana Sugar Cooperative Mill and is not in touch with him.

If that be so, we will construe this as virtual abandonment

of the claim in the absence of any concrete instructions to the learned counsel for the appellant in LPA No.75 of 2015.

Even otherwise, we are of the opinion that his claim to the assignment would not survive if we accept the findings of the learned Single Judge regarding the unfair ouster of respondent No.1 from the selection process and denial of fair opportunity of consideration. The note appended to rule 6 clearly envisages that in case, there is no candidate available for promotion, it is only in that contingency that the post would be filled up by way of direct recruitment. Respondent No.1 was available for consideration and eligible but unfairly kept out. This would imply that there was no occasion for the appellant to resort to the process of direct recruitment.

Since we do not find any infirmity in the findings recorded by the learned Single Judge, this would imply that promotion of respondent No.1 made subsequent to the decision of the learned Single Judge would be maintained particularly when respondent No.1 has been found fit for promotion and has discharged his functions without complaints almost for the past two years.

Accordingly, both the petitions stand disposed of.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

August 29, 2017

Paritosh Kumar

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No