

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 06.08.2018****CWP No.2186 of 2013**

Nepal Singh

...Petitioner

Vs.

Registrar, Cooperative Societies, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Raj Kapoor Malik, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Rajesh Sheoran, Advocate, for respondents No.2 & 3.

RAJIV NARAIN RAINA, J. (ORAL)

If the 3rd respondent – Kaithal Cooperative Sugar Mills Ltd., Kaithal has been unable to make direct recruitment on the post of Assistant Security Officer for over two decades, then the source appears to have dried up and broken down. This is fortified by the fact that the petitioner has been given officiating charge of the post of Assistant Security Officer since 25.08.2012 and has continued to work as such in the Sugar Mills. There is then no valid reason why the recommendations of the Managing Director made in favour of the petitioner should not be accepted as just and proper. The Managing Director, Kaithal Cooperative Sugar Mills Ltd., Kaithal in his clarificatory recommendations dated 21.02.2012 opining on the case of promotion to the post of Assistant Security Officer from amongst civilian Security Guards had pointed out that due to revision of Service Rules in 2007, the scope of promotion of civilian Security Guards is permanently closed. The Service Rules were revised on 05.09.2007. These Rules were

adopted by the respondent – Mills in the meeting of the Board of Directors held on 30.04.2008. According to the revised Rules, the essential eligibility for direct appointment/promotion to the post of Assistant Security Officer is that candidate must be an Ex-servicemen with minimum retirement rank of Havaldar with Matric pass and knowledge of computer is compulsory. He goes on further to say that before revision of Service Rules, there was no minimum academic qualification prescribed for the post of Security Officer/Assistant Security Officer and no academic qualification was mentioned in the Sugarfed Board Rules. There was no Ex-servicemen Security Guard, who is Matriculation pass in their Sugar Mills. There are 20 Security Guards, who are Matriculation pass, from the category of civilian Security Guards. There is no civilian Security Guard, who fulfils the essential qualification for the promotion to the post of Assistant Security Officer, as per revised service rules. It is pointed out in the letter that Sugar Mill is facing financial crisis and direct appointment of Assistant Security Officer is not suitable to the Sugar Mills. The petitioner and his ilk have completed 20 years of service by 2012 and if these civilian Security Guards are to be promoted by giving relaxation in service rules, then there will be negligible financial burden on the Sugar Mills. This is because after granting 2nd ACP pay scales, all Security Guards will be drawing salary equivalent to the pay scale prescribed for Assistant Security Officers. By this process of reasoning the representation was sent by the Managing Director for processing and consideration of the Board sympathetically for favourable action. The proposal has been considered and rejected by the Haryana State Federation of Cooperative Sugar Mills Ltd. Panchkula vide letter dated 01.03.2012 holding that no relaxation should be recommended for diluting

the academic/professional qualifications. This is farcical in absence of direct recruitment to the post since the inception of the revised rules, 2007. This is like baying to the moon.

The Service Rules are non-statutory. They have been framed by Sugarfed and are by character in the nature of bye-laws. The rejection also does not answer the prescription in a case where direct recruitment to the post has neither been initiated nor is likely too and, therefore, it would be rather unjust and unfair to not make direct recruitment and still keep the petitioner on a current duty charge of the post of Assistant Security Officer. The sheer length of service, of which 6 years have been in officiating position, would clearly suggest that the arrangement should continue the arrangement as it has no financial impact on the Sugar Mills.

Accordingly, this petition is allowed. The impugned order dated 01.03.2012 is quashed. The case of the petitioner will be considered with the cases of eligible candidates for substantive appointment by way of promotion as Assistant Security Officer.

In the facts and circumstances, this arrangement when ordered will, however, remain subject to any initiative of direct recruitment undertaken and a regular recruit from Ex-servicemen category being available for joining service. In case, the petitioner retires from service in the capacity of Assistant Security Officer, and is promoted to that post in the light of this order, he will get his retirement benefits accordingly.

06.08.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>