

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

**CWP No.22561 of 2017
Date of decision: 21.12.2018**

Dr. Virender Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajiv Atma Ram, Senior Advocate,
with Mr. Ranjit Singh Kalra, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, A.A.G., Haryana.

Mr. Anurag Goyal, Advocate,
for respondent No.2.

Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari quashing the order dated 15.01.2013 (Annexure P-5) modified vide order dated 22.05.2014 (Annexure P-6) to the extent that the petitioner has been sent on deputation as Managing Director, Haryana Livestock Development Board, order dated 02.09.2013 (Annexure P-9) order dated 14.09.2017 (Annexure P-10) and order dated 18.09.2017 (Annexure P-11).

The petitioner was appointed as Veterinary Surgeon on 17.03.1988 by way of direct appointment. Thereafter, he was selected and appointed as Project Director, Enquiries Production, in the respondent-department on 08.06.2000. On 26.08.2003, he was selected and appointed as Joint Director (Animal Husbandry) through a regular selection process conducted by the Haryana Public Service Commission.

Haryana Veterinary (Group A) Service Rules, 1995 (for short '1995 Rules'), were promulgated vide notification dated 01.02.1995 (Annexure P-2). As per Rule 3 of the said rules, posts in the service were defined in Appendix 'A'. there is one post of Director in the department (now re-designated as Director General, Animal Husbandry and Dairying). As per Rule 9 (1) (a) of 1995 rules, as amended in 2002 (Annexure P-3), post of Director can be filled either (i) by promotion from amongst Chief Superintendent Government Livestock Farm Hisar, Joint Director (Animal Husbandry) Headquarter, Joint Director (Poultry). Project Director State Cattle Breeding Project, Hisar, Institute Director, Haryana Veterinary Vaccine Institute, Hisar and Chief Coordinator, Frozen Semen Technology; or (ii) by transfer or deputation of an officer already in the Service of any State Government or the Government of India.

Case set up by the petitioner is that as per gradation list (Annexure P-4), petitioner and private respondent No.2 were shown as Joint Directors in Haryana Veterinary Service Class-I. But, the petitioner is shown to have been appointed on 27.08.2003 and the private respondent is shown to have been appointed on 18.02.2009. Private respondent has to be ranked junior to the petitioner being appointed six years after him (petitioner). Vide order dated 15.01.2013 (Annexure P-5), petitioner was promoted as Director, Animal Husbandry. Later on, this order was modified vide order dated 22.05.2014 (Annexure P-6). As per this order (Annexure P-6), petitioner's services were placed at the disposal of the Haryana Livestock Development Board, Panchkula, as Managing Director on deputation (which was declared equivalent to the post of Director) as per the provisions contained in Haryana Murrha Buffalo and other Milch Animal

Breed (Presentation and Development of Animal Husbandry and Dairy Development Sector) Act, 2001. As per proviso to Section 4 (4) of the said Act, Managing Director and the Member Secretary shall only be an officer of the State Government not below the rank of the Joint Secretary or **the Director of Animal Husbandry**.

Vide order dated 17.07.2013 (Annexure P-7), respondent-State created a post of Officer on Special Duty (OSD) in the department of Animal Husbandry and Dairying equivalent to the post of Director, Animal Husbandry and Dairying in the scale of Rs.37400-67000+9500 grade pay. The duties and responsibilities of the OSD were to take care of various Government programmes and intervention. However, this post was never added in the Rules governing the Haryana Veterinary Class-1 Service viz. Haryana Veterinary (Group A) Service (Amendment) Rules, 2002. Hence, the post of OSD, which was created vide order dated 17.07.2013 (Annexure P-7), was an ex-cadre post.

Vide order dated 30.08.2013 (Annexure P-8), private respondent was promoted to the post of OSD, equivalent to the post of Director, Animal Husbandry and Dairying, Haryana, in the pay scale of Rs.37400-67000+9500 grade pay on temporary basis by granting relaxation in the required experience of 10 years as Class-I Officer. Thereafter, vide order dated 02.09.2013 (Annexure P-9), he was given the charge of the post of Director General, Animal Husbandry and Dairying Department in addition to his own duties (as OSD) in his own pay scale without any extra remuneration. Subsequently, vide order dated 14.09.2017 (Annexure P-10), the petitioner was recalled from deputation (as Managing Director, Haryana Livestock Development) and repatriated to the department of Animal

Husbandry and Dairying, Haryana and posted as OSD in the department of Animal Husband and Dairying, Haryana, Panchkula, relieving the private respondent of the said charge with immediate effect.

Grievance of the petitioner is that vide order dated 14.09.2017 (Annexure P-10), it was stated that the duties and responsibilities of the OSD will be decided and conveyed separately. However, till date, nothing has been conveyed to him. Further, vide order dated 18.09.2017 (Annexure P-11), private respondent was given additional charge of the post of Managing Director, Haryana Livestock Development Board, Panchkula.

Learned counsel for the petitioner has argued that vide order dated 02.09.2013 (Annexure P-9), additional charge of the post of Director General, Animal Husbandry and Dairying Department was given to the private respondent namely Dr. G.S. Jakhar in addition to his own duties (as OSD) in his own pay scales without issuing any extra remuneration. However, he has been drawing the pay scale of Director General in addition to his own duties as OSD. He has further argued that as per gradation list of Gazetted officers, Class-I, which was circulated on 01.02.2015 (Annexure P-13), the petitioner is shown as Director in the Haryana Veterinary Service Class-I and the private respondent (Dr. G.S. Jakhar) is shown as Officer on Special Duty (OSD) and then shown as Director, General with effect from 02.09.2013. Vide order dated 02.09.2013 (Annexure P-9), only the charge of the post of Director General was given to him (private respondent) and he was never promoted as Director General. Since, no regular promotion order promoting the private respondent as Director General was passed, he cannot draw the pay scale of such post. Petitioner was promoted as Director General in the department vide order dated 15.01.2013 (Annexure P-5) as

modified vide order dated 22.05.2014 (Annexure P-4). Learned counsel for the petitioner has further argued that once the petitioner was promoted to the post of Director General vide order dated 15.01.2013 (Annexure P-5), he cannot be posted to the ex-cadre post of OSD.

During the pendency of this petition, learned counsel for the petitioner as placed on record copy of order dated 06.03.2018 (Annexure P-17), whereby Haryana Government had cancelled the order dated 14.09.2017 repatriating petitioner-Dr. Virender Singh, Managing Director, Haryana Livestock Development Board, Panchkula in the Department of Animal Husbandry & Dairying, Haryana, Panchkula and posting him as Officer on Special Duty in the Department of Animal Husbandry & Dairying, Haryana relieving Dr. G.S. Jakhar of the said charge. Hence, the factually, as of date, the petitioner is working as Managing Director, Haryana Livestock Development Board, Panchkula.

Learned State counsel has argued that the post of OSD was created in the department of Animal Husbandry vide order dated 17.07.2013 (Annexure P-7), which is equivalent to the post of Director, Animal Husbandry and Dairying, Haryana. Moreover, vide order dated 06.03.2006 (Annexure R-1), the post of Director, Animal Husbandry & Dairying, Haryana has been re-designated as Director General, Animal Husbandry & Dairying, Haryana. Creation of the post of OSD has been done as per Rule 3 of Haryana Veterinary (Group A) Services Rules, 1995, which reads as under:-

“3. The Service shall comprise the posts shown in Appendix A to these rules;

Provided that nothing in these rules shall affect the inherent right of the Government to make additions to, or reductions in the number of such posts or to create new posts with different designations and scales

of pay,either permanently or temporarily.”

Learned State counsel further stated that the Government of Haryana has directed the State Vigilance Bureau vide memo dated 23.05.2017 (Annexure R-II) to conduct an inquiry against the Haryana Livestock Development Board, Panchkula. Simultaneously, the State Government, vide memo dated 15.02.2016 (Annexure R-III), has requested the Principal, Accountant General (Audit), Haryana, to conduct special audit of Haryana Livestock Development Board (HLDB) for 2013-14, 2014-15 and 2015-16 in view of complaints on irregular and non-transparent appointment made by Haryana Live Stock Development Board. It has been further stated that the Haryana Livestock Development Board, Panchkula is/was headed by the petitioner being the Managing Director. Keeping in view the above vigilance inquiry, he has been rightly transferred from the post of Managing Director to the post of OSD. Order dated 06.03.2018 (Annexure P-17) is not disputed by learned State counsel.

Mr. Anurag Goyal, learned counsel for respondent No.2 has argued that even the promotion of the petitioner to the rank of Director was given after giving him the benefit of relaxation and vide order dated 07.06.2018 (Annexure R-2/5), a correction has been made that the relaxation was granted for a period of 'One year, Eight Months & Eight Days'. He has referred to the order dated 07.06.2018 (Annexure R-2/4), whereby while assigning the charge of the post of Director General, Animal Husbandry & Dairying to respondent No.2-Mr. G.S. Jakhar, OSD, the clause “in addition to his own duties in his own pay scale without any extra remuneration” has been deleted. While referring to this order, learned counsel for respondent No.2 has argued that respondent No.2 is rightly

drawing the pay scale attached to the post of Director General, Animal Husbandry. Even these two orders (Annexures R-2/4 and R-2/5) are not being disputed by learned counsel for the petitioner.

The short question for consideration in this petition would be, “whether the petitioner has a right to be sent back to the post of Director General, where respondent No.2 is working keeping in view that he is facing a vigilance inquiry with respect to the irregularities committed in the Haryana Livestock Development Board (HLDP).”

The answer to the above question would be in negative. Vide order dated 06.03.2018 (Annexure P-17), Haryana Government has cancelled the order dated 14.09.2017, whereby the petitioner had been repatriated to the Department of Animal Husbandry & Dairying, Haryana, Panchkula and had been posted as Officer on Special Duty (OSD) in the Department of Animal Husbandry & Dairying, Haryana after relieving Dr. G.S. Jakhar of the said charge. This order has been passed keeping in view that the petitioner is facing a Vigilance Inquiry pursuant to the direction given by the Government of Haryana to the State Vigilance Bureau vide memo dated 23.05.2017 (Annexure R-II). Further, vide letter dated 15.02.2016 (Annexure R-III), the State Government had also written to the Principal, Accountant General (Audit), Haryana, to conduct special audit of Haryana Livestock Development Board (HLDB) for the years 2013-14, 2014-15 and 2015-16 in view of complaints on irregular and non-transparent appointment made by Haryana Live Stock Development Board. The petitioner was given promotion to the rank of Director after giving him the benefit of relaxation as is apparent from the letter dated 07.06.2018 (Annexure R-2/5). The petitioner was given the benefit of relaxation of 01

year, 08 months & 08 days' while promoting him to the rank of Director. As per reply filed by respondent-State, post of OSD is equivalent to the post of Director General. Keeping in view that the petitioner is facing a Vigilance Inquiry, no ground is made out to interfere in the impugned orders dated 15.01.2013, 22.05.2014, 02.09.2013, 14.09.2017 & 18.09.2017 (Annexures P-5, P-6, P-9, P-10 & P-11). Moreover, vide order dated 06.03.2018 (Annexure P-17), the Government had cancelled the earlier order dated 14.09.2017 repatriating the petitioner in the Department of Animal Husbandry & Dairying, Haryana.

Resultantly, finding no merits, present petition stands dismissed.

(RITU BAHRI)
JUDGE

21.12.2018
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No