

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.29229 of 2017 (O&M)
Date of Decision : 06.04.2018.

Raj Kumar and others.

... Petitioners

Versus

State of Punjab and another.

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. P.S. Khurana, Advocate
for the petitioners.

B.S.WALIA, J.

1. Petitioners, who are working as Agriculture Sub Inspectors (hereinafter referred to as ASI), have challenged the vires of Rule-6 and Appendix-B of the Punjab Soil and Water Conservation (Group 'A') Service Rules, 2014, (hereinafter referred to as '2014 Rules') to the extent ASI's not possessing degree or diploma in Agriculture or Engineering are ineligible for promotion to the post of Soil Conservation Officer (hereinafter referred to as SCO), secondly on the ground that despite Draftsman having separate channel of promotion to the post of Head Draftsman, 2% reservation has been provided for Draftsmen for promotion to the post of SCO.

2. Method of appointment, qualification and experience for the post of SCO as is given in Rule 5 and Appendix-B of the 2014 Rules is reproduced below:-

Rule 5 & ***Appendix-B*** of the 2014 Rules:

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5. Method of appointment, qualifications and experience.-

(1) Appointment to the posts in the Service shall be made in the manner as specified in Appendix 'B' :

Provided that if, no suitable candidate is available for appointment by promotion then appointment to the Service shall be made by transfer of a person holding similar or identical post under the State Government or Government of India.

(2) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience as specified against that post in Appendix 'B'.

(3) Appointment to the Service shall be made on seniority- cum merit basis, but no person shall have any right to claim promotion on the basis of seniority alone: Provided that in the case of promotion to the post of Chief Conservator of Soils, the criteria specified in Clause (a) of sub-rule (1) of rule 18 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, shall apply.

'Rule-6'

'Appendix-B'

Sr. No.	Designation of the post	Direct Appointment	Promotion	Direct Appointment	Promotion
6.	Soil Conservation Officer	Eighty Percent	(i) Eighteen percent from amongst the Agriculture Sub Inspectors and Surveyors (fifty percent each	(a) should possess decree in M.Sc. (Agriculture) with Soil science or conservation Agriculture as major subject or degree in B.Tech. Agricultural Engineer, in second division:	(a) Eighteen percent from amongst the Agriculture Sub Inspectors and Surveyors (fifty percent

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			respectively) working under the control of Chief Conservator of Soils Punjab and (ii) two percent from amongst the Draftsmen working under the control of Chief Conservator of Soils Punjab	Provided that at least 40% posts shall be filled from amongst the candidates who possess degree in Agricultural Engineering. (b) Out of total 226 posts, 221 posts of cadre shall be reserved for Soil Conservation Officers (c) Five posts shall be reserved as ex-cadre posts for supporting services as given below:- i) Soil Conservation Officer (Computerization) , who possess B.Tech. degree in Computer Engineering at least in second division (ii) Soil Conservation Officer (IT) who possess B.Tech., degree in Computer or information technology at least in second division. (iii) Soil Conservation Officer (Mechanical), who possess B.Tech. degree in Mechanical Engg. at least in second division. (iv) Soil Conservation	each) respectively working under the control of the Chief Conservator of Soils Punjab who possess diploma or degree in Engineering or Agriculture and who have an experience of working as such for a minimum period of ten years. Provided that if no surveyor or Agricultural Sub Inspector having requisite qualification is available for promotion, then fifty percent each from amongst the Agriculture Sub Inspectors and Surveyors respectively working under the control of Chief
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				Officer (Chemical) who posses B.Tech. degree in Chemical Engg. at least in second division. (v) Soil Conservation Officer (Legal) who possess B.A. degree and LL.B. degree at least in first division.	Conservator of Soils, Punjab who have an experience of working as such for a minimum period of fifteen years. (b) Two percent from amongst the Head Draftsmen or Draftsmen working under the control of Chief Conservator of Soils Punjab who have an experience of working as such for minimum period of ten years.
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3. Learned counsel contended that the department of Soil and Water Conservation was established as an independent department in the year 1969 and prior thereto said department was a wing of the Department of Agriculture, Punjab. Post of SCO was a technical post and members of the technical cadre in the department of Soil and Water Conservation were governed by the parent Department of Agriculture, Punjab. As per earlier rules an ASI was eligible for promotion to the post of SCO on the pattern of Agriculture Development Officer with similar quota, as per the Punjab

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Subordinate Agriculture Rules, 1933. However the said entitlement was done away with on promulgation of the Rules 2014.

4. Learned Counsel contended that a plain reading of Appendix-B revealed that ASI's were eligible for promotion to the post of SCO, but only on non availability of qualified Surveyor or ASI with degree or diploma in Engineering or Agriculture and 10 years experience. Learned Counsel contended that since the impugned Rule took away the right of promotion completely except in abovementioned circumstances, therefore, the same was arbitrary, discriminatory and unconstitutional particularly when the petitioners were performing the same duty as other ASI's possessing diploma/degree in Engineering / Agriculture and having the same pay scales. Besides the petitioners had more experience and were better equipped than even those who had been made eligible for promotion besides the petitioners had undergone a special training conducted by the department. Reliance is placed on the decision of Hon'ble the Supreme Court in **Raghunath Prasad Singh vs. Secretary, Home (Police) Department, Govt. of Bihar and others, AIR 1988 AIR SC, 1033** to contend that the right to be considered for promotion was not merely a legal but a fundamental right. It is contended that in the circumstances, the petitioners as well as the diploma / degree holder ASI's constituted one homogenous class, therefore, treating equals as unequals was violative of the fundamental right of equality as enshrined under Article 14 of the Constitution of India. Plea is that despite number of representations, latest of which is Annexure P-8, dated 05.04.2017, no response has been received, therefore, the writ petition.

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5. We have considered the submission of learned counsel for the petitioners and are of the view that for the reasons recorded hereunder there is no merit in the writ petition.

6. In **T.R. Kothandaraman vs. Tamil Nadu Water supply and Drainage BD, 1994 (6) SCC 282** Hon'ble the Supreme Court by considering its various decisions laid down certain propositions, which are reproduced as under :-

(i) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.

(ii) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.

(iii) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

7. In **T.R. Kothandaraman's case (supra)** Hon'ble the Supreme Court was concerned with whether the nature and duties of the promotional posts(s) as also whether the stipulation of higher educational requirement in the two different service cases i.e. of Tamil Nadu Agriculture Engineering Service and Tamil Nadu Electricity Board was necessary to discharge the duties and whether the restriction imposed was reasonable.

8. **Tamil Nadu Agriculture Engineering Service Cases :** Challenge in said cases was to the proviso which treated diploma holders in Engineering eligible for promotion to the post of Executive Engineer only if they were to have 'exceptional merit' in work, otherwise a diploma holder was not eligible for promotion. Hon'ble the Supreme Court held that the challenge was bound to fail in view of what was held in **State of J&K**

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vs Triloki Nath Khosa 1974(1) SCR 771 according to which diploma holders being less educationally qualified than degree holders could be made ineligible for promotion to the higher post. Besides, the proviso to the rule permitted diploma holders to be considered for promotion in case they were possessed of exceptional merit, thereby taking out the rigour of the rule. Secondly with regard to the challenge to Rule 2(b) which prescribed ratio of 3:2 for direct recruit degree holders and promotee diploma holders respectively, Hon'ble the Supreme Court held that higher educational qualification had relevance insofar as the holding of higher promotion post was concerned in view of the nature of the functions and duties attached to that post. Therefore, the classification had nexus with the object sought to be achieved. Moreover, history also supported the differentiation sought to be made by the rule in question. In arriving at the aforementioned conclusion Hon'ble the Supreme Court inter alia took into account that degree holders had studied for six years at college level after leaving school stage whereas diploma holders had studied for 3 years at the level of the institute of Technology after school stage and in view of the same higher technical calibre was presumed in degree holders. In the instant case the difference in technical calibre is writ large as on the one hand are ASI's with degree or diploma with 10 years experience as such while on the other hand are ASI's who have neither degree nor diploma but only experience. Post of SCO calls for higher level of skill and responsibility. No doubt other factors were also taken into account but we are satisfied that the aforementioned basis alone renders the challenge in the instant case without any teeth.

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9. The second question gone into by Hon'ble the Supreme Court was that in view of the rule making authority having made a diploma holder eligible for promotion, whether the ratio could be made so inequitable so as to mock the guarantee of equality. Hon'ble the Supreme Court held that too much emphasis on higher education may cause dent to the cause of social justice, as it would be the poorer section of the society which would be deprived of its legitimate expectations. However, preference given to degree-holders would, at the same time, give fillip to the desire to receive higher education, as such persons would always be favourably placed as compared to the lesser educated ones. A harmony would thus be struck, by maintaining reasonableness in the ratio, between the call of social justice and the need for higher education, without in any way jeopardising the principal object of classification. But then, no particular ratio was spelt out as satisfying the said requirements; the reasonableness of the ratio was left dependant on the facts of each case.

In the instant case eligibility for promotion is from amongst ASI's having qualification of degree or diploma with 10 years experience whereas ASI without degree or diploma but with 15 years experience is eligible for promotion against the quota for promotion provided no eligible ASI is available. The need for higher education can hardly be underlined. Here it is a case of degree / diploma holder versus non degree / diploma holder. No doubt a non degree / diploma holder has been considered eligible for promotion but only in case of non availability of degree/diploma holder ASI. Thus the need of the day i.e. higher education cannot be ignored. No particular ratio was prescribed by Hon'ble the

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Supreme Court as maintaining reasonableness in the ratio between the call of social justice and the need for higher education. The caveat was that the ratio should not in any way jeopardise the principal object of classification. Reasonableness of the ratio was left dependant upon the facts of each case.

Tamil Nadu Electricity Board Cases :

On the reasoning aforesaid, Hon'ble the Supreme Court rejected the challenge to the amendment to the regulations of the Tamil Nadu Electricity Board fixing ratio of 3 : 1 for promotion to the post of Assistant Engineers (Electrical) amongst Junior Engineers (Electrical) and Supervisors (Electrical Grade-I), the former being degree holders and the latter diploma holders because for certain types of work the Supervisors were not sufficiently qualified whereas Junior Engineers were because of the nature of the work performed by the two classes of posts and the difference in qualifications.

Having considered the facts of the instant case, we are satisfied that having regard to the competing interests of degree/diploma holders and non degree/diploma holders, the entitlement for promotion to non degree/diploma holders solely on the basis of experience only in case of non availability of degree/diploma holders is reasonable. The same ensures upholding of the principal object of classification. Preference given to a degree/diploma holder under the Rules would give desire to achieve higher education as degree or diploma holder would always be better placed in comparison to a person who does not possess a degree or diploma. Accordingly, a person who does not possess a degree or diploma has to make way for a degree/diploma holder for promotion to the higher post.

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Laying down requirement of qualification of diploma or degree for promotion to the post of SCO can be said to be the need of the day in view of advancement in the field of agriculture / engineering. No doubt experience counts, but experience alone without requisite educational qualification is of no avail. Apart from requirement of educational qualification of degree or diploma, ten years experience has been stipulated as mandatory for promotion to the post of SCO from the post of ASI. In the circumstances, stipulation that non-degree/diploma holder possessing 15 years experience would be eligible for promotion only in case of non-availability of qualified degree/diploma holder cannot be faulted.

10. In the light of the position as noted above, we are of the considered view that the classification made falls within constitutional parameters, therefore, there is no merit in the present petition. Accordingly, the writ petition is dismissed in limine.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

06.04.2018

rajesh.k.khurana

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

Note: Correction made vide order dated 13.07.2018.