

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15439 of 2019

Date of Decision: September 11, 2019

Dr. Birender Singh Laura & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. Inder Pal Goyat, Advocate,
for the petitioners.

Mr. Kiran Pal Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

Reply on behalf of respondent Nos.1 and 2 filed today in Court
is taken on record. Copy supplied to the counsel opposite.

Petitioners, three in number, have invoked the extraordinary writ jurisdiction of this Court in the nature of quo-warranto/certiorari for quashing the impugned order dated 01.10.2018 (Annexure P-10), whereby respondent No.3 has been appointed to the post of Director General, Animal Husbandry and Dairying, Haryana in violation of the Haryana Veterinary (Group A) Service Rules, 1995 as amended by the Haryana Veterinary (Group A) Service (Amendment) Rules, 2002.

Facts which emanate from the pleadings of the parties, are that the petitioners, in the year 2002, were appointed as Deputy Directors by way of direct recruitment in pursuance to the selection process initiated by the Haryana Public Service Commission. Vide order dated 20.02.2014, they

were promoted as Joint Directors w.e.f. 25.10.2013, thus, claimed themselves to be senior most Joint Directors having the requisite qualification and experience for promotion to the post of Director General, Animal Husbandry and Dairying. On occurrence of the vacancy/post, petitioner No.1, now promoted as Deputy Director, submitted representation dated 15.08.2018 (Annexure P-8), but instead of considering his averment, vide impugned order dated 01.10.2018 (Annexure P-10) appointed respondent No.3 as the Director General.

Mr.D.S.Patwalia, learned Senior Counsel assisted by Mr. Inder Pal Goyat, Advocate, representing the petitioners submitted that it is settled law that the conditions of the service can be relaxed but not the rules. In order to buttress his argument, attention of this Court has been invited to the applicability of Rules 7, 8 and 9 of the Haryana Veterinary (Group A) Service Rules, 1995 (for short, 1995 Rules) and Appendix-B of the Rules. As per his submission, Rule 7 of 1995 Rules envisage the qualification for a person to be appointed to any post along with the experience specified in Columns 3 and 4 of Appendix B. However, the proviso thereto, envisages the relaxation of the experience to the extent of 50%, that too for a particular class, i.e., the candidates belonging to scheduled castes, backward classes, ex-servicemen and physically handicapped, but only for direct recruitment. Reliance by State of clause (ii) of Rule 9 (1)(a) would not be sustainable as it has to be read in conjunction with Rule 19, for, impugned order does not reflect any reason qua the relaxation. In support of aforementioned contention, reliance is being sought upon the judgment of the Hon'ble Supreme Court in **Suraj Parkash Gupta Versus State of Jammu & Kashmir**, 2000 (7) SCC 561 (Paragraphs 23, 24 & 27).

It has been further contended that though the petitioners, in the year 2008, were served with show cause notices questioning their appointment, but the same was challenged in this Court vide CWP No.540 of 2009. This Court, vide order dated 07.10.2013 allowed the writ petition and directed the respondents to consider the case of the petitioners for promotion. Application for clarification/modification bearing No.15569 of 2013 was also disposed off on 29.01.2014. The irony of the petitioners did not stop here as the State preferred a Letters Patent Appeal bearing No.473 of 2014, but, vide order dated 16.08.2019, it was dismissed. Copy of the same has been handed over to the Court during the course of the hearing. However, during the pendency of Letters Patent Appeal (LPA), in the month of February, 2014, petitioners were promoted as Joint Directors. Accordingly, the show cause notices challenging the appointment were withdrawn.

Per contra, Mr. Kiran Pal Singh, learned Assistant Advocate General, Haryana representing the State, while supporting the impugned order, contended that the appointment of the petitioners to be under challenge and does not reflect the decision of the LPA, but another writ petition on identical ground, i.e., CWP No.3206 of 2015 which is pending adjudication. The State is within the power to fill up the vacancy as per Rule 9(3) of 1995 Rules and seniority-cum-merit as per Rule 9(2) will not only be ground for promotion. Though the written statement do not reflect any decision, but it cannot be referred to that there was no application of mind while relaxing the rule and, thus, prayed for dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

“7. No person shall be appointed to any post in the service, unless he is in possession of qualifications and experience specified in Column 3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment otherwise than by direct recruitment.

Provided that in the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of the Commission or any other recruiting authority in case sufficient number of candidates belonging to scheduled castes, backward classes, ex-servicemen and physically handicapped categories possessing the requisite experience, are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.

(a) in the case of Director, Animal Husbandry.-

(i) by promotion from amongst Chief Superintendent Government Livestock Farm Hisar, Joint Director (Animal Husbandry) Headquarter, Joint Director (Poultry) and Project Director State Cattle Breeding Project Hisar; or

(ii) *by transfer or deputation of an officer already in the service of any State Government or the Government of India;*

xxx xxx xxx

(2) *Appointments by promotion shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.*

xxx xxx xxx

19. Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing relax any of the provisions of these

rules with respect to any class or category of persons.

APPENDIX-B

Serial No.	Designation of posts	Academic qualification and experience, if any, for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment.
1	2	3	4
1	Director, Animal Husbandry, Haryana	Veterinary Cadre	1. <u>Decree in Veterinary Science and Animal Husbandry from a recognised University or Institution.</u> 2. <u>Three years experience as 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 within the cadre having atleast 10 years experience in Class-I service.</u>
xx	xx	xx	xx

On conjoint reading of the aforementioned rules, it is irresistibly concluded that for the appointment of Director General, Animal Husbandry and Dairying a person should be having the academic qualification, i.e., degree in Veterinary Science and Animal Husbandry from a recognised University or Institution and three years experience as Chief Superintendent Government Livestock Farm, Hisar, Joint Director (Animal Husbandry), which is relevant in the present case. The aforementioned qualification specified in Appendix-B is to be read in conjunction with Rule 7 of 1995 Rules, which envisages that no person shall be appointed to the post unless he/she is in possession of qualification and experience specified in Column 3 and 4. The proviso, as extracted above qua experience, would

only be applicable to a person belonging to a different category, i.e., scheduled caste, backward class, ex-serviceman and physically handicapped. Though in the first blush, argument of the learned State counsel qua reliance of sub-rule (3) of Rule 9 of 1995 Rules looked attractive, but when read in conjunction with Rule 19, is not able to cut ice, for, assuming for a sake of argument though not clarified in the written statement that the Government had the power to relax the rule and fill vacancy in whatever manner it likes, but there has to be an order in writing. Neither any such order has been placed on record or pleaded.

The first line of the impugned order (Annexure P-10) revealed that respondent No.3 was “posted/transferred”, envisaging clause (ii) of Rule (9)(1)(a). The aforementioned rule cannot be read in isolation, thus, attempt of State to bring the case within the parameters of clause (ii) of Rule 9(1)(a) is not plausible, otherwise the dictum of the judgment (Paras 24 and 27) in **Suraj Parkash Gupta,'s case (supra)** would be eroded. For the sake of brevity, paras ibid read thus:-

“24. The decisions of this Court have recently been requiring strict conformity with the recruitment rules for both direct recruits and promotees. The view-is that there can be no relaxation of the basic or fundamental rules of recruitment. In Keshav Chandra Joshi v. Union of India, [1992] Suppl 1 SCC 272 the Rule permitted relaxation of conditions of service and it was held by the three Judge Bench that the rule did not permit relaxation of recruitment rules. The words 'may consult the PSC' were, it was observed, to be read as 'shall consult PSC' and the rule was treated mandatory. In Syed Khalid Rizvi v. Union of India, [1993] Suppl. 3 SCC 575 at 603, decided by a three Judge Bench, a similar strict principle was laid down. The relevant Rule -Rule 3 of the Residuary Rules (see p. 603) (para 33) in that case did permit relaxation of "rules" Even so,

this Court refused to imply relaxation of recruitment rule and observed : "the condition precedent, therefore, is that there should be appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused,.....It is already held" that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed".

27. The result of the discussion, therefore, is that the wholesale regularisation by order dated 2.1.1998 (for the Electrical Wing), by way of implied relaxation of the recruitment rule to the gazetted category is invalid. It is also bad as it has been done without following the quota rule and without consulting the Service Commission. Further, power under Rule 5 of the J & K CCA Rules, 1956 to relax rules cannot, in our opinion, be treated as wide enough to include a power to relax rules of recruitment."

The genesis of the aforementioned rules is that the State has the power to relax the conditions of service but not the rules.

Keeping in view the aforementioned position, I am of the view that the impugned order is not sustainable. Accordingly, qua respondent No.3 is set-aside. Writ petition is allowed.

However, this will not preclude the State to take into the consideration the cases of the petitioners or persons, who are under the zone of promotion subject to the applicability of the rules and the judgment in accordance with law. Let this exercise be undertaken within a short period so that the post does not remain unmanned.

September 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No