

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

CWP No. 14138 of 2020 (O&M)
Date of Decision: 17.9.2020
(Heard through VC)

Joginder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. RK Arora, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Ms. Alka Chathrath, Advocate,
for respondents No. 3 and 4.

JAISHREE THAKUR, J.

1. The petitioner herein has filed the instant writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari or any other appropriate writ or direction seeking quashing of the order dated 28.7.2020 (Annexure P/9) and the reply issued vide Memo No. 5411 dated 29.7.2020 (Annexure P/10). An additional prayer has been made to consider the petitioner to the post of Establishment Officer/Superintendent Grade-I in the DPC to be held on 18.9.2020.

2. In brief, the main grievance of the petitioner herein is that he is one of the senior most persons in the office of Department of Agriculture & Farmers Welfare, Punjab and is being ignored for promotion to the post of Establishment Officer/Superintendent Grade-I/. Learned counsel places reliance upon the Punjab Agriculture (Head Office) (Group A) Ministerial

Service Rules, 2002, wherein the method of appointment and qualification has been specified in Rule 5. As per Appendix B to Rule 5, Superintendent Grade-I is to be promoted from amongst Superintendents Grade-II working under the control of Director and who has an experience of working as such for a minimum period of five years. Learned counsel appearing on behalf of the petitioner would submit that the petitioner is being ignored for promotion on the ground that he is working in Sub Office whereas there are *no* separate rules for the persons working in the sub-office.

3. Per contra, learned counsel appearing on behalf of the respondents—State would submit that both the Head Office and the Sub Office have two separate cadres of Superintendent Grade-II and would rely upon the Rule provided in the Punjab Agriculture (Head Office) (Group A) Ministerial Service Rules, 2002, which are applicable only for the employees working in the Head Office and, therefore, it is contended that the petitioner could not be considered for promotion to the post of Establishment Officer/Superintendent Grade-I, considering the fact that he is working in the Sub Office.

4. On 11.9.2020, when the case was taken up, learned State counsel had submitted that the writ petition itself is premature as the petitioner had been called for personal hearing on 15.9.2020 on the representation submitted by him and the same would be considered on that date.

5. In view of the above statement, this Court by order 11.9.2020 itself had directed the petitioner to appear for personal hearing, while stipulating that his matter be considered expeditiously and the decision be placed before this Court.

6. Today when the matter was taken up for hearing, a copy of the

order dated 16.9.2020 passed by the Additional Chief Secretary (Development) Government of Punjab, has been placed on record vide which the representation of the petitioner has been rejected, after affording him a personal hearing.

7. Faced with the above situation, learned counsel for the petitioner reiterated his arguments as addressed at the initial date of hearing, submitting that there are no separate rules for promotion to the post of Superintendent Grade-I/Establishment Office, while also contending that the decision taken on 16.9.2020 is a non-speaking order and has not taken consideration any of the points raised by the petitioner herien.

8. On the other hand, learned counsel for the respondents-State and the counsel appearing on behalf of the private respondents would submit that in view of the fact that the DPC proceedings are to be held on 18.9.2020 and the representation of the petitioner stands rejected by a speaking order and after affording him personal hearing, the petitioner would have to challenge the said order by way of filing a separate writ petition.

9. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

10. Admittedly, the petitioner had filed the instant writ petition seeking to challenge the action of the official respondents for ignoring his candidature for being considered to the post of Superintendent Grade-I/Establishment Office in the DPC, by relying upon Rule 5 of the Punjab Agriculture (Head Office) (Group A) Ministerial Service Rules, 2002 and Appendix B to Rule 5 and had also prayed for stay of the DPC. However, the fact of the matter is also that as on date, the representation of the

petitioner stands rejected by order dated 16.9.2020 after affording him the personal hearing, which would have to be challenged by the petitioner.

11. Faced with the situation, learned counsel for the petitioner prays for withdrawal of the writ petition with a permission to challenge the order dated 16.9.2020. However, he prays that in the meantime, DPC proceedings scheduled to be held on 18.9.2020 be stayed so as to enable him to challenge the order dated 16.9.2020.

12. There is some merit in the contention of the petitioner that in case the DPC is allowed to be held as scheduled and promotion is made, his efforts for seeking promotion would be thwarted and the right of the petitioner would be prejudiced in case he is able to secure an interim order in the writ petition intended to be filed.

13. In view of the above facts, the writ petition is dismissed as withdrawn with liberty to the petitioner to challenge the order dated 16.9.2020. However, it is directed that the declaration of result of the DPC shall be kept in abeyance for a period of 10 days from 18.9.2020 and it is to be kept in a sealed cover. The result shall be declared thereafter, subject to any interim order to be passed in the writ petition to be filed by the petitioner within the aforesaid period of 10 days. Needless to mention that in case the petitioner is not able to get any interim order within the stipulated period, the official respondents would be at liberty to proceed in accordance with the recommendation of the DPC.

17.9.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No