

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

CWP No.15314 of 2020 (O&M)

Date of Decision: 24.05.2022

Joginder Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. R.K.Arora, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab for respondent Nos.1 & 2.

Ms. Alka Chatrath, Advocate for respondent Nos.3 & 4.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 28.07.2020 (P-10), whereby claim of petitioner for promotion to the post(s) of Establishment Officer/ Superintendent Grade-I was declined; to quash the speaking order dated 16.09.2020 (P-19), vide which his representation against the above order has been rejected; to quash the recommendations dated 18.09.2020 made by the Departmental Promotion Committee (*for short 'DPC'*) for promotion of respondent Nos.3 & 4 against aforementioned posts; to direct respondent No.1 to treat the petitioner eligible for promotion to the post(s) of Establishment

Officer as well as Superintendent Grade-I on the basis of his seniority-cum-merit while conducting fresh/review DPC along with consequential benefits; and lastly, to quash the action of official respondents thereby preparing separate seniority lists for the posts of Superintendent Grade-II working in the Head Office and that of Field/Subordinate Offices.

(2) Facts are not in dispute.

(3) Briefly stated that petitioner was appointed as a Clerk in Field/Subordinate Office, Department of Agriculture, Punjab on 14.09.1988; thereafter, on 03.03.1994, promoted as Senior Assistant. On 02.01.2008, he was further promoted to the post of Superintendent Grade-II; but subsequently, vide order dated 31.03.2016, the promotion was made effective w.e.f. 20.05.2003.

Respondent Nos.3 & 4 were appointed as Clerks in Head Office, Department of Agriculture on 31.10.1985 & 30.03.1987; thereafter, w.e.f. 06.09.1995 & 21.08.1998, both were promoted as Senior Assistants and later on, they were promoted as Superintendent Grade-II w.e.f. 21.02.2013 & 17.04.2015, respectively.

(4) Dispute in the present case is for promotion to the post(s) of Establishment Officer/Superintendent Grade-I in the Head Office, Department of Agriculture, Punjab. It is relevant to mention here that both these posts are having single cadre i.e. Establishment Officer-01 (one); Superintendent Grade-I-01 (one).

(5) In the meeting of DPC, held on 18.09.2020, respondent Nos.3 & 4 were placed at Serial Nos.1 & 2, respectively. However, so far as petitioner is concerned, he had been declared “ineligible” vide order dated 16.09.2020 by respondent No.1 on the premise that employees only from Head Office were to

be considered for promotion to the above posts and relevant part of the order reads as under:-

“In view of the arguments put forth by the applicant and his representation submitted today, I am of the considered view that the Punjab Agriculture (Head Office) Group ‘A’ Ministerial Service Rules, 2002 under which the applicant seeks promotion to the post of Establishment Officer/Superintendent are only for head office employees while the employees of subordinate offices can only be considered against the posts which are provided in the relevant service rules pertaining to subordinate offices and not against the posts meant for head office employees.

The Punjab Agriculture (Head Office) Group ‘A’ Ministerial Service Rules, 2002 are held to be applicable only for the posts for the head office and for the employees of head office only. I, Anirudh Tewari, IAS, Additional Chief Secretary (D), Department of Agriculture hereby order accordingly and the application of Sh. Joginder Kumar Superintendent Grade-2 is filed.”

(6) CONTENTIONS:

ON BEHALF OF PETITIONER:

Learned counsel contended that petitioner is the senior most Superintendent Grade-II working in the Department and as such, being fully eligible, ought to have been considered for promotion to both the posts in terms of the Punjab Agriculture (Head Office) Group ‘A’ Ministerial Service Rules, 2002 (*for short ‘Group ‘A’ Rules’*). Further contended that just to favour the employees of Head Office, names of respondents No.3 & 4 have been recommended for promotion to the post(s) of Establishment Officer/Superintendent Grade-I, respectively. Also contended that as per Appendix ‘B’ of the Group ‘A’ Rules, for promotion to the post of Establishment Officer, if no suitable Superintendent Grade-I is available, then in that eventuality, the

Superintendent Grade-II working under the control of Director, Agriculture, having minimum experience of seven years, would be eligible for consideration. Since as on today, there is no Superintendent Grade-1 available in the department, therefore, petitioner being the senior most Superintendent Grade-II having experience of more than seven years (although in the Field/Subordinate Office), but under the control of Director, would be fully eligible for consideration to the post of Establishment Officer. Further submitted that under Group 'A' Rules, the sole post of Superintendent Grade-I is to be filled up by way of promotion from amongst the Superintendent Grade-II, working under the control of Director, having experience of five years and as such, petitioner being eligible for this post also would be entitled for consideration. Again contended that under Group 'A' Rules, there is no such provision that only Superintendent Grade-II from Head Office are entitled for consideration to the post(s) of Establishment Officer/Superintendent Grade-I and as such, the official respondents have wrongly rejected the claim of petitioner in complete disregard of the statutory rules; thus, their action is indefensible in law.

ON BEHALF OF RESPONDENT NOS.1 & 2

Learned State Counsel while opposing the prayer of petitioner contended that as per Group 'A' Rules, only the Superintendent Grade-II working in the Head Office are eligible to be considered for promotion to the post(s) of Establishment Officer/Superintendent Grade-I and there is no provision under these rules that employees from Field/Subordinate Offices would be eligible for consideration. Further contended that from the very beginning, no employee working in the Field/Subordinate Offices has ever been

promoted to the post(s) of Establishment Officer or Superintendent Grade-I and only the Superintendent Grade-II working in the Head Office are being promoted for both these posts. Also submitted that petitioner is working as Superintendent Grade-II in the Field/Subordinate Office; therefore, under the Group 'A' Rules, he was not entitled for consideration either as Establishment Officer or Superintendent Grade-I, thus, his case has rightly been rejected while passing the impugned orders and no interference is warranted by this Court under Article 226 of the Constitution.

ON BEHALF OF RESPONDENT NOS.3 & 4:

Learned Counsel for private respondents while supporting learned State Counsel submitted that initially, respondent Nos.3 & 4 were appointed as Clerks in the Head Office and after promotion, as on today, both are working as Superintendents Grade-II w.e.f. 21.02.2013 & 17.04.2015, respectively. Further submitted that at the entry level appointment also, there is no comparison between the employees of Field/Subordinate Offices viz-a-viz Head Office as they are governed under separate set of rules applicable for both the Offices, namely, The Punjab Agriculture Department (Field Office), Group C Service Rules, 2010 & The Punjab Agriculture Department (Head Office) Group C Service Rules, 2010, respectively. Since from the very beginning, petitioner is working in the Field/Subordinate Office, therefore, he got timely promotion as Senior Assistant and thereafter as Superintendent Grade-II; whereas in view of the cadre strength in the Head Office, respondent Nos.3 & 4 had to wait for a long time before they could be promoted as Superintendent Grade-II. Also submitted that till date, no employee from the Field/Subordinate Offices has ever been promoted to the post(s) of Establishment Officer or Superintendent

Grade-I and as such, case of the petitioner has rightly been rejected while treating him as “ineligible”. Again submitted that due to interim order dated 24.09.2020, private respondents have been denied their lawful claim for joining on the promotional post in terms of the recommendations dated 18.09.2020 despite the fact that they are at Serial Nos.1 & 2, respectively; thus, present petition deserves to be dismissed with costs.

(7) Heard learned Counsel for the parties and perused the records.

(8) Law is well settled that no government employee has a right of promotion, but at the same time, consideration for promotion in accordance with law is akin to a fundamental right.

Thus, the core question for consideration of this Court would be :-

“As to whether in view of the facts and circumstances of present case, petitioner has a right of consideration for promotion to the post(s) of Establishment Officer/Superintendent Grade-I in terms of Group ‘A’ Rules?”

(9) Concededly, as on today, petitioner as well as respondent Nos.3 & 4 are holding the posts of Superintendent Grade-II. It is also not in dispute that petitioner is working in the Field/Subordinate Office of the Agriculture Department; whereas respondent Nos.3 & 4 are working in the Head Office.

(10) Before proceeding further, it would be necessary to extract the relevant provisions of Group ‘A’ Rules and which are as under:-

1. **Short title, commencement and application** – (1) *These rules may be called the Punjab Agriculture (Head Office) Group ‘A’ Ministerial Service Rules, 2002.*
- (2) *They shall come into force on and with effect from the date of their publication in the Official Gazette.*
- (3) *They shall apply to the posts specified in Appendix ‘A’.*

2. Definition. – In these rules, unless the context otherwise requires,-

(a) “Appendix” means an Appendix appended to these rules;

(b) ‘Director’ means the Director of Agriculture, Punjab

(c) “Government” means the Government of the State of Punjab in the Department of Agriculture; and

(d) “Service” means the Punjab Agriculture (Head Office) Group ‘A’ Ministerial Service.

3. Number and character of posts. – The service shall comprise the posts specified in Appendix ‘A’;

Provided that nothing in these rules shall affect the inherent right of the Government to add to or reduce the number of such posts or to create new posts with different designations and scales of pay, whether permanently or temporarily.

4. Appointing authority, - Appointment to the Service shall be made by the Government.

5. Method of appointment and qualifications.- (1) Appointment to the Service shall be made in the manner specified in Appendix ‘B’:

Provided that if no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a 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 the post in Appendix ‘B’.

(3) Appointment to the Service by promotion shall be made on the basis of seniority-cum-merit but no person shall have any right to claim promotion on the basis of seniority alone.

6. xxxxxxxx

7. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.- (1) In respect of the matters, which are not specifically provided in these

rules, the members of the Service shall be governed by the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, at present in force are contained in Appendix ‘C’.

8. xxxxxxxx
9. **Interpretation.-** If any question arises as to the interpretation of these rules, the Government shall decide the same.

APPENDIX ‘A’ [See rules1(3), 3 and 6] Number and character of posts					
Serial No.	Designation of the Post	Number of Posts Permanent Temporary		Total	Scale of Pay (in rupees)
1	2	3	4	5	6
1.	Establishment Officer	1	-	1	7880-11660
2	Superintendent Grade-I	1	-	1	7220-11660

APPENDIX ‘B’ (See rule 5)					
Serial No.	Designation of the Post	Percentage for <u>appointment by</u> Promotion Direct appointment		Qualification and experience <u>for appointment by</u> Promotion Direct appointment	
1	2	3	4	5	6
	Establishment Officer	Hundred per cent	-	(i) From the Superintendent Grade-I, who have an experience of working as such for a minimum period of five years; and (ii) If no suitable Superintendent Grade-I, is available for promotion, then from amongst the Superintendents Grade-II, working under the control of a Director, and who have an experience of working as such for a minimum period of seven years.	

Superintendent Grade-I	Hundred per cent	-	From amongst the Superintendents Grade- II, working under the control of Director and who have an experience of working as such for a minimum period of five years.
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(11) There is no dispute that posts of Establishment Officer as well as Superintendent Grade-I are in the Head Office, which are governed under the provisions of Group 'A' Rules. As per Appendix B of these Rules, post of Establishment Officer is to be filled up from Superintendent Grade-I having working experience as such for a minimum period of 05 (five) years. Also stipulated that in case no suitable Superintendent Grade-I is available, then the Superintendents Grade-II working under the control of Director, Agriculture having experience of minimum period of 07 (seven) years can be considered. Likewise, promotion to the post of Superintendent Grade-I is to be made from amongst the Superintendent Grade-II working under the control of Director having an experience of working as such for a minimum period of five years.

Rule 5 (*ibid*), *inter-alia*, talks about method of appointment as well qualifications; and according to sub-rule 1 thereof, appointment to the service shall be made in the manner specified in Appendix B.

Sub-rule 2 says that no person shall be appointed to a post in the service unless he/she possesses the qualifications and experience as specified against the post in Appendix B.

Sub-rule 3 envisages that appointment to the service by promotion shall be made on the basis of seniority-cum-merit, but no person shall have any right to claim promotion on the basis of seniority alone.

(12) There is no dispute that on earlier occasion also, similar claim was raised by petitioner when two other officials, namely, Shri Gurmeet Singh & Shri Nand Lal were promoted as Establishment Officer & Superintendent Grade-I, respectively, but the same was rejected by respondent No.1 while treating him ineligible and he never challenged the same.

(13) The respondents raised specific plea that till date no employee from Field/Subordinate Offices has ever been promoted to the post(s) of Establishment Officer or Superintendent Grade-I, and promotions to both these posts have been made from time to time only from amongst the employees of Head Office and moreover, this factual aspect of the matter was never disputed on behalf of the petitioner. Thus, it can be safely concluded that as per past practice also, only the employees working in Head Office have consistently been promoted to the post(s) of Establishment Officer/Superintendent Grade-I and no one from the Field/Subordinate Offices has ever been promoted against these posts.

(14) During the course of hearing, both sides acknowledged that post(s) of Superintendent Grade-II held by petitioner as well as respondent Nos.3 & 4 are governed under the Punjab Subordinate Agricultural Service Rules, 1933 (*for short 'Rules of 1933'*). Undisputedly, under these Rules, there is no post of Superintendent Grade-II and nomenclature has been shown as 'Superintendent' for Head Office as well as for Subordinate Offices; but separately. Parties jointly submitted that post of Superintendent has been re-designated as Superintendent Grade-I & Superintendent Grade-II, but despite repeated asking, no such Government decision or Notification was shown to the Court in this regard. Even the Colonial Era Rules of 1933 have not been

updated by the quarter concerned for the reasons best known to them and primarily that has led to the present litigation.

(15) Be that as it may, as the Rules of 1933 are having material bearing on the controversy, therefore, relevant provisions of the same are extracted as under:-

“Rule 3. Number and character of Posts.- The service shall consist of seven sections and in each section there shall be such number of posts, whether permanent or temporary, of each grade specified in the appendix, as the Local Government may, from time to time determine.

Rule 4. Authorities empowered to make appointments-(i) All appointments to posts in the service, except the posts shown under section 5 of the appendix, shall be made by the Director from time to time as required : Provided that –

(a) an appointment on an initial pay of more than Rs.200 per mensem shall be reported to the Ministry of Agriculture,

(b) appointments to posts shown in section 7 of the appendix shall be made by the Heads of Offices under whom the posts are shown, with the previous approval of the Director and subject to the condition that the period for which the appointment is made does not exceed four months in each case,

(ii) all appointments to the posts shown in section 5 of the appendix shall be made by the heads of offices under whom the posts are shown.

xxxxxx

Rule 7. Method of recruitment- (1) Posts in the service shall be filled-

(a to h) xxxx

(i) in the case of Superintendent, office of the Director-

(i) by promotion from amongst the Head Assistants employed in the office, or

(ii) by selection from amongst Superintendents or Head Assistants with at least five years' clerical experience in other Government offices:

(j) xxxx

(k) in the case of the Superintendent or Head Clerk of a Subordinate Office-

(i) by promotion from amongst senior clerks who have proved their fitness for the post, or

(ii) by selection from amongst clerks employed in Government offices other than the office in which the post is to be filled:

Rule 10 Seniority of members of the service.- The seniority of the members of the service shall in each class of appointment shown in the Appendix be determined by the dates of their substantive appointment, on probation or otherwise, to a permanent vacancy in such class:

Provided that if two or more members are appointed on the same date-

(a) members appointed by selection in the service shall be senior to members appointed otherwise and members appointed by transfer from departments of the Local Government other than the Agricultural Department shall be senior to members appointed direct ;

(b) in the case of members, who are both or all appointed by selection in the service or who are both or all appointed by transfer from a Department of the Local Government other than the Agricultural Department, seniority shall be determined according to pay, preference being given to a member drawing a higher rate of pay, and if the rates of pay drawn are the same, seniority shall be determined according to length of service, preference being given to a member having the longer service, and, if the length of the service is also the same, seniority shall be determined

according to age, an older member being senior to a younger member;

(c) in the case of members who are both or all appointed direct, an older member shall be senior to a younger member;

Provided further that if any member is reverted to his former post, and is subsequently promoted to the post from which he reverted, the date of his appointment for the purpose of this rule shall be such date as the appointing authority specified in rule 4 may determine.

APPENDIX
(Referred to in rules 3, 4, 6, 9, 10, 11 and 12)

PAY PER MENSEM											
No. of section	Description of section	Designation of post	Number of posts	Rising from	By annual increment of	To	And then rising from	And then by annual increments, if any, of	To	With an efficiency bar at	Remarks
1	2	3	4	5	6	7	8	9	10	11	12
6	Ministerial posts (I)	OFFICE OF DIRECTOR OF AGRICULTURE, PUNJAB									
		Superintendent	1	350	20	450	-	-	-	-	
		Head Assistants	3	250	10	350	-	-	-	-	
		Assistants	4	100	8	180	-	10	250	180	
		Stenographers	2	100	5	150	-	10	200	150	
		Senior Clerks	7	75	5	150	-	-	-	100	
		Junior Clerks	12	40	3	100	-	-	-	82	
		SUBORDINATE OFFICES									
		Superintendent	1	150	10	250	-	-	-	-	
		Head Clerks	7	100	6	160	-	8	200	160	
		Head Clerks	2	75	5	125	-	-	-	100	

Rule 3 talks about number and character of posts, which are specified in the Appendix.

Rule 4 deals with the authorities empowered to make appointments for the posts shown in Appendix; and according to which, all appointments to the posts in service, except shown under Section 5 of the Appendix, shall be made by the Director; but it has been provided that

appointment on an initial pay of more than Rs.200 per mensem shall be reported to the Ministry of Agriculture.

Rule 7 says about method of recruitment and as per sub-rule 1 (i) thereof, the post of Superintendent in the Office of Director shall be filled by promotion from amongst the Head Assistants employed in the Office. Also relevant to mention here that as per Appendix, the post of Head Assistant is available only in the Office of Director and not in the Field/Subordinate Offices. Still further, as per sub-rule (1) (i) (ii), the promotion to the post of Superintendent shall be made from amongst Superintendents or Head Assistants having at least five years' clerical experience in other Government Offices.

On the other hand, as per Rule 7(1) (k), the appointment for the post(s) of Superintendent or Head Clerk in Field/Subordinate Offices shall be made by promotion from amongst Senior Clerks or by selection from amongst Clerks employed in the Government Offices other than the Office in which the post is to be filled up. Thus, in such a scenario, the channel of promotion for the post of Superintendent in the Head Office vis-à-vis Field/Subordinate Offices is entirely different.

Rule 10 deals with seniority of the members of service; and according to which, seniority of members of the service shall in each class of appointment shown in the Appendix be determined by the dates of their substantive appointment on probation or otherwise to a permanent vacancy in such class.

As per Section 6 of the Appendix, reproduced hereinabove, there is a lot of difference regarding pay scale for the post of Superintendent in

Head Office vis-à-vis the Field/Subordinate Offices. A perusal of Appendix reveals that initially, Superintendent working in Head Office was granted the pay scale of Rs.350-20-450; whereas Superintendent in the Subordinate Office is shown in the pay scale of Rs.150-10-250. Also relevant to mention here that even the Head Assistant working in the Office of Director was getting the higher pay scale (Rs.250-10-350) than the Superintendent of Subordinate Office.

In view of the above discussions, it can be safely concluded that post of Superintendent in the Office of Director, Agriculture (Head Office) is a separate cadre than the Superintendent(s) working in Field/Subordinate Offices and as such, both are not inter-changeable; rather distinct class(es) in themselves.

(16) This is an admitted fact that as on today, seniority list(s) up to the post of Superintendent Grade-II for Field/Subordinate Offices and Head Office are maintained separately. Even Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (*for short '1994 Rules'*) also says that the seniority *inter se* of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of the service.

As already discussed, Superintendent working in the Head Office is a separate cadre than that of Superintendent(s) in the Field/Subordinate Offices, therefore, as per Rules of 1933 as well as 1994 Rules, separate seniority lists are to be prepared for the employees of both the Offices i.e. Field/Subordinate Offices and Head Office.

(17) Also noteworthy that in para 4 of the affidavit dated 30.09.2020, filed by Sh. Sutantar Kumar Airi, Director Agriculture, the staff strength of both the Offices has been depicted as under:-

"Sr. No.	Designation	Head office cadre strength	Sub Office cadre strength
1.	Clerk	54	204
2.	Senior Assistant	54	127
3.	Supdt. Grade-2	11	30
4.	Supdt. Grade-1	1	--
5.	Establishment Officer	1	--

Perusal of the above tabulation clearly reveals that the employees of the Field/Subordinate Offices are more in numbers than the Head Office, thus, they have better opportunities for promotions as compare to the employees of Head Office and as such, on that count also, both cannot be equated with each other.

Still further, in another affidavit dated 31.10.2020 of Sh. Gurmeet Singh, Deputy Director, Agriculture, Head Quarter, it has been clarified that Superintendent Grade-II of Head Office and Field/Subordinate Offices are having separate seniority lists and separate cadre. It has also been specifically averred that there are total 42 Offices under the Director, Agriculture in the State of Punjab and Establishment as well as Administrative matters of all the Offices are managed at the Head Office level.

(18) There is no quarrel that petitioner was promoted as Superintendent Grade-II in the Field/Subordinate Office on the basis of seniority maintained for the employees working there; whereas respondent Nos.3 & 4 have been promoted in the Head Office as per separate seniority list meant for the employees of Head Office.

Above all, it is duly admitted by the petitioner in para 4 of his replication to the preliminary submission that *“the ministerial posts in the Head Office and sub offices up to the rank of Superintendent Gr.II are separate cadres with separate cadre strength.”* Thus, in such a scenario, there is no justification that the seniority lists of Superintendents Grade-II working in the Field/Subordinate Offices and that of Head Office be prepared jointly.

(19) In view of the above discussions, this Court is of the firm opinion that petitioner has no right of consideration for promotion to the post(s) of Establishment Officer/Superintendent Grade-I as the post of Superintendent Grade-II held by him is not a feeder cadre for both these posts. Also held that as per Group ‘A’ Rules, the employees working only in the Head Office are eligible to be considered for promotion to the post(s) of Establishment Officer/Superintendent Grade-I.

As a result thereof, no ground is made out to issue any mandate to respondent Nos.1 & 2 to prepare a joint seniority list for the post(s) of Superintendent Grade-II working in the Head Office and that of the Field/Subordinate Offices. Once that is so, then there would be no justification to direct the aforesaid respondents to consider the case of petitioner for promotion to the post(s) of Establishment Officer or Superintendent Grade-I.

Accordingly, this Court does not find any ground to interfere with the impugned order(s). Hence, there is no option except to dismiss the present petition.

Ordered accordingly.

Before parting with the order, to avoid unwarranted litigation, respondent Nos.1 & 2 are directed to upload duly updated Rules of 1933 on

their official website and one copy thereof (duly authenticated) be supplied to the Librarian of this Court for records.

(20) Pending application(s), if any, shall also stand disposed off.

May 24, 2022
gagan/sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes