

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

CWP-9142-2014 (O&M)

Date of decision: August 01, 2022

Sanjay Yadav

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jai Vir Yadav, Senior Advocate with
Mr. Harshvardhan Ranga, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Balvinder Sangwan, Advocate
for respondent No.3-HPSC.

Mr. Yashdeep Nain, Advocate for respondent No.5.

Mr. Surender Dhull, Advocate for respondent No.6.

ARUN MONGA, J. (ORAL)

CM-5329-CWP-2017

For the reasons stated in the application, the same is allowed.

Amended writ petition is taken on record, subject to all just exceptions.

Registry to do the needful.

CM-18348-CWP-2018

For the reasons stated in the application, the same is allowed.

Annexures R-1 and R-2 are taken on record, subject to all just exceptions.

Main case (O&M)

Petition herein, *inter alia*, is for issuance of a writ in the nature of

Certiorari for quashing impugned selection process for appointment to the

post of Deputy Director Fisheries (Group A) in pursuance to advertisement No.1/ 2012 (Annexure P-1) having last date for inviting applications as 09.07.2012 and 17.07.2012 for Forward Remote Areas.

2. Succinct factual background first. Petitioner is serving as District Fisheries Officer-cum-Chief Executive Officer in the Fisheries Department at Kurukshetra. On receipt of requisition from the Fisheries Department, respondent No.3-Haryana Public Service Commission (for short 'HPSC') invited applications for recruitment to one post of the Deputy Director, Fisheries (Group A) for General Category in Fisheries Department, vide advertisement No.1. Petitioner having requisite eligibility conditions/ qualifications applied for the same, and vide letter dated 13.02.2014 (Annexure P-2), he appeared in the interview on 21.02.2014. Dr. G.S. Jakhar-respondent No.4 was associated in the Selection Committee. He was not from the Department of Fisheries. Respondent No.4 did not fulfill the qualifications for being appointed as a regular Director of Fisheries Department as the post of Director, Fisheries is a promotional post or can be filled up by transfer on deputation as per provisions contained in Appendix 'B' of the Rule 7 of the Haryana Fisheries Department, State Service Group A Rules, 1980 (for short 'Rules of 1980'). Respondent No.4 is in fact Director, Animal Husbandry, Haryana having qualification of Veterinary science and has been given additional charge of the Director, Fisheries upon retirement of one Sh. P.V. Singh, Director Fisheries on 30.11.2013. Petitioner sought information under Right to Information Act and information supplied reveals that respondent No.3-HPSC vide letter dated 18.02.2013 requested the Commissioner & Secretary, Fisheries Department to depute a senior and

experience officer to assist the HPSC in an advisory capacity at the time of interview. Out of 4 names, name of respondent No.4 was mentioned at Sr. No.1 as Director Fisheries without mentioning that he was holding the additional charge and not the regular charge of Director, Fisheries. The noting dated 19.02.2014 by the officer, who forwarded the same to the Principal Secretary Fisheries, Haryana, has specifically mentioned that respondent No.4 is from Animal Husbandry Department and the next person i.e., Mr. Rajinder Kumar Sangwan (at Sr. No.2) is the joint Director, Fisheries, may be approved as technical expert from Interview Board. In the absence of requisite qualification, the association of respondent No.4 in the selection process is illegal and would vitiate the selection process. Petitioner came to know that one Sh. Dharminder Singh Budhwar-respondent No.5 who was working as District, Fisheries Officer (Hqrs) in the office of Director, Fisheries Department, did not possess the requisite eligibility qualifications for the post in question.

3. I have heard competing contentions of learned Senior counsel for the petitioner as well as learned counsel representing the private-respondents and learned State counsel.

4. Petitioner having unsuccessfully participated in the selection process has challenged the same primarily on two grounds as argued by learned Senior counsel for the petitioner i.e., (A) that respondent No.4 at the relevant time was since holding only an additional charge on the post of Director, Fisheries and being not a regular appointee and also lacking the requisite qualifications to be considered for appointment on the post of Director, Fisheries was not eligible and ought not to have been allowed to be

a part of the interview committee as an expert from the Department, (B) the direct recruitment sought to be made pursuant to the advertisement is in violation of Rule 9 of Rules of 1980, which envisage that only 25% of the posts are to be filled up by direct recruitment and since as on the date of the advertisement, no vacancy in the direct recruitment quota was available, therefore, entire selection is vitiated on that count alone.

5. First, let us analyze the second argument. Before advertizing to the merits thereof, it would be apposite to see the relevant Rule 9 of the Rules of 1980, which is extracted herein below:-

*“9. **Method of recruitment.** – Recruitment to service shall be made,--*

(a) xx xx

(b) xx xx

(c) in case of Deputy Director Fisheries, Deputy Director Fisheries (Hatchery), Deputy Director Fisheries (Statistics)-

(i) 75% by promotion from amongst Fisheries Development Officer, Fisheries Farm Manager, Fisheries Research Officer; and

(ii) 25% by direct recruitment; or”

6. No doubt, there is no ambiguity in the Rules that the direct recruitment is confined only to 25% and to that extent there is no quibble. However, the same has to be as per the number of posts existing as on the date of advertisement and if seen from the said angle, the petitioner's case falls flat. Reference may be had to Para-9 on merits of the return dated 13.11.2014 filed on behalf of respondents No.1 and 2. The Department was fully conscious of the applicability of the aforesaid Rules and in that background, it has rightly been justified that as on the relevant date, there was 6 sanctioned posts of Deputy Director, Fisheries/ equivalent posts, but vide office instructions dated 05.08.2003 (Annexure R-1), it was decided to downgrade the one post of Assistant Professor, Aquaculture Research and

Training Institute, Hisar to that of the status of the Deputy Director in Fisheries. Meaning thereby that there was in fact 7 posts existing as on the date of advertisement. Also to be noted that the office instructions dated 05.08.2003 *ibid* are not under challenge by the petitioner. What thus, emerges is that in totality of circumstances when the aforesaid Rule 9 is applied to 7 posts existing as on that date, the available quota of the direct recruitment being in proportion of 75:25 (promotee: direct recruitment) would result in 2 posts in the quota of direct recruits, one post was since already filled up, the Department was fully conscious to fill up the second post through impugned advertisement.

7. As an upshot, there is no substance in the argument that there was no post available in the direct quota as on the date of advertisement and in any case, petitioner having himself participated *qua* entire selection process could not have belatedly turn around and challenge the same on the ground that though he is not selected, but even the selection of selected one is to be set aside on the ground of violation of Rule 9. Be that as it may, neither there is any violation of Rule 9 of Rules of 1980 nor even otherwise, petitioner having unsuccessfully participated can belatedly challenge the selection.

8. Coming now to the argument that the Director, Fisheries, at the relevant time, being not qualified to be appointed as Director should not have participated in the interview process. In that context, reference may first be had to the requisition sent from the Haryana Public Service Commission to the Administrative Secretary of the Department for deputing a competent person to assist the Commission in the interview process. It is clearly stated therein that the request was made “to depute a senior and experienced officer

to assist the Commission in an advisory capacity”. When read in that context, it was clearly the discretion of the Administrative Secretary of the Department to have deputed an officer of his choice as long as he was found suitable, senior and experienced. Petitioner having appeared before the interview Committee subsequently turned around to challenge the nomination made by the Administrative Secretary to the Commission on the ground that the nominee (respondent No.4) was holding additional charge as Director was not a regular appointee. Neither is there any requirement by the service Rules of 1980 to make it mandatory that it has to be the Director of the Fisheries Department who has to participate in the interview process nor it is also clear from the requisition sent by the Commission that the person to be so deputed should have had the qualification to be a regular appointee as Director, Fisheries. All that was required on the part of the Administrative Secretary was to depute a person who was senior enough and experienced. To contend that seniority had to be seen only of those who had rendered their service in the Fisheries and/ or even the experience had to be necessarily in the Fisheries Department is neither the mandate of the Rules of 1980 nor even otherwise required under any provision and is merely based on self serving view of the petitioner.

9. In any case, participation of the Director, at the relevant time as an interviewer, flies in the face of the allegations made by the petitioner having specifically pleaded in the petition that the Director instead of allowing the Joint Director who was qualified in the Fisheries stream whereas the Director was qualified in Animal Husbandry stream did not purposely allow the Joint Director to be an interviewer in order to accommodate his

own favorite candidate i.e. respondent No.5 whom he wanted to be appointed as Deputy Director *qua* the advertisement in question. It turned around that said respondent No.5-Dharminder Singh Budhwar was not selected and therefore, the entire challenge *qua* Dr. G.S. Jakhar being deputed to accommodate his favorite Dharminder Singh Budhwar falls flat on that score also. Instead respondent No.6-Sh. Prem Singh Malik was appointed. It transpires that even respondent No.6 has rendered his full length of service and superannuated during pendency of the writ proceedings. To that extent, even the relief sought *qua* quashing of his selection has become totally stale and infructuous.

10. No grounds for interference are made out.

11. Dismissed.

(ARUN MONGA)
JUDGE

August 01, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No