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

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**CWP-10508-2019 (O&M).
Date of Decision: 04.03.2025.**

VIJAY KUMAR

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. Kartikey Chaudhary, Advocate,
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the order bearing No.785/Estt.-II(1) dated 03.05.2018 received by the petitioner vide Endst. No.1457 dated 29.05.2018, whereby the request of the petitioner for protection of pay against previous service as Agribusiness Manager has been rejected, the instant writ petition has been filed by the petitioner.

2 Learned Senior counsel appearing for the petitioner contends that the Haryana Staff Selection Commission had issued an advertisement dated 07.06.2008 for filling up 21 posts of Agribusiness Managers and last date of submission of the applications was 07.07.2008. The petitioner being

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eligible, had applied for the said post and participated in the selection process. The petitioner was declared successful and he was offered appointment on 01.10.2010. He submits that prior to the appointment of petitioner as Agribusiness Manager, the Haryana Staff Selection Commission had also advertised 97 posts of Agriculture Development Officers (ADO) vide advertisement dated 28.08.2009 and the petitioner being eligible had applied for the said post and eventually became successful. He was selected as Agriculture Development Officer as per the result declared by the Haryana Staff Selection Commission on 12.09.2012. The petitioner submitted technical resignation from the post of Agribusiness Manager to join as Agriculture Development Officer on 27.11.2012. On acceptance of the technical resignation, the petitioner joined as Agriculture Development Officer in Agriculture Department, Haryana on 27.12.2012 and thereafter, he was relieved from his previous post. Petitioner rendered service as Agribusiness Manager in Haryana State Agriculture Marketing Board in the same scale from 19.10.2010 to 26.12.2012 and he submitted a representation that his pay may be protected. He thereafter submitted an application with the respondents that his pay may be protected by placing reliance on Rule 10 of the Haryana Civil Services (Pay) Rules, 2016. The same is extracted as under:

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"10. Fixation of pay on subsequent appointment to a post higher or identical to Functional/ACP pay scale: -

On subsequent appointment to a post of pay scale higher than or identical to Functional or ACP Pay scale in the

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same or any other department of Haryana Government where the application for the same has-

(i) not been submitted through proper channel, pay shall be fixed at entry level pay of the post of subsequent appointment admissible under rule 9; or

(ii) been submitted through proper channel, the pay shall be fixed at entry level pay of the post or equal to the basic pay already drawn, whichever is more advantageous.

Note 1.- Where pay in the pay band is fixed equal to entry level pay, the date of next increment in both the cases (i) and (ii) above shall be the 1st July subject to completion of minimum six months qualifying service upto 30th June on the post of subsequent appointment.

Note 2.- Where pay in the pay band is fixed equal to the pay already drawn, the date of next increment in both the cases (i) and (ii) above shall also be 1st July, if otherwise admissible on that day."

3 Learned senior counsel for the petitioner contends that the rejection of the prayer of the petitioner for pay protection is misconceived and based on wrong interpretation of Rule 10 extracted above. The pay scales as well as the qualifications for both the posts were same and the same is not a subject matter of dispute. He submits that reliance on said rule is based upon misunderstanding of the provisions. The same would come into play when a

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person is already in Government service and submits an application for any other post while being in an employment. In the present case, the application for the post of Agriculture Development Officer was submitted by the petitioner before 29.09.2009 whereas appointment of the petitioner to the post of Agribusiness Manager took place on 01.10.2010 i.e. nearly after a year of the submission of the earlier application. Hence, there was no occasion for the petitioner to move the application for appointment against the advertisement for the post of Agriculture Development Officer through the proper channel i.e. through the controlling Department.

4 The aforesaid facts remain undisputed and State counsel also submits that the application in question has not been submitted through the proper channel i.e. with the approval of the Department, hence, the prayer has been rightly declined.

5 Having considered the submissions advanced by the learned counsel appearing for the respective parties, I find that such a mechanical adjudication of the claim of the petitioner by the respondent Department reflects a tendency of the authorities to pass mechanical orders without any application of mind which needs to be curbed and conscious decisions are required to be taken by an officer of the rank of Director, who has authored/approved such decisions. Hence, the order bearing No.785/Estt.-II(1) dated 03.05.2018 received by the petitioner vide Endst. No.1457 dated 29.05.2018 and passed by the respondents is based upon a misreading of plain statutory provisions enshrined in Rule 10. The respondent Director, Department of Agriculture and Farmers Welfare is further burdened with

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costs of Rs.50,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for generating useless and unnecessary litigation which involved no dispute at all and could have been resolved on a mere plain reading of the statutory provision. The respondents are accordingly directed to pass a fresh order within a period of 02 months of the receipt of certified copy of this order. The admissible benefits shall be released to the petitioner within a further period of 02 months thereafter failing which the petitioner shall be entitled to interest on the overdue amount @ 6% per annum. The additional expense of interest and costs may be recovered from the erring officials.

6 The writ petition stands allowed accordingly.

March 04, 2025.

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No