

S. S. Sodhi

Vs

State of Punjab and Others

Civil Appeal No. 1310 of 1990

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

01.03.1990

JUDGMENT

S. C. AGRAWAL, J. -

1. We heard learned counsel for the parties at length. We hereby grant special leave to appeal against the judgment and order of the High Court of Punjab & Haryana dated December 21, 1988 passed in Writ Petition No. 11657 of 1988 and proceed to dispose of the appeal.

2. The appellant is employed as Enforcement Chief with the Punjab State Agricultural Marketing Board (hereinafter referred to as 'the Board') having been promoted to the said post in November 1985. On December 4, 1987, the Secretary of the Board submitted a proposal for creation of the posts of Manager Finance and Manager Marketing in the Board with a view to improve the operational efficiency. By letter dated December 24, 1987, the Deputy Secretary to Government of Punjab, Development Department informed the Secretary of the Board that the President of India is pleased to create the posts of Manager Marketing and Manager Finance during the year 1987-88 for reorganising the affairs of the Board and for improving operational efficiency. By Notification dated February 12, 1988 (published in the Punjab Government Gazette dated February 17, 1988) the Punjab State Agricultural Marketing Board (Class I) Service Rules, 1988 (hereinafter referred to as 'the Rules') made by the President of India for regulating the recruitment and conditions of service of persons appointed to the Punjab State Agricultural Marketing Board (Class I) service were notified. These Rules are applicable to the posts specified in Appendix 'A' to the Rules. The post of Manager Marketing is included in the said appendix. The method of recruitment and qualifications for recruitment are prescribed in Appendix 'B' to the Rules. For recruitment to the post Manager Marketing it was initially provided in Appendix 'B' to the Rules that recruitment could be made (i) by direct recruitment; or (ii) by promotion. Enforcement Chief having experience of working as such for a minimum period of two years is qualified for recruitment by promotion to the post of Manager Marketing. In the proviso to sub-rule (1) of Rule 8 of the Rules it is provided that if no suitable candidate is available for appointment to a post in the Service, such post shall be filled in by direct appointment or by transfer, as the appointing authority may decide in this behalf. By Notification dated July 13, 1988, the Rules amended and against serial No. 2 in Appendix 'B' relating to the post of Manager Marketing an amendment was made in column 3 whereby additional method of recruitment viz. by transfer on deputation, was inserted and in column 6 relating to qualification for recruitment by transfer on deputation the following provision was inserted :

"from amongst the Professors and Readers in the subjects of Agricultural Economics/Agricultural Marketing working in recognised Universities."

3. By letter dated July 22, 1988, the Secretary of the Board informed the Vice-Chancellor of the Punjab Agricultural University, Ludhiana that respondent 4, who was at that time working as Economist (Marketing) in the Department of Economics of Punjab Agricultural University, Ludhiana, had been approved for appointment on deputation from Punjab Agricultural University as Manager Marketing to the Board for a period of two years and it was requested that he may be relieved to join his new assignment at the earliest. In pursuance of the said letter respondent 4 joined as Manager Marketing in the Board with effect from July 28, 1988. Feeling aggrieved by the aforesaid appointment of respondent 4 on the post of Manager marketing the appellant filed a writ petition in the High Court of Punjab & Haryana. The said petition was dismissed by the High Court by order dated December 21, 1988 and thereafter the appellant has filed this appeal by special leave.

4. Shri Hardev Singh, the learned counsel for the appellant, has placed reliance on the proviso to sub-rule (1) of Rule 8 and has submitted that in view of the said proviso it was incumbent for the Board to first consider the case of the appellant for appointment to the post of Manager Marketing by promotion and only on the appellant being not found suitable for such promotion could the Board appoint respondent 4 on the post of Manager Marketing by transfer on deputation. The submission of Shri Hardev Singh is that the High Court was not right in holding that in spite of the said proviso it was permissible for the Board to make appointment on the post of Manager Marketing by any of the modes i.e. by direct appointment, by promotion or by transfer. Shri Hardev Singh has also urged that the appellant has not been found unsuitable for promotion to the post of Manager Marketing and, on the other hand, in January 1988 the Administrative Officer of the Board, in his note dated January 13, 1988 (Annexure 'D'), after examining the service record of the appellant, had recommended that in case the Board desires to fill up the post of Manager Marketing through promotion there is no better choice than the appellant.

5. Sub-Rule (1) of Rule 8 of the Rules provides as under :

"(8) Method of recruitment and qualifications. - (1) Subject to the provisions of sub-rule (4) 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 to a post in the Service, such post shall be filled in by direct appointment or by transfer, as the appointing authority may decide in this behalf."

The proviso to sub-rule (1) of Rule 8 stipulates that in the matter of appointment to a post governed by the Rules the appointing authority will first consider the candidates who are eligible for such appointment by promotion and if no suitable candidate is available for such appointment by promotion then the post may be filled in by direct appointment or by transfer as the appointing authority may decided in this behalf. Shri J. K. Sibal, the learned counsel for the Board and respondent 4, has not been able to show that the said proviso has a different meaning. The contention of Shri Sibal is that before the appointment of respondent 4 on the post of Manager Marketing the Board has considered the appellant and he was not found suitable for promotion to the said post. We are, therefore, unable to agree with the view of the High Court that in spite of the proviso to sub-rule (1) of Rule 8 it was open to the appointing authority to fill up the post of Manager Marketing by any of three methods of recruitment viz : (i) by direct appointment; (ii) by promotion or (iii) by transfer and that it was not necessary for the appointing authority to first consider the claim of the departmental candidates for promotion and go to other modes of recruitment only when such departmental candidate for promotion was not available.

6. It is, therefore, necessary to consider whether the suitability of the appellant for promotion to the post of Manager Marketing was considered before it was decided to appoint respondent 4 on the said post by transfer on deputation in July 1988. In this context, it may be mentioned that in the proposal for creation of the post of Manager Marketing the Secretary of Board, in his letter dated December 4, 1987 (Annexure 'B'), has stated as under :

"The work connected with Enforcement, Development of markets and Project schemes and the work of Market Intelligence is handled in different branches headed by Enforcement Chief (Rs. 1775-2100), AMDS (Rs. 1200-1850) and Project Officer (Rs. 1200-1850) respectively. There is strong need for coordinating the work of all these branches and putting them under a common head so that we have an integrated approach for achieving better result. The work of all these branches is interrelated and interconnected. Putting them under a common head will improve matters and increase operational efficiency. Even otherwise there is stagnation in senior ranks in the Board. The post of Enforcement Chief is the seniormost one. The avenues of promotion are limited. To motivate our officers for better performance we have to create chances for their promotion. At present there is no promotion beyond the post of Enforcement Chief. The officer presently working as Enforcement Chief is stuck up at the maximum of the pay scale. Creation of higher post will open a new avenue of promotion and thus provide motivation of better performance. Creation of the post of Manager Marketing in the pay scale of Rs. 1200-2500 is proposed."

7. After the post of Manager Marketing was created the Administrative Officer of the Board submitted a note (Annexure 'D') dated January 13, 1988 wherein it was stated :

"The present Enforcement Chief, Shri S. S. Sodhi was promoted from the post of AMDO to the post of Enforcement Chief vide Board's order No. 919 (1985) dated November 7, 1985. I have thoroughly gone through his character rolls right from the year 1985 onwards. He has been assessed from 'good' to 'very good' officer during all these years. Some adverse remarks in the year 1972-73 and 1973-74 as conveyed to him were expunged by the appropriate authority on his representation and his work and conduct during that period was assessed as satisfactory. His confidential reports from 1980-81 to 1986-87 are as under :

#Sr. No. Year Assessment ACRs Page No. (1) 1980-81 Very Good 36 (2) 1981-82 Very Good 38 (3) 1982-83 Very Good 40 (4) 1983-84 Outstanding 42 (5) 1984-95 Very Good 44 (6) 1985-86 Very Good 46##

However, the report of the year 1986-87 (Cp/48 of ACR file), where he has been assessed as 'Outstanding' has not been shown to the Chairman. From the angle of his performance on various assignments, he is judged as very good officer. His personal bio-data and activities are available in detail, as supplied by Mr. Sodhi, at flag 'A'.

4. Mr. Sodhi has taken keen interest in making the scheme of 'Apani Mandi' a success. He has helped in plugging the loopholes/in various rules and thereby through effective control has plugged the leakage of the market fee.

5. Another factor worth mentioning is his role in formulating a scheme for declaring 'wood' as an agricultural produce. He took keen interest in obviating the efforts of the traders-lobby in over-

powering this scheme.

6. His attitude, towards the subordinate colleagues and superiors is co-operative and atmosphere in his office is congenial. In case Board so decides as to fill up this post of Manager Marketing through promotion, we have no better choice than Shri S. S. Sodhi, the present Enforcement Chief, for promotion to this post in the scale of Rs. 2100-2500."

8. The Secretary of the Board has made the following note dated February 17, 1988 : "This was discussed with FCD. Please keep it pending for the time". Thereafter the matter of appointment on the post of Manager Marketing was considered after the Rules were amended vide Notification dated July 13, 1988. The Secretary of the Board submitted a note dated July 21, 1988 (Annexure 'R-3/1') which was to the following effect :

"A provision for the post of Manager Marketing in the pay scale of Rs. 2000-100-2500 has been made in the Punjab State Agricultural Marketing Board, Class I Service Rules, 1988. This post can be filled either by direct recruitment or by promotion or by transfer on deputation. The source of recruitment by promotion is from the post of Enforcement Chief. At present, Shri S. S. Sodhi, is working as Enforcement Chief and he has completed two years of service. His service record is also reasonably good. However, at the time of creation of this post of Manager Marketing, it was visualised that an academician with professional qualifications and proper competence may be appointed so that he is able to give new perspective and direction to the Marketing wing of the Board. It was keeping this in mind that government has amended the Class I Service Rules incorporating following qualifications for deputationists for this post.

"From amongst Professors and Readers in subject of Agricultural Economics/Agricultural Marketing working in a recognised University."

It is felt that, we may not, for the time being promote the Enforcement Chief to the post of Manager Marketing and instead fill it by appointing a qualified professional. We have two options i.e. appoint a person by direct recruitment or take a Professor or Reader on deputation from a recognised University. The first alternative will block promotion chances of the Enforcement Chief for all times to come and, therefore, is not recommended. The second option of taking a Professor/Reader on a short term deputation of two years may be followed. It will give enough period to the deputation to lay foundations of professionalism in the Marketing wing of the Board without blocking promotion chances of the permanent employees. The permanent employees, in the meantime, can acquire the necessary skills under the guidance of the professional and take over the job in due course.

The matter was discussed with the Vice-Chancellor of the Punjab Agricultural University. He had suggested the name of Shri P. S. Ranghi, Economist (Marketing) working in Department of Economics of Punjab Agriculture University. He is working in the rank of Reader in the University pay scale Rs. 1200-1900 which is now likely to be revised to Rs. 3700-5700 as per the recommendations of the Pay Commission/UGC. He has done a Ph.D. in Agricultural Economics and his subject was "An Economics Analysis of Marketing and Processing of Rice in Punjab". He has written a number of research papers relating to Agricultural Marketing. We may,

therefore, take him on deputation for a period of two years and protect the pay and emoluments which he is drawing on his present post."

9. Shri Sibal has placed reliance on the above note and has submitted that the note shows that the suitability of the appellant for promotion to the post of Manager Marketing was considered and it was felt that he was not suitable for such promotion and that in order to lay foundations of professionalism in the Marketing wing of the Board a Professor/Reader may be taken on a short term deputation of two years.

10. As to the suitability of the appellant it may be mentioned that in the note of the Administration Officer dated January 13, 1988 (Annexure 'D') it has been pointed out that in the Confidential Reports from 1980-81 to 1985-86 the appellant has been assessed as 'Outstanding' in 1983-84 and in the other years he has been assessed as 'Very Good' and in the report of the year 1986-87 he has been assessed as 'Outstanding' but the said report has not been shown to the Chairman. From the said note it appears that after considering the service record of the appellant, the Administrative Officer has expressed the view that there was no better choice than the appellant for promotion to the post of Manager Marketing. There is nothing in the record to indicate that the performance of the appellant during the period from January 13, 1988 to July 21, 1988 had deteriorated so as to render him unsuitable for such promotion. On the other hand, we find that during this period the appellant was sent to Mount Abu on training from May 16 to May 20, 1988 and for a short training to USA and Canada on July 2, 1988. The note (Annexure 'R-3/1') dated July 21, 1988 cannot be construed to mean that the appellant was considered not suitable for promotion to the post of Manager Marketing. In the said note it is recorded that the service record of the appellant is reasonably good. The only reason that has been given for not promoting the appellant is that, at the time of creation of the post of Manager Marketing, it was visualised that an academician with professional qualifications, with proper competence may be appointed so that he is able to give new perspective and direction to the Marketing wing of the Board and keeping in view the said consideration the Secretary of the Board recommended that at the initial stage the post of Manager Marketing may be filled up by taking a Professor/Reader on a short term deputation of two years, so that he may lay foundations of professionalism in the Marketing wing of the Board without blocking promotion chances of the permanent employees and the permanent employees may, in the meantime, acquire the necessary skills under guidance of the professional and take over the job in due course. We, however, find that the post of Manager Marketing was created in December 1987 on the basis of the proposal made by the Secretary of the Board in his letter (Annexure 'B') dated December 4, 1987. The said letter indicates that the main consideration for creation of the post of Manager Marketing was to coordinate the work of three branches, namely, Enforcement, Development of Markets and Project Schemes and Work of Market Intelligence and putting them under a common head to have an integrated approach for achieving better results. Another consideration which has been mentioned in the said letter is that there was no promotion beyond the post of Enforcement Chief and it was necessary to open a new avenue of promotion and thus provide motivation for better performance. There is nothing in the said proposal to show that the post of Manager Marketing was created with a view to have an academician with professional qualifications who may give new perspective and direction to the Marketing wing of the Board. The reason that has been given in the note dated July 21, 1988 (Annexure 'R-3/1') for denying promotion to the appellant to the post of Manager Marketing is thus not borne out by the contemporaneous record relating to the creation of the said post. We are, therefore, of the opinion that in the matter of appointment of respondent 4 to the post of Manager Marketing by transfer on deputation, the appointing authority has failed to bear in mind the mandate of the proviso to sub-rule (1) of Rule 8 and the said appointment cannot be held to have been made in accordance with the Rules.

11. Keeping in view the fact that respondent 4 has been appointed on deputation for a period of two years with effect from July 28, 1988, and that period will be expiring soon and that if he is allowed to complete this period of deputation the object underlying his appointment, viz. laying foundations of professionalism in the Board, would also be accomplished, we do not consider it expedient to disturb the present arrangement. We, however, feel that on the expiry of the present period of deputation of respondent 4, appointment on the post of Manager Marketing in the Board should be made by promotion as envisaged by the proviso to sub-rule (1) of Rule 8 of the Rules. Since the appellant has been found suitable for promotion to the post of Manager Marketing on the basis of her service record we are the view that on the expiry of the period of such deputation of respondent 4, the appellant may be appointed in the post of Manager Marketing by promotion.

12. The appeal is, therefore, disposed of with the direction that on the expiry of the period of two years for which respondent 4 has been appointed by transfer on deputation in the post of Manager Marketing the appellant may be appointed by promotion on the said post of the Manager Marketing. No order as to costs.

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