

Krishan Kumar, Assistant Secretary, Market Committee, Bhiwani, District Bhiwani, (Haryana)

Vs

Haryana State Agricultural Marketing Board, Panchkula Through its Chief Secretary

Civil Appeal No. 2782 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

31.03.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Division Bench of the Punjab and Haryana High Court, made on 29-5-1996 in CWP No. 16133 of 1995.

3. The admitted position is that an advertisement was published by the respondent for recruitment to the post of Assistant Secretary of the Haryana State Agricultural Marketing Board. Out of 11 posts notified for recruitment, six posts were reserved for general candidates, 3 posts for Scheduled Castes and 2 posts for Other Backward Classes. Pursuant thereto, the appellant had appealed for consideration of his claim for appointment. The qualifications prescribed under the Haryana State Agricultural Marketing Board Service Rules, 1974 (for short "the Rules") are thus :

"(1) Graduate of recognised University; and

(2) Adequate knowledge of the Punjab Agricultural Produce Marketing Act, Rules and Regulations; and

(3) At least three years' experience in government office/semi-government body."

4. The appellant had the experience of working in Haryana Warehousing Corporation (i) from 6-10-1984 to 4-1-1985, (ii) from 7-1-1985 to 31-3-1985, (iii) from 6-5-1985 to 28-7-1985, (iv) from 30-7-1985 to 29-10-1985 and (v) from 2-11-1985 to 5-12-1985. He also had the experience of working in Hissar National Cooperative House Building Society Ltd., Hissar between 24-4-1988 and 30-4-1991. On the basis thereof, he was selected and appointed. He joined duty on 1-8-1992.

Subsequently, Writ Petition No. 161 of 1995 was filed and by judgment dated 2-1-1995, the High Court directed the Board to examine whether the appointments were duly made and appointees were duly qualified in accordance with the rules. It was directed further that in case the candidates were not qualified, the appointments must be deemed to have been set aside. In furtherance thereof, a notice was given to the appellant to produce the record. Accordingly, the appellant produced the record. The authority considered the same and held thus :

"Shri Krishan Kumar, Respondent 6 has produced the experience certificate of the Hissar National Cooperative House Building Society Ltd., Hissar where he has worked as Accountant-cum-Clerk from 24-4-1988 to 30-4-1991. His appointment is also subject to verification of the experience certificate submitted by him. In case, the

experience certificate is not found genuine as per rules, the Board reserves the right to cancel his appointment."

5. It is stated that they have examined the certificate and found it to be genuine but Hissar Cooperative House Building Society was not found to be a semi-government Society. No contribution of the government fund was made to the Society. Therefore, he was not eligible to be appointed. Accordingly, his appointment came to be terminated. Calling that order in question, he filed a writ petition which was dismissed. Thus, this appeal by special leave.

6. The notice was issued by this Court on 30-9-1996 wherein it was stated as under :

"It is reported on instruction by the learned counsel for the petitioner that the petitioner is now 36 years of age and he will not be qualified for any other appointment. He also states that the petitioner has meritorious record to his credit. Therefore, he requests that a notice may be issued to the respondent to consider his case on sympathetic consideration."

7. Counter-affidavit has been filed by the respondent stating that they are not willing to consider his case sympathetically. They have stated in their counter-affidavit in para 3(f) that the Hissar National Cooperative House Building Society is not a semi-government body as per the report of the Registrar, Cooperative Societies, Haryana. Thus he does not fulfil the qualification prescribed under the rules.

8. The learned counsel for the appellant has contended that he has not submitted any illegal certificate. He has submitted the certificates before the authority which was found to be correct. He had sufficient experience before he was appointed as Assistant Secretary. It is further urged that though it is now found that it is not a semi-government body, he may be considered to be appointed with the requisite qualifications and the experience. He has also brought to our notice that the rules had been amended deleting the requirement of 3 years' experience, by the order of the Government dated 6-10-1995, whereas the order of termination came to be made on 31-10-1995. Thus, his case may be considered on the footing that he had at the relevant time sufficient experience. The learned counsel for the respondent has stated that since the qualification is one of the conditions, as found by the High Court and at the relevant time, he did not possess that qualification, the dismissal of him from service is in accordance with the rules.

9. In view of the respective contentions, the question that arises for consideration is whether the view taken by the High Court is correct in law. Strictly speaking, the High Court order does not suffer from any illegality for the reason that as on the date of application for selection he did not have the prescribed 3 years' experience as required by the Rules. In other words, 3 years' experience was required as necessary qualification for appointment as Assistant Secretary. It is seen that during the period between his appointment on 10-1-1992 and allowing of the writ petition, he has gained sufficient experience of working as Assistant Secretary and his performance of the duties as Assistant Secretary has not also been disputed or any fault found by the respondent. It is seen that he is now barred by age. Under these circumstances, we think that the respondent should reconsider the matter afresh and take appropriate decision to appoint him as Assistant Secretary.

10. In view of the above legal position and also the factual situation, the appeal is allowed and writ is issued but, in the circumstances, without costs.