

(1996) 01 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13204 of 1992

Dr. Suresh Aggarwal and
Another

APPELLANT

Vs

Ch. Charan Singh Haryana
Agricultural University and its
Board of Management and
Others

RESPONDENT

Date of Decision: Jan. 17, 1996

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (1996) 113 PLR 122

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: Surya Kant, for the Appellant; Deepak Agnihotri, for Respondent Nos. 1 and 2 and Ram Kumar Malik, for the Respondent

Final Decision: Allowed

Judgement

Jawahar Lal Gupta, J.

The petitioners challenge the appointment of respondent No. 3 as Associate Director (Training) at the Haryana Agricultural University, Hissar. A few facts as relevant for the decision of this controversy may be briefly noticed.

2. On February 9, 1992, the Respondent-University advertised one post of Associate Director (Farm Advisory Service). This post is equivalent in rank and status to that of a Professor. Various candidates including petitioner No. 1 applied for this post. The selection Committee considered the claims of various persons. On July 24, 1992, it selected Dr. K.C. Bishnoi for appointment to the post. Respondent No. 3 was also one of the candidates. He was placed at No. 2 in the merit list. On August 28, 1992, the proceedings of the selection committee were placed before the Board of

Management for consideration. A copy of the relevant agenda item has been produced on record as Annexure P-3. A perusal thereof shows that the "appointment of Dr. K.C. Bishnoi as Associate Director (FAS) in the scale of Rs. 4500-7300 (pay to be fixed as per rules)" was "recommended for consideration of the Board." The Board considered the matter and approved the proposal. As a result, vide order dated September 4, 1992 Dr. K.C. Bishnoi who was working as Associate Director (Training) was appointed to the post of Associate Director (Farm Advisory Service). A copy of the order of appointment has been produced as Annexure P.4. Three days later, the University passed an order dated September 7, 1992 by which respondent No. 3 was appointed as Associate Director (Training). This post had not been advertised. On September 28, 1992, the petitioners approached this court through the present writ petition and questioned the action of the Vice Chancellor in appointing respondent No. 3 to the post of Associate Director (Training). Thereafter, the Vice Chancellor placed the matter before the Board for its approval in the meeting held on October 28, 1992. A copy of the agenda item has been produced as Annexure P.6 with the replication. Since it had been pointed out that the matter was pending before this court, the Board has not taken any decision in the matter. However, respondent No. 3 has continued to hold the post of Associate Director (Training) till today.

3. The petitioners challenge the appointment of respondent No. 3 on the ground that the post having not been advertised, various eligible persons including the petitioners have been deprived of the chance to compete and to be considered for appointment. They, consequently, pray that the appointment of respondent No. 3 be quashed and that the University be directed to fill up the post in accordance with law.

4. Written statement has been filed on behalf of respondents 1 and 2 as well as by respondent No. 3. There is no dispute on facts. However, it has been emphasized that the posts of Associate Director (Training) and Associate Director (Farm Advisory Service) carry identical duties. Qualifications are also the same. The posts are inter-changeable and thus, the appointment of the third respondent is legal and valid. It has also been pointed out that under the Statutes of the University, the recommendations of the Selection Committee are valid for a period of two months. The Vice Chancellor is empowered to extend the period by another six months. The action of the Vice Chancellor in ordering the appointment of respondent No. 3 was in conformity with the Statutes governing the University. In the present case, the appointment was made on the suggestion of Director of Extension Education in the interest of on-going training programmers in the Directorate.

5. The petitioners have filed a replication reiterating their claim as made out in the petition and controverting the reply filed on behalf of the respondents.

6. Counsel for the parties have been heard. Mr. Surya Kant, learned counsel for the petitioners has contended that the post of Associate Director (Training) having not

been advertised, the action of the Vice Chancellor in appointing respondent No. 3 was wholly illegal, arbitrary and violative of Article 16 of the Constitution. He has further referred to the agenda item prepared by the University for consideration of the Board of Management in which it has been observed that "Dr. K.S. Khokhar is short of only five months" experience in training/extension education" to contend that the appointment of the respondent was even otherwise illegal in as much as he was not qualified for the post.

7. The claim made on behalf of the petitioners has been controverted by the learned counsel for the respondents. While Mr. Agnihotri, appearing for the Respondent-University has contended that the action is in conformity with the Statutes/Mr. R.K. Malik has further submitted that respondent No. 3 having held the post for the last more than three years, he should be allowed to continue and no interference is called for at this stage. He has referred to the decision of a Division Bench of this Court in Dr. Krishan Singh Khokhar and Ors. v. Mr. P.P. Caprihan and Ors., LPA No. 238 of 1984 decided on July 13, 1993. Learned counsel has also referred to the decision of this court in Prem hand, Naib Tehsildar and Ors. v. The State of Haryana and Ors. 1989(2) S.L.R. 556 in support of his submission.

8. The short question that arises for consideration is - can the University make appointments in excess of the number of posts advertised by it ?

9. So far as the facts are concerned, there is no dispute. Admittedly, the University had issued advertisement No. 2/92. It had advertised the post of Associate Director (Farm Advisory Service). The advertisement does not even remotely refer to the post of Associate Director (Training). There is not even a hint that the University can fill up a similar or other post alongwith the one advertised by it. In accordance with the Statutes of the University, the selection committee had recommended two names. This was so on account of the fact that in case, the person who was placed at No. 1 in the merit list, did not join, the next in order of merit should be available. In pursuance to the recommendations of the Selection Committee, the matter was placed before the Board of Management. The specific recommendation made to the Board was for the consideration of the appointment of Dr. K.C. Bishnoi as Associate Director (FAS). While making this recommendation, it was not pointed out that on the appointment of Dr. Bishnoi to the post of Associate Director (FAS), the post held by him viz. that of Associate Director (Training) would fall vacant and that Dr. Khokhar who had been placed at No. 2 in the merit list could be considered. The Board met on August 28, 1992. It approved the proposal for the appointment of Dr. Bishnoi. On September 4, 1992, the appointment was made. Thereafter, the order dated September 7, 1992 was issued by which even respondent No. 3 was appointed as Associate Director (Training).

10. Admittedly, the post had not been advertised. The eligible candidates did not get a chance to compete. Even petitioner No. 2 who admittedly fulfills the qualifications for this post and could have applied for consideration, had not submitted his

application. His claim was never considered by anyone. Apparently, the grievance made on behalf of the petitioners especially petitioner No. 2 that the action was violative of Article 16 of the Constitution in as much as there was denial of equality of opportunity is well-founded.

11. The respondents contend that the selection committee is entitled to recommend an additional candidate. It is further submitted that under the Statutes of the University, the panel is valid for a period of six months. This is, however, subject to the basic condition contained in the note to the relevant Statute wherein it is specifically provided that "the selection committee should confine its recommendations only in respect of the post for which selection is held." The selection was held for the post of Associate Director (FAS). It was open to the selection committee to recommend an additional name in respect of this post. The other post viz. that of Associate Director (Training) having not been advertised, the selection committee could not have recommended an additional name for appointment to that post. The purpose of the Statutes primarily to ensure that if a particular post has been advertised and the selection held, the University should not be forced to go through the process of selection all over again in a case where the selected candidate does not accept the offer of appointment. In the present case, that situation did not arise, in as much as Dr. Bishnoi who had been placed at No. 1 in the merit list had actually joined the post. Still further, in a case, where another post in the same cadre and identical to the one advertised becomes available during the validity of the panel, it may be possible for the University to fill it up from the list of selected candidates prepared by the selection committee. For example, if two posts of Associate Professors are advertised and the selection committee places three candidates on the merit list, it would be possible for the University to fill up a vacancy which arises within a period of six months from the panel already prepared. This however, does not mean that if the second post is in a different cadre, the panel prepared for one post can be used for the post which becomes available at a subsequent stage.

12. Even otherwise, it deserves notice that a citizen is entitled to equality of opportunity with regard to every post which is filled up. If panels are kept pending for a long time and used as independent sources of recruitment, the interests of such candidates as may become eligible at a subsequent stage would be adversely affected. In order to ensure that such a result does not occur, the Statutes of the University permitting the appointment of candidates beyond the advertised posts have to be strictly construed. Liberal interpretation of such Statutes can cause prejudice to the interests of the candidates and adversely affect the system. Therefore, the provision that the selection committee can recommend additional names and that the panel can be valid for a period of six months has to be construed to ensure that there is minimum infringement of the guarantee enshrined in Article 16 of the Constitution. When so construed, it follows that the University having advertised the post of Associate Director (FAS), it could not have

used the panel for appointment to a post in another speciality.

13. It also deserves mention that on a perusal of the agenda item in the meeting of the Board of Management which was fixed for October 28, 1992 (Annexure P-6 with the replication filed by the petitioner), it appears that the qualifications for the two posts have been separately prescribed. Even the duties attached to the two posts have been enlisted separately. Broadly, it appears that the duties assigned to the post of Associate Director (FAS) are indicated from Sr. No. 1 to 9. In case of Associate Director (Training), the duties are delineated from Sr. No. 1 to 5. It is true that some of the qualifications and duties overlap. In the very nature of the things, such a situation is bound to occur. However, today when we have specializations and super specializations, even a minor difference is not without meaning and significant. The very fact that the qualifications and duties have been separately enlisted, it is reasonable to assume that the two posts are not the same and the nature of duties differ.

14. In view of the above, it is clear that the post of Associate Director (Training) was different from that of Associate Director (FAS) and the panel prepared by the selection committee for one post could not have been used for the other. Still further, it is also clear that the University had advertised one post of Associate Director (FAS). As a result of the selection, it could not have made appointment to another post in the separate field of Training.

15. As for the question regarding the competence of the University to fill up posts in excess of those advertised, it deserves mention that the matter has been settled authoritatively by the decisions of the Apex Court as well as this court. In [Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and Others](#), it has been categorically held that the waiting list "does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up...." Even nearer home, the matter has been considered by a Full Bench of this Court in [Bijender Singh etc. Vs. The State of Haryana etc.](#). It has been held that the Selection Board cannot make selection in excess of the number of posts for which requisition has been placed before it. It is further held that "a small percentage of candidates or as may be desired by the Government can be kept on the waiting list so that in the event of some candidates not joining the posts or being found unsuitable on verification of their antecedents or on physical examination, the next in order of merit may be made available." A similar view has also been taken in a number of other cases.

16. On a consideration of the matter, it appears to be settled in principle as well as on precedent that if the University advertises one post, it cannot fill up another in a different speciality from the list of selected candidates prepared by the selection committee. The question as posed above is, thus, answered in the negative.

17. This brings me to the consideration of the contention raised on behalf of the third respondent. Mr. Ram Kumar Malik has submitted that the appointment having been made on September 7, 1992 and the respondent having joined the post of Associate Director, he should not be dis-lodged after a period of more than three years. .

18. For the consideration of this submission, it is apt to notice a few facts. Firstly, it is clearly established on the record that the third respondent was appointed without the approval of the Board of Management. Secondly, the appointment was challenged without any avoidable delay by the petitioners. Thirdly, the appointment has not been approved by the Board till today. It also deserves mention that the present is not a case where the third respondent would be rendered jobless in case his appointment to the post in question is quashed. He was admittedly working at the Respondent-University. Consequently, it is prima facie clear that no irreparable or undeserved loss would be caused to the third respondent by the quashing of his appointment. It also deserves notice that when an appointment is made in violation of the constitutional guarantee contained in Articles 14 and 16 or the Statutes of the University, the mere lapse of time which is beyond the control of the aggrieved party should not be made a ground for allowing the illegality to be perpetuated. On account of the heavy pendency of cases, even urgent matters are sometimes not expeditiously disposed of. If the rights of a citizen are affected only on account of the delay in courts and a person wrongly appointed is allowed to continue, the basic purpose of Articles 14 and 16 would be frustrated. May be in rare cases where a person has been appointed in accordance with law and there is only a technical flaw that the court may refuse to set aside the appointment on account of lapse of time. However, in a case where the post is filled up without any advertisement or consideration of the claims of other eligible candidates, the courts are slow to decline the grant of relief to the aggrieved party. In the present case, it is the admitted position that petitioner No. 2 is eligible for appointment to the post of Associate Director (Training). It is also the admitted position, that his name was not considered- Petitioner No. 1 is even senior to the third respondent. In this situation, it would not be just and fair to uphold an illegal appointment merely on account of lapse of time.

19. This brings me to the consideration of the two decisions referred to by Mr. R.K. Malik. The first of these cases is that of Prem Chand, Naib Tehsildar v. The. State of Haryana 1989(2) S.L.R. 556. Even in this case, it was held by the Bench that the action of the Subordinate Service Selection Board and the State Government in making appointments in excess of the advertised posts had deprived the deserving candidates "of an opportunity to compete in selection for the posts of Naib Tehsildars which were filled in the years 1982, 1983 and 1984." Their Lordships were further pleased to observe that "we had thought of quashing the entire selection beyond the prescribed number of vacancies which were originally advertised but we restrain from doing so, as it will cause injustice to the selected candidates who have

passed the departmental tests and were appointed against regular vacancies and have been in service for the last four years. In some cases, they may have become overage for Government job." It was also found that the Government had spent enormous amount in training them. Consequently, the selections were not quashed. However, as already noticed, such is not the position in the present case. The third respondent would not be treated as overage for the post in question. Furthermore, he will not be jobless. He would merely revert to the post of Associate Professor held by him prior to September 7, 1992.

20. Even in Dr. Kliokhar's case (supra), which was incidentally filed by respondent No. 3, the factual position was that the selections had been challenged in the year 1983. The challenge was negatived by the learned Single Judge. The Letters Patent Appeal was filed in the year 1984. It came up for hearing in the year 1993. In this situation, the Bench had exercised discretion and refused to interfere. The factual position in the present case is clearly distinguishable.

21. No other point has been urged.

22. In view of the above, the writ petition is allowed. It is held that the appointment of respondent No. 3 to the post of Associate Director (Training) vide order dated September 7, 1992, a copy of which has been produced as Annexure P-5 with the writ petition is violative of Articles 14 and 16 of the Constitution. It is, accordingly, set aside. Respondent No. 3 is directed to vacate the post forthwith. In case, the University decides to fill up this post, it would proceed to advertise it and fill it up in accordance with law. In the circumstances of this case, there will be no order as to costs.