
Manjit Singh Mann, Naib Tehsildar and Others Vs State of Haryana and Others

Civil Writ Petition No. 956 of 1980

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 27, 1992

Acts Referred:

Punjab Tahsildari Rules, 1932 " Rule 5(2)

Citation: (1993) 103 PLR 494

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: P.S. Patwalia, for the Appellant; Balram Gupta, for the Respondent Nos. 4 to 12 and Ritu Bahri, A.A.G. for the Respondent Nos. 1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

G.R. Majithia, J.

The petitioners, who are working as Naib-Tehsildars in the State of Haryana, have challenged the promotion of

respondent Nos. 4 to 12 as Tehsildars in this Civil Writ Petition under Articles 226 and 227 of the Constitution of India.

2. The facts :--

The petitioners were appointed as Naib-Tehsildars under training by order, dated November 17, 1976. The petitioner No. 1 to 4 were allocated

to Ambala Division, whereas petitioner Nos. 5 and 6 were assigned Hissar Division. The petitioners joined as Naib-Tehsildars under training on

November 18/19th, 1976. After completion of one years" training, they were posted as Naib-Tehsildars on regular basis. Respondent Nos. 4 to

12 were enlisted as "B" Class Naib-Tehsildar candidates as they were appointed such candidates by transfer/promotion. In the year, 1978,

seniority list of Naib-Tehsildars of Ambala Division was circulated. Petitioners were shown senior to respondent Nos. 4 to 7 in the joint seniority

list. In the year, 1979, seniority list of Naib Tehsildars of Hissar Division was circulated and petitioner Nos. 5 and 6 were shown senior to

respondent Nos. 8 to 12. The promotion from the post of Naib-Tehsildar to the post of Tehsildar is governed by the Punjab Tehsildari Rules,

1932 and also the Standing Orders issued by the Financial Commissioner, from time to time under the Rules. The petitioners are senior to

respondent Nos. 4 to 12, but the latter have been promoted as Tthsildars in preference to the formers, The challenge to the promotion has been

made under these circumstances.

3. Written statement has been filed on behalf of respondent Nos. 1 to 3 by Shri V. P. Dhir, Joint Secretary to Government, Haryana, Revenue

Department, Chandigarh. It is not disputed that the promotion from Naib Tehsildar to the post of Tehsildar is governed under the Rules, but it is

pleaded that as required in para (i) of Appendix-III of Part IV of the Regulations and Instructions governing the work of the Haryana Public

Service Commission a standard of minimum qualification and experience is laid down in respect of each kind of higher post in consultation with the

Public Service Commission. In the case of promotion to the post of Tehsildar, a three years" minimum service on the post of Naib Tehsildar was

prescribed in consultation with the Commission. Rule 5(2) of the Rules provides for promotion of only those Naib Tehsildars as Tehsildars who

have become eligible for promotion by passing the departmental examination. The condition that a Naib Tehsildar must have worked for a period

of three years on the post before being considered for promotion as Tehsildar was prescribed in consultation with the Commission. The petitioners

did not fulfil the required condition of minimum experience and passing of departmental examination. Petitioner No 4 passed the departmental

examination in October 1978, but he did not fulfil the condition of minimum service of three years as Naib Tehsildar when respondent Nos. 4, 5, 6,

8 and 12 were promoted. Thereafter, though they had passed the Tehsildari Departmental Examination, yet they did not fulfil the condition of three

years service as Neib Tehsildar and thus, had not become eligible for consideration for promotion to the post of Tehsildars.

4. The learned counsel for the petitioners submitted that by executive instructions the statutory rules cannot be amended or modified. The

submission is devoid of any merit. The Rule has not been amended Rule does not debar the prescription of minimum qualification for promotion as

Tehsildar. There is no bar under the Rules that preference cannot be given by the State Government for selection of persons having qualification

higher than those prescribed by the Rules. The State Government can prescribe that selection will be made from amongst those candidates who

have higher qualification than the minimum prescribed for eligibility The Governor of Punjab in consultation with the Punjab Public Service

Commission laid down the minimum three years continuous experience as full fledged and regular Naib Tehsildar after completing training, if any,

and passing of departmental examination of Naib Tehsildar for appointment/promotion as Tehsildar candidate/Tehsildar, vide memo No. 7635-8

(I).SI/9882, dated 18th December, 1961 and this condition has continuously been followed. This qualification was prescribed so that efficient

Naib Tehsildar with experience should be appointed as Tehsildar. The prescription of qualification by the Governor of Punjab in consultation with

the Punjab Public Service Commission is regular and no fault can be found with it. The petitioners are senior to the private respondents as Naib

Tehsildar, but did not fulfil the eligibility criterion when the selection was to be made. The private respondents fulfilled the eligibility condition and

were promoted in accordance with the rules Reliance can suitably be placed on Sant Lal v. The State of Haryana 1978 (1) S. L. R. 133. wherein

it was observed thus :--

To our mind, the touchstone for determining an issue of the present kind is again inevitably to examine the real intent of the legislature in

prescribing qualifications for a class of posts. Where this is obviously a prescription of minimum qualifications or the barest requirement for

eligibility, then plainly there can be no bar for the respondent State to seek persons with higher qualifications than the lowest level laid down by the

rule makers. Ordinarily, the rationale underlying the prescription of qualifications in most statutes or rules is to prevent poor or unqualified persons

to be appointed to a post in the public service which requires the performance of responsible duties. It could hardly be the intent of the legislature

to either debar persons of higher qualifications or to deny them the preference which they by their industry or merit signified by superior

qualifications may entail. Nor can one read into the prescription of minimum qualification requirement that every person having such qualification

must be considered against that post despite the fact that others superior in merit to him are available and (sic) for the same. Of course, we are not

saying that the maximum qualifications cannot be fixed by statute because the legislature may well have plenary powers to do so. All that is being

indicated is that unless expressly otherwise provided the prescription of qualifications is ordinarily the minima for eligibility to the particular post and

not the maxima therefor.

5. In the right of this, I find no merit in the writ petition and is dismissed.