

(2011) 08 P&H CK 0237

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 10910 of 2010

Dr. Surat Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Aug. 3, 2011

Acts Referred:

- Haryana Institute of Rural Development Rules, 1991 - Rule 10(2), 16

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Nirmaljit Kaur, J.

The Petitioner herein has challenged the directions dated 31.05.2010 (P3), issued by the Government and has further prayed for quashing of the decision dated 18.06.2005 (P5) of the Executive Committee, creating the post of the Director General in Haryana Institute of Rural Development as well as the order dated 31.08.2010 (P6), vide which, sanction was granted for creating of the post of Director General, HIRD.

2. While praying for quashing of the above directions/orders, the learned senior counsel appearing for the Petitioner has raised three fold arguments:

Firstly, the impugned directions were without jurisdiction. Government had power only to issue directions on the question of policy. The direction to create a post of the Director General, HIRD, is not a policy matter.

Secondly, the said issue is squarely covered by the ratio of the judgment rendered by the Apex Court in the case of Rakesh Ranjan Verma and others Vs. State of Bihar and others.

3. Thirdly, the impugned directions were contrary to the existing rules i.e. Haryana Institute of Rural Development Rules, 1991 framed by the Governing Body. Under

Rule XIV of the existing Rules, all the powers and functions which have been proposed in the impugned directions (P3) are performed by the Director of the Institute. By the impugned directions, these functions are ordered to be given to the Director General without amending the existing rules.

5. Learned Counsel for the Respondents, however, while vehemently opposing the petition, submitted that the Government had only placed the proposal for creation of the post of Director General before the Executive Committee for its consideration in exercising their powers conferred upon them under Rule XVI of the Rules, 1991. The appointment was by the Executive Committee as per rules and powers conferred upon it under the Rules 1991. Further, under Rule X (ii) (b) of Rules 1991, the Executive Committee is competent to create such posts, appoint and control such staff other than those for whose appointment specific provisions have been made in the memorandum of Association and Rules 1991 of HIRD for the efficient management of the affairs of the institutions and to regulate the recruitment and conditions of their service. Since the Rules, 1991 already provided the provision for creation of the post and subscribe their conditions of service, No. amendment in the Rules was required for creation of the post of Director General, HIRD and for laying down its qualifications and functions.

6. Heard.

7. Rule XVI of the Rules, 1991, is reproduced below:

XVI Powers of the Government In the discharge of its functions, the Governing Body and the Executive Committee shall be guided by such directions on questions of policy as may be given to it by the Government of Haryana. Such directions shall be in writing.

8. It is evident from the above that the Government has the powers to issue directions on the questions of policy only. The directions qua creation of a specific post under No. circumstance cannot be considered a policy matter. The said issue was dealt with by the Hon"ble Supreme Court in the case of Rakesh Ranjan Verma (supra). The provisions of the above rule are similar to that of Rule 78A of the Electricity (Supply) Act (54 of 1948).

9. Section 78A of the Electricity Act reads as under:

Directions by the State Government-(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

10. Hon"ble the Supreme Court, while considering the said provisions, held as under:

11. ...Thus, we agree with the view taken by the High Court in this regard that the direction given by the State Government to appoint the Appellants as Junior

Engineers by the Board does not involve any matter of policy and it would be an encroachment on the powers of the Board given u/s 15 of the Act.

In view of the above, there is No. dispute that the directions to appoint or to create a post, cannot be considered as a policy matter. The Government had No. jurisdiction to issue such directions.

The argument of the learned Counsel for the Respondents that it was only a proposal which was placed before the Executive Committee for its consideration and therefore, was not a direction, has No. merit in view of the language used in the said letter (P3). The same reads as under:

The State Government in the exercise of powers conferred upon by Rule XVI of the Haryana Institute of Rule Development Rules, 1991, directs that a proposal for the creation of a post of Director General, Haryana Institute of Rural Development in the pay scale of Rs. 37,400-6700+Rs. 10000/-be placed before the Executive Committee of the HIRD for its consideration.

The Director General shall also be the member of the Institute and of the Executive Committee of the Haryana Institute of Rural Development. He shall also be entrusted with the following powers and functions.

11. A perusal of the above, including the words "directs" and "shall" left little choice with the Executive Committee but to accept the proposal.

12. In fact, the directions were not only for creation of the post of Director General, HIRD but even powers and functions to be entrusted to the Director General, HIRD, were specified and laid down.

13. The argument of the learned Counsel for the Respondents that it was not the Government but the Executive Committee while exercising its powers under Rule X (ii) (b) of Rules 1991, who created the post of Director General, HIRD and laid down its conditions of service, thus, both the actions i.e. creation of post of Director General, HIRD and the laying down its qualifications and pay scale were within the powers and well within the jurisdiction of the Executive Committee may have had some merit, in case, the Executive committee had taken a conscious and independent decision after applying it mind and considering the requirements of such a post. In fact, it is evident from the above discussion that the decision of the Executive Committee taken on 18.06.2005 (P5) was on account of a direction by the Government leaving No. scope for the Executive committee to refuse the proposal. This is further evident from the fact that the Executive Committee had reluctantly agreed to create the post of Director General, HIRD subject to the condition that Rajiv Gandhi State Institute of Panchayati Raj and Community Development, Nilokheri, is also brought under the supervision and purview of proposed Director General. The minutes of the meeting of the Executive Committee read as under:

In the absence of Member Secretary, the matter regarding creation of a post of Director General in HIRD was considered by the Committee. During the discussion, the members felt that the posts of Director General would be more meaningful and useful if the Rajiv Gandhi State Institute of Panchayati Raj and Community Development located at Nilokheri (adjacent to HIRD) is also brought under the supervision and purview of proposed Director General of HIRD. This would facilitate better synergy, supervision and coordination between both the Institutes.

14. The decision of the Executive Committee to appoint the Director General was subject to the above condition. However, contrary to the said decision of the Executive Committee, the Government vide P6 dated 31.08.2010 accorded sanction of the post of Director General for Haryana Institute of Rural Development only as under:

The Governor of Haryana is pleased to accord sanction for the creation of a post of Director General in Haryana Institute of Rural Development, Nilokheri in the pay scale of Rs. 37400-6700 plus Rs. 10000/-Grade pay subject to the condition that the appointment to the post will be restricted to two tenures of two years each or the age of 65 years, whichever is earlier.

This issues with the concurrence of Finance Department conveyed vide their U.O. No. 55/5/2010-2FD-I/2105 dated 23.08.2010.

15. It is evident from the above that the creation of the post, function as well as the qualifications was on the directions and as per the tailored desire of the Government and not an independent decision of the Executive Committee. In case, the same was an independent decision of the Executive committee, the Government would have accepted the same in toto. The decision of the Executive Committee beyond the direction of the Government was not accepted by the Government. Annexures P3, P6 deserve to be quashed on the ground too.

16. In view of the above discussion, there is no doubt that the Government had no power to issue directions to the Executive Committee under Rule XVI of Rules, 1991 except on policy matter. Creation of post is not a policy matter. The decision of the Executive Committee (P5) is an outcome of the directions issued by the Government under the garb of so called proposal and therefore, cannot be sustained.

17. The argument of the learned Counsel for the Petitioner that the qualifications prescribed for the post of Director General, HIRD are much less than that of the qualifications prescribed for the post of Director as well as the argument that the powers and functions for the post of the Director General laid down in P3 are overlapping the functions and powers of the Director, need not be gone into at the stage as the petition is being allowed on the first two grounds itself as raised by the learned counsel for the Petitioner.

18. Consequently, the present petition is allowed and the directions dated 31.05.2010 (P3) issued by the Government and the decision dated 18.06.2010 (P5) of the Executive Committee and order dated 31.08.2010 (P6) are quashed.