

(2014) 07 P&H CK 0635

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 9279 of 2012

Nathu Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 25, 2014

Acts Referred:

- Constitution of India, 1950 - Article 12, 14

Citation: (2014) 176 PLR 788

Hon'ble Judges: Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench: Division Bench

Advocate: Pritam Saini, Advocate for the Appellant; Ajay Kumar Kansal, Advocate for the Respondent

Judgement

Satish Kumar Mittal, J.

The petitioner, who is working as Class IV employee in HAFED, has filed the instant writ petition for quashing of the order dated 5.8.2011 (Annexure P-5) passed by the Estate Officer, HUDA, Kaithal (respondent No. 3 herein), whereby after providing an opportunity of hearing to the petitioner he was found ineligible for allotment of the plot in Government Servants Reserve Quota (GSRQ) category for which he had applied, and ordered the refund of earnest money to him; as well as the order dated 8.2.2012 (Annexure P-7), whereby the appeal/representation filed by the petitioner against the aforesaid order has been dismissed by the Administrator, HUDA, Panchkula (respondent No. 2 herein). In the present case, the HUDA invited applications for allotment of residential plots of various categories in Sector 21, Kaithal. In the said advertisement/brochure, some plots of different categories were reserved for GSRQ category. Though the petitioner is not a Government Servant, as he has been working as Class IV employee in HAFED, but he applied for allotment of 8 Maria plot under GSRQ category. His name was included in the draw of lots held on 5.4.2011 subject to the condition of his eligibility. In the said draw, he was declared successful and a plot measuring 8 Maria bearing No. 642-P, Sector 21,

Kaithal was allotted to him subject to the condition of his eligibility. Consequently, the Estate Officer, HUDA, Kaithal vide its letter dated 29.4.2011 informed the petitioner to complete the eligibility condition for allotment of the plot to him out of GSRQ category and asked him to furnish certain documents with regard to proof of his Government Servant. On scrutiny of the documents submitted by the petitioner, it was found that he was working as Class IV employee in HAFED and was not a Government employee, therefore, he was asked to explain his position regarding eligibility and was also afforded an opportunity of hearing on 29.6.2011. After hearing him, the petitioner was found ineligible for allotment of the plot under GSRQ Category being an employee of the HAFED as the employees of Cooperative Federation were not eligible to apply under the said category. Consequently, the claim of the petitioner for allotment of the said plot was rejected by the Estate Officer, HUDA, Kaithal on 5.8.2011 by passing a speaking order.

2. Feeling aggrieved against the said order, the petitioner filed an appeal under the HUDA Act, 1977, which was not maintainable. However, the appeal of the petitioner was considered as a representation and the same was also rejected by the Administrator, HUDA, Panchkula vide order dated 8.2.2012.

3. The petitioner has challenged the aforesaid two orders in the present writ petition.

4. We have heard the learned counsel for the parties and gone through the impugned orders.

5. In the written statement filed on behalf of respondents No. 2 and 3, it has been stated that in view of Clause 12(v) of the advertisement/brochure, the petitioner was not eligible to apply for allotment of a plot under GSRQ Category. It has been submitted that the employees of the Cooperative Federations are not eligible to apply for plot under GSRQ Category. Since the petitioner has been working as Class IV employee in HAFED, he was not eligible for allotment of plot under the said category. It has also been stated that the petitioner is not a Government Servant. The employees of the HAFED do not draw any pension from the Government. Their service conditions are not governed by the Civil Services Rules, as applicable to State Government's employees. Rather their service conditions are governed by the Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rules, 1988 (hereinafter referred to as "Common Cadre Rules of 1988"). It has been stated that initially the application of the petitioner was provisionally included in the draw of lots subject to fulfilling of his eligibility condition, but later on, on verification it was found that he is not a Government Servant and thus was not eligible to apply for allotment of plot under GSRQ Category. Accordingly, his claim was rightly rejected by the authorities.

6. After hearing the learned counsel for both the parties, we do not find any merit in the present writ petition.

7. Clause 12(v) of the advertisement/brochure, which provides for eligibility to apply for allotment of a plot under GSRQ Category, reads as under:--

"Only Haryana Govt. employees, employees of its Boards, Corporations, employees of Municipal Corporation/Committees, Improvement Trust and Cooperative Banks under the auspices of Haryana Government are eligible to apply. However, the employees of Autonomous Bodies like University, employees of DRDA and employees of Cooperative Federations except Haryana State Cooperative Banks are not eligible to apply."

8. Under the aforesaid Clause, the employees of autonomous bodies like University, employees of DRDA and employees of Cooperative Federations except Haryana State Cooperative Banks were not eligible to apply. Undisputedly, the petitioner was working as Class IV employee in HAFED which is a Cooperative Federation. Therefore, as per the aforesaid Clause, the petitioner was not eligible to apply for allotment of a plot under GSRQ Category.

9. During the course of hearing, it has not been disputed that the petitioner is not a Government Servant. His service conditions are being governed by the Common Cadre Rules of 1988. The employees of the Cooperative Federation do not draw any pension from the Government. However, during the course of arguments, learned counsel for the petitioner, while referring to the decision of the Hon'ble Supreme Court in M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others, argued that the HAFED is an instrumentality of the State within the meaning of Article 12 of the Constitution, therefore, its employees should be treated as Government Servants. This contention of the learned counsel is not acceptable. Though the HAFED may be an instrumentality of the State but all the employees of the instrumentality of the State within the meaning of Article 12 cannot be termed to be Government Servants. In the advertisement/brochure, reservation for GSRQ Category has been made for Government employees of the Statutory Boards, Corporations, Municipal Corporation/Committees, Improvement Trust and Cooperative Banks under the auspices of Haryana Government. In Clause 12(v) of the advertisement/brochure itself, it has been specifically laid down that the employees of Cooperative Federation are not eligible to apply for allotment of plot in the GSRQ Category. The petitioner being an employee of the HAFED has been specifically made ineligible to apply for allotment of plot under the said category. In our view, both the authorities have rightly rejected the claim of the petitioner on the aforesaid count. Though in the writ petition the petitioner did not challenge the constitutional vires of the aforesaid Clause which excludes the employees of the Cooperative Federation from applying for allotment of plot under GSRQ Category, but during the course of arguments, learned counsel argued that the said exclusion is discriminatory and violative of Article 14 of the Constitution of India. We do not find any substance in the aforesaid submission also. Primarily in the aforesaid Clause, some reservation has been made for the State Government employees or

the employees of its Statutory Boards or Corporations. The employees of the Cooperative Banks have also been made eligible, but the employees of the autonomous bodies like University, employees of DRDA and employees of Cooperative Federations have been excluded from applying for allotment of plot in the GSRQ Category. Undisputedly, the employees of the Cooperative Federation are not the Government Servants and they cannot be treated as equivalent to Government Servants. Therefore, the State Government in its wisdom has rightly classified the said category as a different category and excluded the employees of that category from applying for allotment of plot under the said category. In our view, the said categorization of the employees of Cooperative Federation or the employees of the Boards and Corporations for the purpose of allotment of plot to the Government Servants cannot be said to be illegal, discriminatory or violative of Article 14 of the Constitution of India.

In view of the aforesaid, we do not find any merit in the petition and the same is hereby dismissed.