

AIR 2002 SC 964 : (2002) AIRSCW 666 : (2002) 6 ALT 29 : (2002) 93 FLR 322 : (2002) 2 JCR 77 : (2002) 2 JT 94 : (2002) LabIC 790 : (2002) 2 SCALE 146 : (2002) 3 SCC 182 : (2002) 1 SCR 952 : (2002) 2 SCT 110 : (2002) 2 SLJ 280 : (2002) 1 Supreme 637

Supreme Court of India

Case No: C.A. No.-003928-003928 / 1998

Ran Singh Malik

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Feb. 13, 2002

Acts Referred:

Constitution of India, 1950 – Article 136, 309#Haryana Veterinary (Group A) Service Rules, 1995 – Rule 3

Citation: AIR 2002 SC 964 : (2002) AIRSCW 666 : (2002) 6 ALT 29 : (2002) 93 FLR 322 : (2002) 2 JCR 77 : (2002) 2 JT 94 : (2002) LabIC 790 : (2002) 2 SCALE 146 : (2002) 3 SCC 182 : (2002) 1 SCR 952 : (2002) 2 SCT 110 : (2002) 2 SLJ 280 : (2002) 1 Supreme 637

Hon'ble Judges: R. P. Sethi, J; G. B. Pattanaik, J

Bench: Division Bench

Advocate: R.S. Hegde, Somiran Sharma, for P.P. Singh, for the Appellant; Aditya Kr. Choudhary, for J.P. Dhanda, Neeraj Kumar Jain, Ajay Siwach and Rao Ranjit, for the Respondent

Final Decision: Disposed Of

Judgement

Pattanaik, J.

Leave granted in SLP[C] No. 5117 of 1999.

2. This appeal is directed against the judgment of the learned Single judge of High Court of Punjab and Haryana in Civil Petition No. 7893 of 1993

which stood affirmed by the Division Bench in Letters Patent Appeal No. 739 of 1995 in dismissing the LPA in limini. The question for

consideration is whether the appellant can be said to have been appointed to a post in Haryana Veterinary Service Class I, when he was appointed

as Deputy Director (Feed and Fodder), on being selected by the Haryana Public Service Commission by order dated 27th April, 1987. The

appellants case in brief before the High Court was that on 15.7.83 he was appointed as Deputy Director (Fee and Fodder) on ad hoc basis in his

own pay scale. While he was so continuing an advertisement was issued on 18.8.1986 for recruitment to a temporary post of Deputy Director

(Feed and Fodder) in Haryana Veterinary Service Class I in Animal Husbandry Department and the appellant applied for the said post. Ultimately

he was elected by the Public Service Commission and the recommendation of the Public Service Commission having been accepted by the

Government he was appointed by direct recruitment to the post of Deputy Director (Feed and Fodder) in Haryana Veterinary Service Class I in

the scale of pay of Rs. 1200-50-1500-60-1860 by order dated 27th April, 1987. The appointment letter unequivocally indicated that he will be

governed by Haryana Veterinary Service Class I Rules 1930 and will be on probation for a period of 2 years. On 2.6.1987 the scale of pay of

post in Class I Haryana Veterinary Service was revised to Rs. 1400 to 2100 with effect from 1.2.1981 but that revised scale was not given to the

appellant for which he had made representation. On 16.5.1988 there had been a further revision of the pay scale in the scale of Rs. 3000 to 4500,

but instead of granting the revised pay scale the appellant was given the pay scale of Rs. 1400 to 2100. The appellant made yet another

representation but his grievances not having been redressed he filed the Writ Petition which was registered as Civil Writ Petition No. 2728 of

1989. Respondents Nos. 2 and 3 were appointed on different posts of Class I Haryana Veterinary Service under different schemes on 6.2.1989.

When the tentative seniority list was published in the year 1992 of the officers in Class I appellants name was not shown whereas names of

respondents Nos. 2 and 3 had been shown even though they were junior to the appellant. Appellant again submitted a representation for inclusion

of his name in the gradation list and ascribing him his position in the gradation list. The appellant was given a personal hearing but no order having

been passed he filed a Writ Petition No. 7893 of 1993, which stood dismissed by judgment dated 31.8.1995, which is the subject matter of

challenge. As already stated, the appellant moved the Division Bench in Letters Patent Appeal but the Division Bench dismissed the same in limini.

3. Before the learned Single Judge the State of Haryana took the stand that the post of Deputy Director (Feed and Fodder) is a non-veterinary ex-

cadre post in the Animal Husbandry department, and the appellant, who is a graduate in Agricultural Science cannot claim parity with graduates

holding Class I post in Haryana Veterinary Service. It was further stated that the post of Deputy Director (Feed and Fodder) carried a pay scale

lower than that of other posts in the Class I Haryana Veterinary Service and even the appointment letter of the appellant stated so unequivocally

and, therefore, the appellant cannot claim the same scale of pay as that of other posts in the Class I Haryana Veterinary Service. So far as the

seniority is concerned, it was stated that the post of Feed and Fodder being an ex-cadre post the appellant was not shown in the gradation list and

so also cannot claim seniority over respondent Nos. 2 and 3 who from the date of their appointment in February 1989 had been getting a higher

scale of pay. While the Writ Petition was pending before the High Court the Government of Haryana in exercise of powers conferred under

Proviso to Article 309 of the Constitution of India made Rules regulating the recruitment and conditions of service of persons appointed to the

Haryana Veterinary (Group A) Service called, The Haryana Veterinary Service Group A Rules, 1995. Rule 3 thereof indicates that the service

would comprise of the post shown in Appendix A to the Rules. Appendix A did not include the post of Deputy Director (Feed and Fodder) and

on the other hand, the said post of Deputy Director (Feed and Fodder) was shown to be a post in non-veterinary cadre carrying a pay scale of Rs.

2200 to 4000. The impact of the aforesaid Rule on the point that arises for consideration will be considered at the appropriate stage.

4. The learned Single Judge in the impugned judgment came to the conclusion that the post of Deputy Director (Feed and Fodder) was an ex-

cadre isolated post, and therefore, has to be treated as an ex-cadre post. In the absence of the relevant document dealing with the creation of the

post, the aforesaid conclusion was based upon the letter that had been written by the Director, Animal Husbandry to the Secretary to the

Government on 11.6.1985. The learned Judge also took into consideration the fact that the appellant himself was given a lower scale of pay in the

letter of appointment and all along he has been given a lower scale of pay than the pay scale attached to the regular post in the Haryana Veterinary

Service and since the post in question was not a cadre post in the Haryana Veterinary Service Class I the incumbent cannot claim the higher scale

of pay meant for the cadre post. On the question of inter se seniority between the appellant and respondent Nos. 2 and 3 the learned Single judge

came to the conclusion that since respondent Nos. 2 and 3 were recruited to a cadre post in the Class I service in the higher scale of pay, they

would be held to be senior to the appellant. The Writ Petition, thus having been dismissed and the Division Bench not having entertained the

Letters Patent Appeal against the same the present appeal has been preferred on grant of Special Leave.

5. It is strenuously contended before us in this appeal by the learned counsel appearing for the appellant, that the advertisement that was issued by

the Haryana Public Service Commission unequivocally indicated that the post of Deputy Director (Feed and Fodder) is a post in Haryana

Veterinary Service Class I in Animal Husbandry Department, the said advertisement never indicated the scale of pay of the post in question. It is

no doubt true, that in the appointment letter that was issued in favour of the appellant a lower pay scale had been indicated but the pay scale in the

Haryana Veterinary Service Class I having been revised to Rs. 1400 to 2100 with effect from 1st February, 1981, the appellant would be entitled

to get that scale from the date of his appointment in April 1987. It was further contended that the further revision that was carried out on

16.5.1988 should have also been given to the appellant and there is no rhyme or reason to deny the same and the High Court was in error in not

granting appropriate relief to the appellant. The learned counsel further urged that the government having failed to produce the relevant file and/or

document indicating that the post of Feed and Fodder is an ex-cadre post and had been created with a lesser scale of pay the High Court

committed error in relying upon the correspondence between the Director and the Secretary to the Government and such conclusion cannot be

sustained in law. Lastly it was contended that once the appellant is held to have been recruited to a post in Haryana Veterinary Service Class I and

is entitled to the scale of pay attached to that post, his name was required to be indicated in the gradation list of the officers in Class I service and

on the basis of continuous length of service in Class I, he would be held senior to respondent Nos. 2 and 3 who joined the service only on 6th

February, 1989, whereas the appellant has been in the service after being duly selected by the Public Service Commission since 27th April, 1987.

6. The learned counsel appearing for the State vehemently resisted the aforesaid contentions and urged that the creation of a post as well the

constitution of the post in a cadre are all policy decisions of the Government and the Government would be free to take its own decision depending

upon several factors. There is no fetter on the power of the State Government to create ex-cadre post to be filled up by personnel with expertise

for the very post in question and the post of Feed and Fodder is one such post. The counsel urged that once it is held to be an ex-cadre, and was

created in the lower scale of pay, and appellant on being selected, duly accepted the offer in that lower scale of pay that was conveyed to him

cannot make grievance either with regard to the pay scale or with regard to the seniority which is dependent upon the question as to whether the

post itself was a cadre post or an ex-cadre post. According to the learned counsel for the State on the materials on record the High Court rightly

came to the conclusion that the post was an ex- cadre post, and therefore, the decision of the High Court cannot be interfered with.

7. In view of the rival submissions two questions really arise for our consideration:-

1. Can it be said that the post of Feed and Fodder was an ex-cadre post carrying lower scale of pay than the regular post in the Haryana

Veterinary Service Class I?

2. If the answer is in affirmative then can the appellant claim either higher scale of pay or seniority in the cadre on the ground that the advertisement

issued by the Public Service Commission did not indicate the scale of pay attached to the post and merely stated that the post is one borne in the

Haryana Veterinary Service Class I?

8. So far as the first question is concerned, the expression cadre" has not been defined in the Statutory Rules for Recruitment, which was in force

the date on which the advertisement had been issued on 18.8.86 or the date on which the letter of appointment was issued to the appellant, the

Governor having accepted the recommendation of the Haryana Public Service Commission. The relevant Rule at that point of time was the Rule of

1930 which was in force under a Notification of the Punjab Government and that Rule continued to be in force until the State of Haryana framed

the Rule in the year 1995. Under 1930 Rules the Veterinary Services were divided into two classes, namely, Punjab Veterinary Service Class I

and Punjab Veterinary Service Class II. So far as the class I services are concerned, the same could be filled up either by promotion of selected

officers from Class II or by direct appointment or by transfer from other services in England by direct appointment through the High Commissioner

for India. The said Rule had been promulgated during the British regime and continued to be in force even after independence. The aforesaid Rule

nowhere defined the cadre or indicated as to which post would be borne in the cadre. In the absence of such definition of cadre in the Rule, the

normal connotation would apply, and therefore, a cadre would ordinarily mean the strength of a service or apart of the service so determined by

the Government constituting the post therein. Usually if the employer decides to create any ex-cadre post which may be necessary for any

specialised scheme in keeping with the qualification of the personnel required to man that post, it is so indicated in the order of creation of the post.

But unfortunately in the case in hand the relevant document creating the post of Feed and Fodder is not forthcoming. All the same the

contemporaneous document which is a letter from the Director to the Secretary to the Government can also be looked into for the purpose of

coming to the conclusion whether the post of Feed and Fodder is in the regular Cadre in Haryana Veterinary Service Class I or is an ex-cadre

post. The High Court relied upon the aforesaid letter and came to the conclusion that it was an ex-cadre post. Apart from the aforesaid letter the

fact that the appointment letter issued in favour of the appellant indicated a lower scale of pay is an internal evidence to suggest that the post was

not created in the cadre but was an ex-cadre post and the appellant did accept the said offer and joined the post.

9. In the aforesaid premises, we do not see any infirmity with the ultimate conclusion of the learned Single Judge of the High Court in holding that

the post of Feed and Fodder was an ex-cadre post and we affirm the said conclusion. Our aforesaid conclusion is reinforced by the Statutory Rule

which has come into existence since 1995, inasmuch as under the aforesaid Haryana Veterinary (Group A) Service Rules, 1995, the post borne in

the regular Veterinary Cadre Class I have been indicated in Appendix A and the post of Feed and Fodder has not been included therein. That

part, even in non-veterinary cadre the posts of Deputy Director (feed and Fodder) has been indicated but in a lower scale of pay than other post

borne in the regular Class I post. The validity of the aforesaid Rule has not been assailed before us. The very inclusion of the post of Deputy

Director (feed and Fodder) which the appellant was holding on the basis of his selection, pursuant to the advertisement issued in the non-veterinary

and in a lesser scale of pay under the Statutory Rules re- affirms our earlier conclusion that the post of Deputy Director (Feed and Fodder) was an

ex-cadre post. Even otherwise with effect from the coming into force of the Statutory Rules of 1995 the said post of Deputy Director (Feed and

Fodder) has unequivocally been shown to be a post in the non-veterinary cadre and at a lesser scale of pay.

10. In the aforesaid premises, we are persuaded to agree with the conclusion of the High Court that notwithstanding the advertisement issued by

the Haryana Public Service Commission indicating that the post of Deputy Director (Feed and Fodder) in Haryana Class I Veterinary Service, the

appellant would not be entitled to the pay scale attached to a regular post in Haryana Veterinary Service Class I, as the post that was advertised

was an ex-cadre post and had been created with a lesser scale of pay. So far as the question of seniority inter se is concerned, respondents Nos. 2

and 3 though appointed later but had been appointed to the post carrying higher scale of pay in Haryana Veterinary Class I and, therefore, they

would be treated to be senior to the appellant. That apart, under the Statutory Rule of the year 1995, the veterinary and non-veterinary services

having been bifurcated, the question of inter se seniority of respondents Nos. 2 and 3, who are in the veterinary service and the appellant who is in

the non-veterinary service would not arise. We, therefore, do not see any infirmity with the impugned judgment of the High Court requiring our

interference under Article 136 of the Constitution. These appeals fail and are dismissed.