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State of Orissa Vs. State (Trysem) Live Stock Inspector Sangha .

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Court : Supreme Court of India

Decided On : Aug-14-2018

Judge : Hon'Ble Mr. Justice Kurian Joseph, Hon'Ble Mr. Justice Sanjay Kishan Kaul

Appeal No. : 36700 / 2016

Appellant : State of Orissa

Respondent : State (Trysem) Live Stock Inspector Sangha .

Advocate for Pet/Ap. : Sharmila Upadhyay

Judgement :

1 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO(S). 8253 OF2018[ARISING OUT OF S.L.P. (CIVIL) No.34621 OF2016 STATE OF ORISSA AND OTHERS APPELLANTS (S) VERSUS STATE (TRYSEM) LIVE STOCK INSPECTOR SANGHA AND OTHERS RESPONDENT (S)

JUDGMENT

KURIAN, J.

1. Leave granted.

2. In direct recruitment to a post, whether qualification is to be seen, with reference to the date of occurrence of vacancy or at the time of recruitment, is the question arising for consideration in this case. The Orissa Non-Gazetted Veterinary Technical Service

3. (Recruitment and Conditions of Service) Rules, notified on 4th January, 1984 (referred to in the impugned Judgment as 1983 Rules), provides for recruitment to two cadres - Veterinary Technician and Livestock Inspector. 90 per cent of the posts of Livestock Inspector is to be filled-up by direct recruitment and the remaining 10 per cent by promotion of Class IV field employees who are matriculates and have field experience for two years in the treatment of animals. Veterinary Technician post is filled-up by promotion from the cadre of Livestock Inspectors. Rules 5 and 6 of the 1984 Rules provide for the method of recruitment and selection procedure. The Rules read as follows: Direct recruitment to the cadre of Livestock Inspector:-

5. Direct appointment to the posts in the cadre of Livestock Inspectors shall be made by Director in order of merit out of the list of candidates successfully completed the training. Selection of candidates for Livestock Inspector Training:-

6. In order to be eligible to undergo Livestock Inspectors Training a candidate must fulfill the following conditions, namely:- a) He must be citizen of India or a subject of Nepal/ Bhutan. Provided that the eligibility of persons other than citizen of India shall cease on such date as the Government may by order appoint in that behalf, b) He must have passed either the class VII examination with Oriya as a subject or passed a test in Oriya in M.E. School standard conducted by the Education department, c) He shall be over eighteen years and below twenty seven years of age on the date of admission to the Livestock Inspector Training Center: Provided that maximum age limit may be relaxed by five years in respect of candidate belonging to Scheduled Castes and Scheduled Tribes and to such extent in respect of candidates of such other categories as the Government may by general or special order specify from time to time, 3 d) He must have passed at least matriculation or equivalent examination of the Board of Secondary Education of a recognized University, e) He must be a good character, f)

He must be of sound health, good physique with height not less than 52 and chest unexpanded 30 and must also be of active habits and be free from organic defects and physical and mental infirmity, g) He must know cycling well, h) He must not have more than one wife living,

4. By Notification dated 19.09.1997, the 1984 Rules were amended as per the Orissa Group C Veterinary Technical Service (Recruitment and Conditions of Service) (Amendment) Rules, 1997.

5. As per the amendment, the educational qualification, which was previously matriculation, has been changed to Intermediate in Science or +2 Science or Higher Secondary (Science) or such other equivalent examination or +2 Vocational courses in the field of Animal Husbandry/ Dairy/Poultry/Meat/Animal Production educational institution/Board/Council/University : Provided that candidates who have passed +2 vocational courses shall be given preference while selecting the candidates to undergo Live-Stock Inspectors Training.

6. There is also a proviso to the amendment that in case of the candidates selected for training from amongst the Group D field employees. The required qualification is only Matriculation or equivalent examination of the Board of Secondary Education, recognised from a 4 Orissa. The High Court was of the view that there are two sets of Rules 7. 1983 Rules and 1997 Rules. As we have noted above, there is only one set of Rules notified on 4th January, 1984, amended in 1997. Unfortunately, the High Court, as per the impugned Judgment, took it as two sets of Rules. The High Court hence took the view that the vacancies which existed prior to the 1997 amended Rules should be filled-up as per the qualification which existed as per the 1984 Rules, even if the recruitment is after the amendment. Thus aggrieved, the State is in appeal.

8. Mr. Maninder Singh, learned Additional Solicitor General, however, points out that the 1983 Rules having been amended in 1997, any direct recruitment, after the amendment, has to be made in terms of the amended rules. The situation would have been different in case of promotion where the persons aspiring for promotion could have laid a claim for promotion in respect of the vacancies available prior to the amendment. That is not the situation in the present case. It is

a case of direct recruitment. As held by this Court in *Union of India and another v. Yogendra 1*, in the case of direct recruitment, the candidate should possess the qualification as per Rules which are in force at the time of recruitment irrespective of the date of occurrence of vacancy. 1 (1994) Suppl. 2 SCC2265 9. Mr. R. P. Bhat, learned Senior Counsel appearing for the respondents, has strenuously contended that the respondents are people who have been sent for training imparted by the Government under TRYSEM (Training Rural Youth for Self Employment) Scheme for a period of one year during 1994 to 1997 and they have been awaiting appointment as Livestock Inspectors/Veterinary Assistants, etc., as per the then existing Rules of 1983. It is also submitted that all those who have been trained under the project, have been appointed as per the 1983 Rules with a qualification of matriculation, prior to the introduction of amendment to the Rules with effect from 1997. Therefore, it is contended that all the vacancies which existed prior to the amendment in the Group C cadre, should be filled-up with persons who have been trained under the Scheme, as was done in the case of the previous batches. It is also submitted that even under the amendment, there is a category of people who have been found qualified for appointment with matriculation and, therefore, the respondents should also be considered since they also have the same qualification as matriculation and training.

10. There cannot be any quarrel with the first principle in service jurisprudence, that for direct recruitment, the qualification has to be seen at the time of recruitment. In direct recruitment a lot of policy issues are also involved. It is not mandatory that all such vacancies should be filled up and if at all to be filled up, should be filled up as and when vacancies arise. Those are all matters left to the conscious decision of the appointing authority. It is also open to the competent authority to decide the mode and manner of selection and prescribe the qualification and eligibility at the time of recruitment. However, in the case of promotion, the incumbents are entitled to stake a claim for vacancies which existed prior to the amendment to be filled-up as per the un-amended rules. That is based on the principle of legitimate expectation. Hence, we find it difficult to appreciate the submission made by Shri R. P. Bhat, learned Senior Counsel, that the qualification should be seen as on the date of occurrence of vacancies, in the case of direct recruitment.

11. In *Yogendra Singh (supra)*, this Court has dealt with the similar situation and it has been held that No candidate who does not possess the currently prescribed qualifications, but who may possess the educational qualifications prescribed earlier, can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed. 7 12. The reliance placed by the High Court in *Vinod Kumar Sangal 2*, is of no assistance since it was a *v. Union of India and others* case of promotion and bunching of vacancies for several years where the requirement was in fact selection from panel prepared year-wise.

13. No doubt, there is a proviso under the amended Rules that for a candidate selected for training from amongst Group D filed employees, the qualification is only matriculation or equivalent. That is a relaxation given under the Rules in respect of in-service candidates for training followed by appointment. The respondents are not in-service candidates. They can aspire for only direct recruitment.

14. Thus, the view taken by the High Court that the appointment will have to be made in terms of the Rules existing at the time of occurrence of vacancy, for direct recruitment, placing wrong reliance in *Vinod Kumar Sangal (supra)* does not reflect the correct legal position. As we have already stated above, for promotees, they can always stake a claim for promotion in respect of the vacancies available prior to the amendment to be filled-up in terms of the amended Rules. That is not the situation in the present case. 2 (1995) 4 SCC2468 15. Faced with such a situation, the learned Senior Counsel has drawn our attention to the letter dated 01.12.2000 from the Government of Orissa in the matter of employment of TRYSEM Livestock Inspectors in various programmes in the Animal and Rural Development Department. In that letter, the Government has made it clear that the experience of the people for recruitment will have to be seen, but the educational qualification has to be seen as on However, the December 1998, which is after amendment. Government has stated in the letter that the Department has to formulate a specific project for absorption of 500 unemployed TRYSEM trained youths which in long run will help in optimum development of the Department. It may be relevant

to note that the very appointment is from trained candidates. That being the stand taken by the Government, as reflected in the letter, we make it clear that it will be open to the respondents to make an appropriate representation before the Government for relaxation of the qualification in view of their training, in which case, the Government will consider the same expeditiously. It will also be open to the respondents to bring to the notice of the Government that after training, they had actually been engaged as Livestock Inspectors on various occasions. 9 16. Subject to the above, the impugned Judgment of the High Court dated 18.07.2016 in Writ Petition (Civil) No.24638 of 2011 is set aside and the appeal is allowed. No costs.J.

[KURIAN JOSEPH].J.

[SANJAY KISHAN KAUL]. NEW DELHI; AUGUST14 2018.

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