

CASE NO.:
Appeal (civil) 3928 of 1998

PETITIONER:
RAN SINGH MALIK

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.

DATE OF JUDGMENT: 13/02/2002

BENCH:
G.B. Pattanaik & R.P. Sethi

JUDGMENT:

With Civil Appeal No. 1177/2002.
(@SLP(C) No.5117 of 1999)

JUDGMENT

PATTANAIAK, J.

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

This appeal is directed against the judgment of the learned Single judge of High Court of Punjab and Haryana in Civil Writ 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 (Feed 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 selected by the Public Service Commission and the recommendation of the Public Service Commission having been accepted by the Governor 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 in 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.

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 Governor 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.

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.

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.

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.

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?

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 Notiification 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 a part 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.

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 apart, 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.

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.

.....J.
(G.B. PATTANAIAK)

.....J.
(R.P. SETHI)

February 13, 2002.

JUDIS