

PETITIONER:

KRISHAN KUMAR, ASSISTANT SECRETARY, MARKET COMMITTEE, BHIWANI,

Vs.

RESPONDENT:

HARYANA STATE AGRICULTURAL MARKETING BOARD, PANCHKULA THROUGH

DATE OF JUDGMENT: 31/03/1997

BENCH:

K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted

This appeal by special leave arises from the judgment of the Division Bench of the Punjab and Haryana High Court, made on May 29, 1996 in CWP No. 16133/95.

The admitted position is that an advertisement was published by the respondent for recruitment to the post of Assistant Secretary of the Haryana State Agricultural Marketing Board. Out of 11 posts notified for recruitment, six posts were reserved for general candidates, 3 posts for Scheduled Caste and 2 posts for Other Backward Classes. Pursuant thereto, the appellant had appealed for consideration of his claim for appointment. The qualifications prescribed under the Haryana State Agricultural Marketing Board Service Rules, 1974 (for short, the 'Rules') are thus:

- "(1) Graduate of recognised University; and
- (2) Adequate knowledge of the Punjab Agricultural Produce Marketing Act, Rules and Regulations; and
- (3) At least three years experience in Government office/Semi Government Body."

The appellant had the experience of working in Haryana Warehousing Corporation (i) from 6.10.1984 to 4.1.1985, (ii) from 7.1.1985 to 31.3.1985, (iii) from 6.5.1985 to 28.7.1985, (iv) from 30.7.1985 to 29.10.1985 and (v) from 2.11.1985 to 5.12.1985. He also had the experience of working in Hissar National Cooperative House Building Society Ltd., Hissar between 24.4.1988 and 30.4.1991. On the basis thereof, he was selected and appointed. He joined duty on August 1, 1992. Subsequently, Writ Petition No. 161/95 was filed and by judgment dated January 2, 1995, the High Court directed the Board to examine whether the appointments were duly made and appointees were duly qualified in accordance with rules. It was directed further that in case, the candidates were not qualified, the appointments must be deemed to have been set aside. In furtherance thereof, a

notice was given to the appellant producethe record. Accordingly, the appellant produced the record. The authority considered the same and held thus:

"Shri Krishna Kumar, respondent No.6 has produced the experience certificate of the Hissarnational Cooperative HouseBuilding Society Ltd., Hissar wherehe has worked as Accountant-cum-Clerk from 24.4.1988 to30.4.1991. His appointment is also subject to verification of the experiencecertificate submitted by him. Incase,the experience certificate is notfound genuine as per rules, the Board reserves the right to cancel his appointment."

Itis stated that they have examined the certificate and found it to be genuine but Hissar Cooperative House Building Society was not found to be a Semi-Government Society. No contribution of the Government fund was made to the society.Accordingly, his appointmentcame to be terminated. Calling that order in question, he filedwrit petition whichwas dismissed.Thus, this appeal by special leave.

The notice was issue by this Court on September 30, 1996 wherein itwas stated as under:

"It is reported on instruction by the learned counsel for the petitionerthat the petitioner is now of 36years of age and he will not be qualified for any other appointment. He also states that the petitioner has meritorious record to his credit. Therefore, he requests that a notice may be issued to the respondent to consider his case on sympathetic consideration."

Counter-affidavit has been filed by the respondent statingthat they arenot willing to consider hiscase sympathetically. They have stated in their counter-affidavit in para 3(f) that theHissarNational Cooperative House Building Society is nota semi-Government body as per report of theRegistrar, CooperativeSocieties, Haryana. Thus he does not fulfil the qualification prescribed under the rules.

The learned counsel for the appellant has contended that he not submitted any illegal certificate. He has submitted the certificates before theauthority which was found to be correct. He has sufficientexperience before he was appointed as Assistant Secretary.It is further urged that though it is now found that it is not a semi-Government body, he maybe consideredto beappointed with the requisite qualifications and the experience. He hasalso broughtto ournoticethat the rules had been amended deleting the requirement of 3 years experience,by the order of theGovernment dated October 6, 1995, whereas the order of terminationcame to be made on October 31, 1995. Thus, his case may beconsidered on the footing that he had at the relevant time sufficient experience. The learned counsel for the respondenthas stated that sincethe qualification is one ofthe condition, as foundby the High Court and at the relevant time,he didnot possess that qualification, the dismissal of him fromserviceis in accordance with the rules.

In view of the respective contention, the question that arises for consideration is: whether the view taken by the High Court is correct in law? Strictly speaking, the High Court order does not suffer from any illegality for the reason that as on the date of application for selection he did not have the prescribed 3 years experience as required by the Rule. In other words, 3 years experience was required as necessary qualification for appointment as Assistant Secretary. It is seen that during the period between his appointment of the writ appointment on January 10, 1992 and allowing of the writ petition, he has gained sufficient experience of working as Assistant Secretary and his performance of the duties as Assistant Secretary has not also been disputed or any fault found by the respondent. It is seen that he is now barred by age. Under these circumstances, we think that the respondent should reconsider the matter afresh and take appropriate decision to appoint him as Assistant Secretary.

In view of the above legal position and also the factual situation, the appeal is allowed and writ is issued but, in the circumstance, without costs.