

CASE NO.:
Appeal (civil) 6041 of 1998

PETITIONER:
JASWANT SINGH

Vs.

RESPONDENT:
PUNJAB POULTRY FIELD STAFF ASSOCIATION & ORS

DATE OF JUDGMENT: 26/11/2001

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

RUMA PAL, J

This appeal has been preferred from the decision of the High Court setting aside the appointment of the appellant as a chick sexer in the Department of Animal Husbandary of the Government of Punjab.

The appellants case is that he was appointed as a Bird Attendant/Hatchery Man in the Department on 24th November, 1981. In 1983, the appellant successfully underwent training as a chick sexer with the Central Hatchery, Chengannur, Kerala. After completing his training, he discharged the duties of a chick sexer and was appointed as chick sexer at various places within the State. For example, one order dated 3.7.86 from the Deputy Director, Animal Husbandary Poultry Development to the Assistant Director states:

Regarding the aforesaid subject, the duty of chick sexer for the work of Hatchery is as under:

S.No.	Name of Sexer	Place of	Place where the p appointment	farm /where the wo
	(sic) Chick Sexer will undertaken			
1.	Shri Joga Singh	Malerkotla	Malerkotla &	Patiala
2.	Shri Gobind Singh	Gurdaspur	Gurdaspur &	Jalandhar
3.	Shri Jaswant Singh (the appellant herein)	Patiala	Kot-Kapura	

It is clarified here that on the day of chick sexing no chick sexer should be given any leave. In case chick sexer has to take leave under compelling circumstances they should be appointed.(sic).

In 1980, instructions were issued by the Government laying down qualifications for appointment to the post of chick sexer. These qualifications were:

a) B.A./B.S.C. (Academic)

b) Five weeks Chick Sexing Training of any recognised Govt. Institution in India or abroad.

Preference:

Six months Poultry Training Course at the Govt. Training Institute at Chandigarh.

c) Punjabi upto Matric standard.

OR

a) Matric with three months Poultry Training Course from Government Training Institute/Stock Assistant Course from College of veterinary Medicine, Hissar/Punjab Agriculture University, Ludhiana;

b) Chick Sexing training at any recognised Government Training Institute in India or abroad.

c) Five years experience in any Government Poultry Farm.

d) Two years experience in Chick Sexing.

e) Punjabi upto Matric Standard.

According to the appellant, he fulfilled these norms and was entitled to be promoted to the post of chick sexer.

The appellant filed a suit in 1989 against the State Government Authorities claiming to be paid the same scale of pay as chick sexers. The suit was dismissed in 1993. The appellant preferred an appeal. The only relief asked for by the appellant before the Appellate Court was that the Department might be directed to consider i) whether the appellant had been working as a chick sexer ; ii) and was entitled to pay and other benefits. The State Authorities had no objection to such an order being passed. The order of the Additional District Judge accordingly was:
.the department is ordered to consider the fact as to whether the plaintiff was working as chick sexer and if so his request for other benefits may also be considered according to Law.

In the meanwhile, one Gobind Singh (whose case was substantially similar to the appellants case) also filed a suit. The suit ultimately culminated in an order passed by the High Court in Second Appeal by which the High Court directed that since Gobind Singh had been discharging the duties of a chick sexer, he was entitled to get the pay and allowances of that post. The State Authorities did not challenge this decision and appointed Gobind Singh as a chick sexer. As far as the appellant was concerned, in purported

compliance with the direction of the Additional District Judge and the decision of the High Court in Gobind Singhs case, an order was passed on 22nd August 1996 promoting the appellant as chick sexer with effect from 17.10.94. This order was challenged under Article 226 by the Punjab Poultry Field Staff Association (the respondent No.1 herein) which claimed to represent the interest of one Kuldeep Inder Singh, Poultry Assistant. The association claimed that the appellant was a Class-IV staff member and was not qualified nor eligible to be promoted to the post of chick sexer which was a class III post. The Associations case was based on a notification issued by the State Government in 1992 laying down rules inter alia prescribing the method of recruitment and qualifications for the different posts under the Punjab Animal Husbandry (Non-Ministerial) Class III Service. The Rules, which were called the Punjab Animal Husbandry (Non-Ministerial) Class III Service Rules, 1992, provided that the post of chick sexer would be filled 50% by direct recruitment and 50% by promotion. We are not concerned with the qualifications for direct recruitment. As far as promotion was concerned, the feeder cadres were Poultry Assistants, Field Assistants, Poultry Store Keepers and Poultry Farm Assistants. According to the Association, the appellant did not belong to any of the feeder cadres mentioned for the post of chick sexer as mentioned in the 1992 Rules.

Before the High Court, the appellant claimed that he was entitled to be considered according to the position prevailing prior to the 1992 Rules. However, on the basis of an affidavit filed by the respondent authorities, the High Court came to the conclusion that there was no vacant post of chick sexer prior to the notification of the 1992 Rules and that therefore, the 1992 Rules applied to the appellant. The Associations writ application was allowed by the High Court holding that the appellant was not qualified to hold the post of chick sexer according to the 1992 Rules. The appellants promotion to the post of chick sexer was accordingly quashed.

Before us the appellant has reiterated his arguments before the High Court. Additionally, it has been claimed that the respondent authorities had misled the High Court by stating that there were no vacancies in the post of chick sexer prior to 1992. According to the appellant, three posts of chick sexers were created by the State Government for the year 1972-73 which had not been filled up till the appellants appointment with effect from 17th October 1994. Even assuming that the appellant is correct in this contention, nevertheless the order of promotion dated 22nd August 1996 cannot be upheld. The basis of the appellants claim for promotion is the order of the Additional District Judge. It is the case of the respondent authorities also that the order of promotion was passed pursuant to the Additional District Judges directive. As already noted, the directive to grant the appellant benefits etc. was conditional upon the respondent authorities determining whether the appellant had been working as a chick sexer. We may, therefore, assume that the respondent authorities passed the order of promotion only after being satisfied that the appellant had in fact worked as a chick sexer. There is also ample uncontroverted evidence on record in support of this. However, such a conclusion would not necessarily result in the benefit of promotion being granted to the appellant unless promotion was permissible according to law. The

promotional rules whether prior or subsequent to 1992, both of which have been quoted earlier, do not permit the promotion of the appellant. The 1980 Rules were amended in 1983 so that the three month Poultry Training Course required in order to qualify for the post of chick sexer was changed to a twelve month Poultry Training Course. Admittedly, the appellant had not undergone training for one year. As far as the 1992 rules are concerned, the respondent No.1 correctly submitted that the appellant could not have been promoted as a chick sexer in terms thereof as he was not holding any of the feeder posts.

The High Courts decision in Gobind Singhs case did not direct the promotion of Gobind Singh. What was directed was the payment of salary and allowances of the post of chick sexer since Gobind Singh had been discharging the duties of that post. Therefore, while the appellants promotion to the post of chick sexer cannot be upheld, given the fact that the appellant had discharged the duties of a chick sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the appellants promotion, we direct the respondent authorities to pay the appellant for the period he rendered service as a chick sexer at the scales of pay together with all allowances to which chick sexers were entitled at the relevant time. However, this relief is limited to the period commencing from three years prior to the filing of the suit by the appellant upto the time he continued to discharge duties as a chick sexer. All dues in terms of this order must be paid to the appellant within a period of six months from the date of this judgment after adjustment of payments already made to the appellant by the respondent authorities. The appeal is disposed of accordingly without any order as to costs.

J.
(S. Rajendra Babu)

J.
(Ruma Pal)

November 26, 2001