

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11196 of 2011

Date of decision: November 28, 2015

Employees State Insurance Corporation and another

..... Petitioners

Vs.

Jaswant Singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Vikas Suri, Advocate
for the petitioners.

Mr. A.P.S. Shergil, Advocate
for respondent No.1.

Mr. Sanjeev Bansal, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

M. JEYAPPAUL, J. (ORAL)

The 1st respondent Jaswant Singh aggrieved by the selection of respondents No.3, 4 and one Dr. Leena Chawla without any relaxation of qualification with regard to experience granted by the Appointing Authority on the basis of the recommendation made by the Selection Committee as per rules, challenged the appointment of respondents No.3, 4 and Dr. Leena Chawla. The sum and substance of the contention made by the 1st respondent was that as per the rule in vogue, the Selection Committee, if it thinks fit shall recommend for relaxation of qualification with regard to experience

and the Appointing Authority on such recommendation, can relax the qualification with regard to experience before appointment was made.

It is the grievance of the writ petitioner that no recommendation was made by the Selection Committee for relaxation of qualification with regard to experience and the Appointing Authority also has not passed a specific order relaxing the qualification with respect thereto.

The Tribunal, having made an observation that the appointment made by the Appointing Authority without relaxing the qualification as regards the experience in terms of rules in vogue is totally unacceptable, gave a direction to the Competent Authority to consider the 1st respondent for the relevant appointment in the light of the observations made by it. The original application filed by the 1st respondent was disposed of with the above direction and costs of ₹ 10,000/- was also imposed on the Authority who exercised the power of appointment.

The matter was heard at length by us as early as on 03.11.2015. We found that there was no merit in the writ petition. Therefore, we vacated the order of stay granted by us on 15.07.2011 and directed the writ petitioner to comply with the orders passed by the Tribunal within three weeks from 03.11.2015.

As directed, Sh. Upender Sharma, Director (Recruitment) attached to ESI Corporation has filed an affidavit that an order of appointment has been issued to the 1st respondent and notional consequential benefits of seniority and fixation of pay from 09.10.2009, the date on which first offer of appointment for the post of Specialist Grade-II (Jr. Scale) for Punjab Region was also granted to the 1st respondent.

Inasmuch as the direction issued by the Tribunal was effectively considered and the order passed by this Court on 03.11.2015 was also complied with. We are of the considered view that there is no issue subsisting for determination in the writ petition.

Of course, learned counsel appearing for the 1st respondent submits that had the other disqualified candidates not been selected in the subject interview that was held on 10.08.2009, the 1st respondent who had got all the qualification would have been appointed and accommodated in Chandigarh itself. It is further submitted that despite grant of notional seniority and pay fixation w.e.f. 09.10.2009, the 1st respondent was offered with appointment in Ludhiana. It is the submission of learned counsel for 1st respondent that 1st respondent may be accommodated in Chandigarh itself.

We find that there is no merit in the submission made by learned counsel for the 1st respondent. In our considered view, the direction issued by the Tribunal has been substantially complied with by the writ petitioner. In other words, the 1st respondent has got substantial relief from 09.10.2009.

The fact remains that the 1st respondent has been appointed only in Punjab Region for which interview was held. Even if the 1st respondent had been originally accommodated in Chandigarh, in normal course of time, he would have been transferred to some other station in Punjab Region. The grievance as regards his posting at Ludhiana cannot be the subject matter of issue in the writ petition.

The officer who held the appointment process, namely, Sh. S.K. Srivastava was holding only additional charge for a brief period from 06.08.2009 to 17.11.2009 during which period the said appointment was made. Further, we find that the order passed by the Tribunal was stayed by

this Court. The moment we heard the arguments and made an observation that there is no case in the writ petition, the order passed by the Tribunal was scrupulously complied with by the writ petitioner. Therefore, we have no hesitation to set aside the costs imposed on the Appointing Authority by the Tribunal.

The writ petition stands disposed of accordingly.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

November 28, 2015
Dinesh Bansal