IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 19857 of 2009

Date of Decision : October 05, 2015

Rajesh Kumar Sharma .... Petitioner

Vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. K. S. Khehar, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Ravi Gakhar, Advocate
for respondent no. 5.

* * *

DEEPAK SIBAL, J. :

The petitioner is aggrieved against the rejection of his request for re-visiting his option exercised by him earlier, for continuing to stay in the Inspectorate Cadre of the respondent Department, as also against the order passed by the Appellate Authority dismissing the appeal preferred by him against the above said rejection.

Shorn of unnecessary details, the facts, which are borne out from the record of the case and which have emerged from the arguments raised at the bar are that the petitioner, who was serving the Department of Excise and Taxation, Government of Haryana, as a confirmed Senior Scale Stenographer, was appointed as a Taxation Inspector by way of promotion. His initial appointment as a Taxation Inspector was on temporary basis, which was later confirmed. The promotion of officials belonging to the Ministerial Cadre, to the post of Taxation Inspectors/Excise Inspectors, as in the case of the petitioner, was challenged by some Taxation Inspectors/ Excise Inspectors before this Court through a bunch of petitions being **C. W. P. Nos. 16037, 17051, 17666, 18675 and 19221 of 2004**. In these petitions, this Court passed the following order :-

> *"We have heard the learned counsel for the parties.*
> *Mr. Hari Pal Verma has put on record a communication dated 22.09.1999, whereby in a similar situation a Taxation Inspector was reverted to the ministerial cadre. We accordingly dispose of this writ petition with a direction that the case of the present petitioner shall also be considered in the light of the aforesaid communication and the decision taken within a period of three months from the date that a certified copy of this order is supplied to the respondents. Dasti."*

In pursuance to the above quoted order, through letter dated

11.11.2005, options were sought from all Taxation Inspectors, who had been promoted from the Ministerial Cadre, including the petitioner, to the effect whether they were willing to continue permanently in the Inspectorate Cadre or intend to be reverted to the Ministerial Cadre, from which they were promoted.

In response to the above option notice, the petitioner, on 14.06.2006, opted for continuing to serve in the Inspectorate Cadre, by giving the following undertaking :-

> ***"PROFORMA FOR OPTION***
>
> *I hereby undertake that I am willing to continue in Inspectorate Cadre and not willing to revert to the post from which I promoted as Taxation/Excise Inspector.*
>
> *Signature : Sd/-*
> *Name of the employee :Rajesh Kumar*
> *Designation : Taxation Inspector*
> *Dated : 14.06.2006"*

Later, on the ground of the option having been taken from him under duress, as also for the reason that the stay in the Inspectorate Cadre would cause financial loss to him, the petitioner through a representation dated 09.10.2006, sought to revise his option given by him earlier. The Excise and Taxation Commissioner, Haryana (hereinafter referred to as – the Commissioner), through his order dated 25.01.2008 (Annexure P-12), considered his representation and rejected the same. The only allegation made by the petitioner that he had been made to sign his option under duress, was found to be vague and unsubstantiated. His appeal to the Commissioner also met the same fate.

The ground raised by the petitioner for seeking to revise his option given by him for continuing to serve in the Inspectorate Cadre was that he had been made to sign his option under duress. A perusal of the representation made by the petitioner shows that the averments in this regard are absolutely vague and unsubstantiated. The official, who allegedly pressurized the petitioner to exercise the option and the mode and manner adopted by such imaginary official are nowhere to be found in his representation. Had there been any duress or pressure, the petitioner would have either not signed the option or would have immediately protested against the same and not wait for about four months before thinking to re-visit the option exercised by him and that too, through vague averments.

In fact, the plea taken by the petitioner of having been made to sign his option under pressure lacks bona fide as financial loss is also pleaded to be one of the reasons for re-visiting his option exercised earlier. The plea of financial contradicts the plea raised by the petitioner that he was made to sign the option under duress. Once the petitioner pleads financial loss, it is clear that the same is after due calculation, demolishing his plea of having made to sign the option under pressure. Raising of contradictory pleas questions the bona fides on the part of the petitioner.

The petitioner would also clearly be estopped by his conduct from revising his option given by him.

In support of his case, two Division Bench judgments of this Court have been cited by counsel for the petitioner, which have no application to the case in hand.

In **Nand Lal Sharma vs. State of Punjab** – **1996 (2) S. C. T. 257**, as also in the case of **Ghuman Singh vs. State of Punjab and others** – **1996 (2) S. C. T. 259** **(C. W. P. No. 18627 & 18701 of 1995 – decided on 20.12.1995)**, the petitioners therein were permitted to change their option on the ground of discrimination since similarly situated employees had been allowed to change their options by the respondents therein. That situation does not arise in the case in hand.

In view of the above, finding no merit in this writ petition, the same is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

October 05, 2015
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