

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 16207 of 2011(O&M)

Date of Decision: December 8 , 2015.

Buta Ram

..... PETITIONER (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikas Singh, Advocate and
Ms. Sukhmani Tiwana, Advocate
for the petitioner.

Mrs. Monica Chhibber Sharma, DAG, Punjab.

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?

LISA GILL, J.

Prayer in this writ petition is for appointing the petitioner as “Fire Driver” without seeking approval from respondents No.1 to 3 and for quashing of order dated 24.09.2009, Annexure P7 passed by respondent No.2 whereby approval for appointment of the petitioner as “Fire Driver” as proposed by respondent No.4 – Municipal Council, Rampura Phul has been declined.

It is submitted that the petitioner was appointed as a Peon on

18.02.1997 on compassionate basis as his father Shri Babu Ram, a Driver with respondent No.4 died in harness. It is urged that appointment of petitioner to the post of Peon was unjustified as his father was working as a Driver and vacant post of driver being available he should have been appointed as Driver. However in view of the situation, petitioner had accepted appointment as Peon without protest.

In view of the fact that there was necessity of driver in the Fire Wing of respondent No.4, petitioner was assigned the duty of driver vide order dated 13.09.2004. Respondent No.4 vide resolution No.21 dated 08.10.2007, Annexure P3 approved the petitioner being sent as a driver in the Fire Brigade. He was subjected to medical examination. Respondent No.4 vide Memo dated 28.05.2009, Annexure P5 asked for approval of promotion of the petitioner as a Driver from respondent No.3 – Regional Deputy Director, Local Government, Bathinda. Memo dated 11.06.2009 was also apprised to Director, Local Government, Punjab for approval of promotion of the petitioner to the post of Driver.

However, respondent – Directorate, Local Government vide impugned communication dated 24.09.2009 (Annexure P7) observed that in accordance with the Fire Brigade Standing order dated 09.07.2004 which provides for direct appointment as Driver/Operator, test of 3rd and 4th Class employees of Municipal Council, Rampura Phul be held and action be taken for appointment as Fire Driver after holding interview of eligible candidates/employees who may wish to be appointed to the said post. Aggrieved therefrom, present writ petition has been preferred.

Learned counsel for the petitioner vehemently argues that, in fact, petitioner was appointed to the post of Driver vide resolution No.21 dated 08.10.2007. He underwent physical/medical examination. Admittedly, he was assigned duty of Fire Driver which he has been discharging honestly and diligently to the satisfaction of superiors. There is no basis for not affording approval to his appointment as Fire Driver. In fact, there is no need for approval from respondents No.1 to 3. Section 39 of the Punjab Municipal Act, 1911 does not mandate such an approval. Furthermore, initial appointment of the petitioner should have been on the post of Driver and not Peon.

Said arguments are refuted by learned counsel for the State who prays for dismissal of the writ petition as no vested right of the petitioner has been infringed.

It is an admitted position that petitioner was appointed to the post of Peon in the year 1997 on compassionate grounds due to death of his father in harness. Petitioner accepted the said appointment without demure. No challenge can be raised at this stage to say that appointment should have been made to the post of Driver as petitioner's father was working as a driver. Apart from the fact that no such challenge was raised earlier, there was indeed no vested right with the petitioner to be appointed on compassionate grounds, on the same post held by his father.

Perusal of order Annexure P2 reveals that he was assigned the duties of a Driver temporarily without any benefit attached thereto. Respondent No.4 vide resolution No.21 dated 08.10.2007 granted approval for sending the petitioner to work as a Driver in the Fire Brigade in accordance

with the rules. Perusal of Standing Order dated 09.07.2004 produced today in Court with a copy thereof to learned counsel for the petitioner, prescribes qualifications for recruitment to the Fire Brigade Staff. Relevant clause of the same reads as under:-

“Annexure -D

Qualifications fixed for the recruitment of fire brigade staff.

Sr.No.	Name of the Post	For Direct Recruitment	For Promotion
1.	xx xx	xx xx	xx xx
2.	xx xx	xx xx	xx xx
3.	Driver/Operators	1. Middle standard minimum 2. Holding license of driving heavy vehicles of not less than five years prior to the date of recruitment in fire service. 3. He must have experience of carrying out running repairs to vehicles and other fire service appliances.	
4.	xx xx	xx xx	xx xx

It is apparent that for appointment to the post of Driver/Operator, there is no channel of appointment through promotion. Appointment can be effected only through direct recruitment. Said Standing Order is not under challenge. Perusal of impugned Memo dated 24.09.2009 reveals that Government has decided that a test should be held for all 3rd and 4th Class employees of the Municipal Council, who are desirous of appointment to the post of Driver/Operator with the Fire Brigade. There is no reason as to why an opportunity should not be afforded to all the employees of the Municipal Council who are desirous of being appointed to the post of Driver/Operator with the Fire Brigade. In this situation, no fault can be found with impugned order/Memo dated 24.09.2009, Annexure P7.

In view of the above, this writ petition being devoid of any merit,
is dismissed.

December 8 , 2015.
'om'

(LISA GILL)
JUDGE