

CWP No.3885 of 2013 (O&M)

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

**CWP No.3885 of 2013 (O&M)
Date of decision: 27.11.2015**

A.K.Rana and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sanjiv Bansal, Advocate,
for the petitioners.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. Amar Vivek, Advocate,
for respondent Nos.2 to 4.

Rakesh Kumar Jain, J.

The petitioners have challenged re-employment of respondent No.5 on 26.11.2012 as Senior Scientific Adviser in the Haryana State Pollution Control Board (hereinafter referred to as the "Board") after retiring as Scientist 'C' upon attaining the age of superannuation on 30.09.2012 and have prayed for the issuance of a writ in the nature of *quo-warranto* declaring his re-employment as illegal and arbitrary.

Shorn of unnecessary details, the sequence of events pleaded by the petitioners are that on 17.09.2012, a note was sent from the Chief Minister's Secretariat, that it is desired by the Chief Minister that keeping in view the qualifications, experience and performance of respondent no.5 in

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the Board, the feasibility of giving one year extension/re-employment in service to him, working as Senior Scientist-I (HQ), may be explored. Before the case was sent to the Government for approval, legal advice from the District Attorney of the Board was obtained. In his advice, the District Attorney had made the following comments:-

“I have gone through the office note put up by the office to consider the case of Sh. S.C. Mann, Sr. Scientist for re-employment as Sr. Scientific Adviser.

Firstly, I would like to comment that till now there was/is no necessity and no post of Sr. Scientific Adviser in the Board. Secondly, there are numerous complaints pending before the Hon'ble Lokayakut, Haryana against Sh. S.C. Mann (who is the highest Authority in the State). Thirdly, Sh. S.K.Sharma, Scientist C (retd.) on account of the numerous complaints pending before the Hon'ble Lokayakut, Haryana and certain financial irregularities allegedly committed by Sh. S.C. Mann, Sr. Scientist like lapse of Bank guarantee etc. worth crores of rupees had warned the Board to file cases if Sh. S.C. Mann, Sr. Scientist C is re-employed in the Board. However, the complaints which were pending before the authorities in the Board were filed which I can not say, were filed after holding enquiry or without holding any enquiry. (As the records of the same are not put up before the undersigned).

As per the facts and the records submitted before the undersigned since there are numerous complaints pending before the Lokayakut, Haryana and a controversy can arise if the retiree is re-employed on the post which does not even exist in the Board.

Submitted for further necessary action, please.”

On the aforesaid note given by the District Attorney, the file was ordered to be put up for fresh note. Thereafter, another note was put up in which it was mentioned that the Board has already approved the agenda by circulation for re-employment of respondent no.5 as Senior Scientific Adviser in the Board and that respondent no.5, Senior Scientist (Retd.) can

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be re-employed as Senior Scientific Adviser by creating a temporary post for a period of one year with the approval of Finance Department and Government. This note was approved by the Chief Minister and on 26.11.2012, the following order was passed:-

“The Governor of Haryana is pleased to accord approval for re-employment of Sh. S.C. Mann, as Sr. Scientific Adviser in Haryana State Pollution Control Board for a period of one year against the vacant post of Scientist-C or below that in the Board, with immediate effect. On re-employment he may draw remuneration as proposed by the Haryana State Pollution Control Board i.e. equivalent to last pay drawn minus pension.

2. This issues with the concurrence of Haryana Bureau of Public Enterprises (Finance Department) conveyed vide their U.O. No.23/HSPCB/Acctt./HBPE (FD) dated 26.11.2012.

Sd/-
Chandigarh:Dated; P.K.Gupta
26.11.2012. Additional Chief Secretary to
Govt. Haryana, Environment Department”

After notice of motion, on 29.04.2014, counsel appearing on behalf of the respondent No.2-Board made a statement before the Court which was recorded in the following manner:-

“Learned counsel appearing for respondent No.2 has informed the Court that term of respondent No.5 has not been extended beyond 26.11.2013.

Learned counsel shall file an affidavit to this effect.

List on 13.10.2014.”

Respondents No.2 to 4 filed the reply on 04.09.2015 in which it is averred that re-employment of respondent No.5 in the Board for a period of one year as Senior Scientific Adviser was against the sanctioned vacant post of Group-A Cadre by adopting all due procedure and in accordance with the sanction granted by the State Government after obtaining

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concurrence of the Finance Department, which was as per rules/instructions issued by the Govt. from time to time, copy of which was also attached as Annexure R-1. It was also averred that respondent No.5 has been further re-employed for another period of one year w.e.f. 26.05.2014 (A.N.) to 26.05.2015 vide office Endst. No.HSPCB/Estt./2014/1770-75 dated 26.05.2014 as his services were further required in office exigencies and public interest based on his exceptional service record and meritorious services rendered by him. It was further averred that respondent No.5 has been further granted extension for a period of one year because of the exigencies in the working of the Board on 19.08.2015 upto 18.08.2016. As regards the petitioners, it is averred that petitioner No.1 was charge sheeted under Rule 7 of the Haryana (Punishment & Appeal) Rules, 1987 for a number of cases, which were decided just before his retirement and petitioner No.2 Shri S.K.Sharma, who had applied for re-employment in the Board was not found suitable and eligible as per the re-employment policy of the State Government because he had already attained the age of 60 years.

Thereafter, respondent No.1 also filed reply in which it is averred that it is the prerogative of the State Government to give re-employment to any of its employee/officer/official after retirement strictly on merit and in public interest.

An additional affidavit dated 29.09.2015 has been filed by Shri Anurag Rastogi, Principal Secretary Environment-cum-Chairman of the Board, who has averred that the services of respondent No.5 are required by

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the Board as he has got rich experience of dealing with environmental issues. In para no.7 of his affidavit, it is averred that petitioner No.2 Shri S.K. Sharma was not found eligible for re-employment on account of attaining the age of 60 years but there are no such instructions applicable to the respondent-Board which bar the consideration of grant of re-employment of officers to the services of the Board after attaining the age of 60 years. In the later part of the affidavit, the petitioners were also offered re-employment after taking into consideration their desire, track-record and background. It is also averred that the statement made on 29.04.2014 by the counsel appearing on behalf of the Board was on his own.

Counsel for the petitioners has submitted that the Board has tried to overreach the Court because on 29.04.2014, a statement was made that respondent No.5 has not been given extension beyond 26.11.2013, whereas office orders dated 19.05.2014 (Annexure P-8) and dated 14.01.2014 (Annexure P-9) are narrating another story because in those orders, respondent No.5 was shown in employment. However, in order to hush up the matter, the Board passed an order dated 12.05.2014 to the following effect:-

“It is ordered that name of Sh. S.C.Mann, the then Senior Scientific Adviser written by mistake inadvertently at Sr. No.04 of Office Order No.HSPCB/Estt/2014/EG-29/76-110 dated 09.01.2014 and Sr. No.5 of office order No.HSPCB/Estt.2014/123-85 dated 14.01.2014 be deemed as deleted with effect from the date of issue of order i.e. 09.01.2014 & 14.01.2014.”

However, on 26.05.2014, another order was passed for extending the term for one year of respondent No.5 on the same post till

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25.05.2015, which has now been further extended upto 18.08.2016.

Counsel for the petitioners has argued that the respondents had been playing hide and seek with the Court because in the reply filed on 04.09.2015, the categorical stand taken by the respondents is that the re-employment of respondent No.5 is as per rules/instructions, which are attached as Annexure R-1 wherein it is clearly mentioned that *“the age of the Officer/Official to be re-employed must be below 60 years except in case of Patwaris who may be re-employed upto the age of 70 years”*. This rule has been applied in the case of petitioner No.2 who has been denied re-employment only on account of the fact that he had attained the age of 60 years, as mentioned in para 7 of the affidavit dated 29.09.2015 filed by Shri Anurag Rastogi, Principal Secretary Environment-cum-Chairman of the Board, but at the same time in the same paragraph, it is mentioned that there are no such instructions applicable to the Board which bar the consideration of grant of re-employment to the officers in the services of the Board after attaining the age of 60 years.

It is vehemently argued that para no.1 of the preliminary submissions of the written statement dated 04.09.2015 signed by Shri Ajay Kadian, Member Secretary of the Board, has been verified as true and correct to his knowledge and based on information derived from the official record which he is believed to be true and correct, whereas para no.7 of the affidavit dated 29.09.2015, filed by Shri Anurag Rastogi, Principal Secretary Environment-cum-Chairman of the Board, is also verified as true and correct to his knowledge and based on information derived from the

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official record which he is believed to be true and correct. It is submitted that it is not understandable as to how two different averments could be made by two different officers of the Board from the same official record, as in the written statement filed by the Member Secretary of the Board Shri Ajay Kadian, he has tried to justify the re-employment of respondent No.5 on the basis of rules/instructions, attached as Annexure R-1, in which clause 2(C)(iv), which is referred here-in-above, specifically provides that there can be no re-employment of any officer/official in the Board beyond 60 years except in the case of Patwaris who may be re-employed upto the age of 70 years, whereas in the affidavit dated 29.09.2015 filed by Shri Anurag Rastogi, Principal Secretary Environment-cum-Chairman of the Board, he has averred in para no.7 that there are no such instructions applicable to the Board which bar the consideration of grant of re-employment of officers to the services of the Board after attaining the age of 60 years. It is further submitted that if there were no instructions which bar the re-employment of an officer/official to the services of the Board after attaining the age of 60 years, then why the case of petitioner No.2 Shri S.K. Sharma was declined on the ground of being not eligible for re-employment on account of attaining the age of 60 years? It is further submitted that respondent No.5 enjoys a considerable influence in the Government who has been given the backdoor entry in the services of the Board, otherwise the post of Senior Scientific Adviser should have been thrown to general public.

In reply, Shri Amar Vivek, learned counsel appearing on behalf of the Board, has submitted that he would not be in a position to defend the

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statement made on behalf of the Board by the earlier counsel on 29.04.2014 when he had informed the Court that the term of respondent No.5 has not been extended beyond 26.11.2013 but he has submitted that respondent No.5 has been given re-employment keeping in view the interest of the Board and his excellent service record. He further submitted that the Hon'ble Lokayukta has dismissed all the complaints filed against respondent No.5. He has further relied upon a Division Bench decision of the Bombay High Court in the case of **Kashinath Shetye and others v. State of Goa and others**, 2011(5) AIR Bom. R 85.

I have heard learned counsel for the parties and perused the entire available record.

There is no dispute that the proceedings for giving one year extension/re-employment to respondent No.5 started on 17.09.2012 when the desire of the Chief Minister was quoted in the note to explore the feasibility because respondent No.5 was attaining the age of superannuation on 30.09.2012 while working as Scientist-C. The District Attorney put up his note dated 28.09.2012 against the extension, which I have already reproduced in the earlier part of this order, but in order to overcome the difficulty created by the District Attorney, the file was ordered to be put up for fresh note and re-employment of respondent No.5 was ordered as Senior Scientific Adviser by creating one temporary post for a period of one year, as a result thereof, on 26.11.2012, the appointment was given. The petitioners, who were also working with respondent No.5 in the same department and were denied re-employment, challenged the validity of the

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order dated 26.11.2012 by filing the present writ petition on 19.02.2013, in which notice of motion was issued on 21.03.2013 and on 29.04.2014, a statement was suffered by Shri G.S.Hooda, Advocate, appearing on behalf of the Board that the term of respondent No.5 has not been extended beyond 26.11.2013 so as to get rid off the petitioners and to make the writ petition infructuous but respondent No.5 was given another extension w.e.f. 26.05.2014, after about 6 months of the earlier period of one year extension upto 25.05.2015 and now on 19.08.2015 till 18.08.2016, for another period of one year though he has completed more than 60 years of age. It is really strange that respondent No.5, whose term had already been over on 26.11.2013, was shown to have been working at Sr. No.4 in the office order dated 09.01.2014 and at Sr. No.5 in the office order dated 14.01.2014, without there being any order of extension but later on those orders were withdrawn by order dated 12.05.2014 and on 26.05.2014, and was given extension of another one year. Is there any explanation with the Board for allowing the respondent No.5 to continue in the office of Senior Scientific Adviser after the period of first extension was over and no order was passed for the second extension. The answer is in negative.

The matter would not rest here because the respondents have been blowing hot and cold in the same breath in order to push their misdeeds under the carpet as they have taken divergent stands in the written statement filed through Ajay Kadian, Member Secretary of the Board on 04.09.2015 and the affidavit filed by Anurag Rastogi, Principal Secretary-cum-Chairman of the Board dated 29.09.2015 because in the written

statement, the stand taken by the respondent-Board was that re-employment of respondent No.5 is after adopting all the due procedure and in accordance with the sanction granted by the State Government after obtaining concurrence of the Finance Department in terms of the rules/instructions which are also attached as Annexure R-1 with the reply which clearly stipulates that no officer/official can be re-employed if he is above the age 60 years of age except Patwaris, whereas in the affidavit filed by Shri Anurag Rastogi, he has averred that there is no rules/instructions applicable to the Board which bar the consideration of grant of re-employment to the officers/officials for the service of the Board after attaining the age of 60 years but at the same time, in the later part of the same paragraph, he offered re-employment to petitioner No.2 but it was denied on the ground that he was not found eligible on account of attaining the age of 60 years. How could the Board have double standards, one for its favourite officer and another for the employee who has no God father. Even in the judgment cited by the respondents in the case of **Kashinath Shetye's case (supra)**, the Division Bench of the Bombay High Court has held that *“the matter may be different if the rules expressly prohibited the extension in certain circumstances or restricted the exercise of such powers in a particular manner or to a particular extent”*.

Once the rule does not permit extension beyond 60 years, there is no question of giving extension to respondent No.5 even for the third time in the teeth of the writ petition having been filed by the petitioners, challenging his first extension.

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The cumulative effect of the above discussion leads to an irresistible conclusion that the extension given to respondent No.5 or his re-employment to the post of Senior Scientific Adviser in the Board is patently illegal and arbitrary.

In view thereof, the present writ petition is hereby allowed and the re-employment/extension of respondent No.5 to the post of Senior Scientific Adviser in the Board is set aside.

November 27, 2015
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(Rakesh Kumar Jain)
Judge