

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

Date of decision: 26.08.2016

CWP No.17053 of 1998

Samir Yadav

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Tej Pal Dhull, Advocate, for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

Mr. H.N.Mehtani, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner was appointed as an Assistant Excise & Taxation Officer in open competition in a selection conducted by the Haryana Public Service Commission – respondent No.3. Pursuant to the offer of appointment dated 19.06.1997, the petitioner joined his duties on 04.07.1997. On 16.04.1998, he was issued a show cause notice as to why his services should not be terminated since he was appointed in excess of the advertised vacancies as per revised merit list dated 18.12.1997. The reply filed by the petitioner was not found satisfactory and his services were terminated on 26.10.1998, a copy of which has been endorsed to the petitioner on 28.10.1998 (Annex P-9).

2. Aggrieved by the order dated 26.10.1998/28.10.1998 (Annex P-9), the petitioner approached this Court by way of present petition. On 10.11.1998, the Division Bench of this Court stayed the operation of the impugned order (Annex P-9) till 23.11.1998. The ad interim stay has

continued by interim orders from time to time and operates till today. The interim stay order dated 10.11.1998 is significant since it noticed the arguments of Mr. R.K.Malik made at that time on the basis of which interim stay was granted. The order dated 10.11.1998 reads as follows:

“Heard Shri Malik and perused the record.

The only point urged by Shri Malik is that the impugned order of reversion passed by the Government should be quashed on the ground that the petitioner’s plea regarding availability of four posts of Assistant Excise & Taxation Officers has not been considered. Learned counsel pointed out that four of the candidates, who were placed in the category of Assistant Excise & Taxation Officers did not avail of the offer of appointment and, therefore, the consequential vacancies could be offered to the candidates like the petitioner.

Notice of motion to the respondents. Shri Jaswant Singh, Deputy Advocate General, Haryana is requested to accept notices on behalf of respondent Nos.1 & 2. Shri H.N.Mehtani, Advocate, is requested to accept notice on behalf of respondent No.3. counsel for the petitioner should furnish two sets of paper-book to Shri Jaswant Singh and one set of paper-book to Shri H.N.Mehtani today itself.

Shri Mehtani shall produce the original select list as well as the revised select list on the next date of hearing. Shri Jaswant Singh should ensure filing of a returned/affidavit within seven days on the issue relating to the unfilled posts of Assistant Excise & Taxation Officers and show to the Court as to why the petitioner should not be allowed to remain in service in view of the availability of vacant posts of Assistant Excise & Taxation Officers.

Put up for arguments on 19.11.1998.

The impugned order Annexure P-9 shall remain stayed till 23.11.1998.

Copy of the order be given dasti on payment of fee prescribed for urgent applications.”

3. During the pendency of this petition and by virtue of the stay order, the petitioner was promoted as Excise & Taxation Officer on 29.10.2004 and, thereafter as Deputy Excise & Taxation Commissioner on 27.05.2015 and has some years of service left. It may be briefly noticed that the dispute began when the Haryana Public Service Commission increased the original vacancies advertised i.e. 62 to 74 by a corrigendum. It would not be necessary to go into the intricacies of the case examining legal stand points since equities have come in developing over the passing years sufficient not to undo by a writ and send him packing home. The petitioner has been in service under a stay order from June, 1997, which is about two decades and it will be wholly inequitable and unjust to vacate the stay or to dismiss the petition only for the reason he was discovered to be appointed in excess of vacancies notified. Therefore, it is not felt necessary to go into the arguments raised by Ms. Shruti Jain Goel, learned AAG, Haryana that re-allocation is not possible against unfilled vacancies, which had to go to the next recruitment process. The argument may have held water once, but many a recruitment must have taken place meanwhile and serious complications would arise, if the argument is accepted at this stage after having earned promotions and gaining skills on the job.

4. On the other hand, Mr. R.K.Malik, learned senior counsel, relies on the decision of the Supreme Court in **Roshni Devi & others Vs. State of Haryana & others**, JT 1998 (6) SC 459, where the Supreme Court modified the judgment of the Full Bench of this Court and held that even

though the appointments made in excess of the advertised posts were illegal, the appointees should be allowed to continue because they had served for more than 9 years. This case is even on better footing by longer length of time. Similar issue arose before the Division Bench of this Court in **Ramesh Kumar Vs. State of Haryana & others** [CWP No.7062 of 2003 decided on 01.07.2004] and connected writ petition, which involved recruitment of 3206 JBT Teachers. Even though the Bench found that the appointment of some of the respondents were not fair and proper, but still refused to displace the appointees because of long passage of time and also refused to exercise jurisdiction to strike them down while relying upon *Roshni Devi's* case.

5. Still further, in **Prem Chand Vs. State of Haryana & others**, 1989 (2) SLR 556, a Division Bench of this Court came to the conclusion that the selection made by the Government for recruitment of Naib Tehsildars was contrary to the law laid down by the Supreme Court, but declined to quash the appointments by making the following observations:

“We had thought of quashing the entire selection beyond the prescribed number of vacancies which were originally advertised, but we refrain from doing so, as it will cause injustice to the selected candidates who have passed the departmental tests and were appointed against regular vacancies and have been in service for the last four years. In some cases, they have become overage for government job. The government also have spent enormous amount in training them. So, in the interest of justice, we have not quashed the selection.”

6. In addition, Mr. Malik relies on Single Bench judgment in **Yogesh Kumar Vs. State of Haryana & others** [CWP No.14682 of 1999 decided on 12.07.2013] and connected cases, decided in a similar situation,

where the Court refused to strike down appointments after passage of time and when the petitioner had been further promoted to higher post, then interference was not found to be justified.

7. By applying the ratio of the above-noted decisions, I would be rather reluctant to interfere in the matter and would accordingly allow the present writ petition to serve the larger ends of justice and without any order as to costs. As a corollary to the above discussion, this Court is of opinion that the impugned order dated 26.10.1998/28.10.1998 (Annex P-9) is not sustainable in law and is thus set aside.

26.08.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*