

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19222 of 1998 (O&M)

Date of Decision: 30.08.2016

Kulbir Singh Nirania

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Ms. Rimple Kadyan, Advocate,
for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

Mr. H.N. Mehtani, Advocate,
for HPSC.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the order dated July 27, 1998 passed by the Commissioner & Secretary to Government of Haryana, Food & Supplies Department terminating the services of the petitioner in the aftermath of the directions issued by this Court in CWP No.11684 of 1996 titled *Girish Arora and others v. State of Haryana* directing the State Government to restrict the appointment orders in favour of the selected candidates in the order of merit only to the extent of advertised posts. The judgment was delivered on May 22, 1997. Before doing ordering so, the petitioner was issued show cause notice on March 27, 1998 as to why his services be not terminated in view of the judgment in *Girish Arora* case.

2. The brief facts are that the Haryana Public Service Commission

advertised 62 vacancies of Haryana Civil Services (Executive Branch) & Allied Services. However, during the pendency of the process of selection, an additional request for the post of Allied Services was received by the Commission from the State Government and accordingly the number of posts in the HCS (EB) and other Allied Services were increased from 62 to 74. Accordingly, the Commission recommended the names of 74 candidates for appointment to various services for which a combined examination was held which has by Court orders been restricted to the original vacancies notified holding that appointments in excess of advertised posts were impermissible. This was obviously in conformity with the law laid down in Hoshier Singh Vs. State of Haryana, (1993) Suppl 4 SCC 377 that only such posts are to be filled as are advertised.

3. The Public Service Commission in its reply has supported the interim order in deference to the orders passed by this Court in *Garish Arora*. It is for these reasons that appointment of the petitioner as a District Food & Supplies Officer has been nullified since his appointment was found in excess of the advertised post and thus unsustainable.

4. Mr. R.K. Malik, learned Senior counsel appearing for the petitioner submits that there has been a gross misinterpretation of the orders passed in *Girish Arora's* case for the reason that the extra posts were available much prior to the date of interview and therefore they could be added. He submits that some candidates from the December 1992 batch approached the Supreme Court and it was held that posts available up to the date of interview to be filled up from that very selection/examination unless there is any statutory embargo for the same should be appointed. He refers

to the judgment to substantiate his case handed down in Sandeep Singh v. State of Haryana and another, (2002) 10 SCC 549. In the proceedings before the Supreme Court, in that case no statutory embargo was pointed out and thus the Court held that the judgment in Virender Singh Hooda and others v. State of Haryana and another, (1999) 3 SCC 696 should apply to the facts and circumstances of *Sandeep Singh's* case. While setting aside the impugned judgment of the High Court from where the appeal had arisen the Supreme Court made it clear that if any other person, who had appeared at the said examination and who had not approached Court till today, (November 09, 2000, the date of decision) would not be entitled to file any such application for getting the relief in question so far as the examination of the year 1993 is concerned regarding the advertisement issued in December 1992.

5. While this petition was pending, the Haryana Legislature enacted the Haryana Civil Services (Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002 which was promulgated on March 27, 2002. This Act was made was retrospectively operational from August 29, 1989. The Act was made to cover and nullify recommendations made by the Commission after August 30, 1989 except for Section 5 which was brought into force at once. The stated that Objects and Reasons of the Act are notable and reads as follows:-

"STATEMENT OF OBJECTS AND REASONS

Hon'ble Supreme Court, in Virender Singh Hooda case [(1999) 3 SCC 696] held that in the light of government circular letter dated 22-3-1957 and 26-5-1972 all those vacancies which had occurred in Haryana Civil Service (Executive Branch) up to the period of six months

from the date of recommendations made by the Haryana Public Service Commission were required to be filled out of the same selection. Thereafter, the Hon'ble Supreme Court in its judgment dated 9-11-2000 in Sandeep Singh v. State of Haryana [(2002) 10 SCC 549] relating to Haryana Civil Service (Executive Branch) and Allied Services Examination, 1993, has inter alia held that even on first principle, it appeals to us to commend that the vacancies available in any particular service till the date of interview at least should be filled in from the very same examination unless there is any statutory embargo for the same.

There is another set of decisions by the Hon'ble Supreme Court starting with Hoshier Singh v. State of Haryana [1993 Supp (4) SCC 377] in which it has been held that appointments beyond the advertised posts cannot be made as it deprives the candidates who were not eligible at the time of original advertisement but have acquired eligibility subsequently, of the opportunity to compete for public employment against such additional posts which did not form part of the original advertisement. The Hon'ble Supreme Court found such appointments to be violative of Articles 14 and 16 of the Constitution of India. This view has been followed by the Apex Court in several subsequent decisions. However, in Virender Singh Hooda case [(1999) 3 SCC 696] or in Sandeep Singh case [(2002) 10 SCC 549] no argument was advanced before the Apex Court based on the judgment in Hoshier Singh case [1993 supp(4) SCC 377] and other similar cases.

The judgments in cases of Virender Singh Hooda [(1999) 3 SCC 696], Sandeep Singh [(2002) 10 SCC 549] and Sujan Singh, etc. have thus created multiplicity of litigation inasmuch as various candidates who were originally selected for one of the allied services are claiming appointment to Haryana Civil Service (Executive Branch) or some other Allied Service. Also the Haryana Public Service Commission calls candidates for interview equivalent to thrice the number of advertised vacancies. In

case subsequent vacancies are clubbed with the advertised vacancies at a later stage, it would lead to more litigation even from those who were not called for interview but otherwise would have been eligible for being called for interview had the subsequent vacancies been clubbed initially. Further, as a result of abovementioned judgments of the Hon'ble Supreme Court, two sets of candidates have got appointments against one post.

This has brought about total uncertainty at such a late stage in the selection for Haryana Civil Service (Executive Branch) and Allied Service made by the Haryana Public Service Commission. Considerations like efficiency and availability of equal opportunity to candidates who become eligible for taking up subsequent examinations have been kept in view. Since the entire problem has arisen as a result of recruitments made pursuant to the advertisement dated 30-1989, hence this Bill has been proposed w.e.f. 29-8-1989.”

6. By virtue of the Act, the State of Haryana removed the base of Hooda-1, Sandeep Singh and Sujan Singh cases by the stroke of the legislative enactment. It may be mentioned in the first path-breaking case in Hoshiar Singh (*supra*) the Supreme Court declared that the law that appointments could not exceed the advertised vacancies . As a result, the petitioner could not avail any benefit from Sandeep Singh case in view of the retrospective operation of the Act of 2002 which has been upheld by the Supreme Court in Virender Singh Hooda and others v. State of Haryana and another, (2004) 12 SCC 588 in challenge to the vires of the 2002 Act.

7. The same situation as arises in this case arose in CWP No.17092 of 1998, *Surender Singh Tanwar v. State of Haryana and others* decided on April 28, 2006 by the Division Bench and this Court addressed the controversy, as in this case, and found the legal position entirely covered

by the decision in *Hooda-II*. The Court noticed the Act of 2002 which was upheld in *Hooda-II*. The retrospective operation of the Act as upheld by Supreme Court in *Hooda-II* was limited to only Section 4.3 of the Act which was adversely commented upon by the Supreme Court in *Hooda II* for its retrospective operation being excessive, oppressive and unconstitutional in authorizing termination of services of all those candidates who were appointed in HCS(EB) in excess of advertised vacancies. Furthermore, in this case there is a direct ruling on the point in the Division Bench in *Girish Arora* case relating to the same selection which is binding on a subsequent Court.

8. On notice, the State has filed a separate written statement in the lines of the reply of the Commission with the additional input that on promotion of D.P. Jhangra in the Food & Supplies Department in the year 1992 one post of District Food and Supplies Officer fell vacant. Accordingly, the respondent Department of Food & Supplies had sent a requisition for one post of District Food and Supplies Officer in direct quota reserved for Backward Classes which was an additional requisition for the same examination in excess of 62 vacancies advertised in the original advertisement in 1992. Only a single post of DFSO was advertised. It may be noticed that the written test was conducted in October 1993. The result of the examination, was however cancelled vide order dated June 24, 1994 due to internal controversy between the Chairman and Members of the Commission. The orders scraping the written examination were challenged before this Court in a bunch of writ petitions which were allowed and the decision to scrap the test was quashed. The matter went up to the Supreme

Court and finally directions were issued to the Commission to complete the selection process. This is what led to delay in the declaration of the final result, notified on March 16, 1996. These facts are only useful as a background on which nothing depends in this case.

9. I would, therefore, find no valid or cogent reason to allow this petition and set aside the order of termination passed on July 27, 1998. The orders are neither unconstitutional nor arbitrary and have in fact been passed in deference to the orders of this Court issued in *Girish Arora* case. Accordingly, the petition has no merit and is dismissed. It may be underscored for emphasis that the petitioner at the time of termination had served for only about five months.

(RAJIV NARAIN RAINA)
JUDGE

30.08.2016
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Whether speaking/reasoned	Yes
Whether reportable	No