

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**CWP No. 524 of 2001**

Date of Decision: 8.11.2016

Charanjit Gaba

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr.N.C.Kinra, Advocate for the petitioner  
Ms.Shruti Jain Goyal, AAG, Haryana  
None for respondents no.2 and 3

**RAJIV NARAIN RAINA**, J. (Oral)

1. The petitioner was appointed on temporary basis in an ad hoc arrangement and served for about 1 1/2 years before he was rendered surplus on account of being found in excess of the cadre strength of the post of Steno Typist to which he was appointed. He was retrenched from service. At the time of temporary appointment, the services of Steno Typists of the Subordinate Judiciary in the respective Sessions Division are governed by Rule III (2) of Chapter 18 Part A of the High Court Rules and Orders, Vol.1. The services of the petitioner were dispensed with on 31st August, 1999. But in the meanwhile, the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Services) Rules, 1997 came into force from 17th November, 1998 in which the qualification for recruitment to the post of Steno Typist was enhanced to Graduation which the petitioner did not possess and hence he could not be re-appointed as claimed by him. After the Rules came into force, a vacancy was advertised for the post of Steno Typist and the

petitioner made a bid for the job to secure it back again. His case was recommended by the learned District and Sessions Judge, Bhiwani to the High Court quoting an enabling Rule of relaxing qualification, but the recommendation did not find favour with the High Court and the application was rejected. This writ petition has been filed against that order claiming that his case was wrongly ignored for consideration by power of relaxation as he thought he had an antecedent right to appointment on the basis of old Rules having served in the Sessions Division, Bhiwani for 1 1/2 years. One of the grounds taken by the petitioner is unfair discrimination based contention pleading that one Ms. Janak Ahuja was appointed as Clerk against vacant post by order dated 7th June, 2001 even though she was not a Graduate. Ms. Ahuja like the petitioner was retrenched from service but in a different Sessions Division i.e. at Rohtak. Reliance has been placed on this order, but at the same time, there is a rider contained therein that the appointment would be subject to confirmation by Hon'ble the Chief Justice of the Punjab and Haryana High Court, Chandigarh. Nothing has been pleaded in the petition from where a firm conclusion can be drawn in favour of the petitioner based on principle of parity of treatment and therefore, there is insufficient material on record for this Court to ignite its jurisdiction under Article 226 of the Constitution.

2. So far as the claim for consideration is concerned, it appears to me too late in a day in a case of recruitment going back over two decades to consider issuing a direction to the respondents to consider the candidature of the petitioner as Steno Typist in the Sessions Division, Bhiwani and appoint him. To my mind, this writ petition has been rendered infructuous by passage of time and also for the reason that the

petitioner was not a permanent employee when he was retrenched. Any vacancy arising after the rules came into force would have to be filled by the criteria laid down in the rules. It is well settled proposition of law that essential qualification cannot be relaxed.

3. In his last submission, Mr. Kinra, learned counsel submits that the order disengaging the petitioner contains the word “termination” which may tend to create in the mind of a new employer a barrier to employment as it might be thought that the petitioner was penalized or something and as such the petitioner, he says, is left with the faint odour of unpleasantness if not stigma. He is not completely wrong in his submission that such an impression may enter the mind of a future employer, and therefore, the word “terminated” in the order dated 1st September, 1999 (Annex. P-3) shall be understood in the sense that the services of the petitioner have been dispensed with having been rendered surplus in the Sessions Division, Bhiwani and nothing more. This clarification is given even though it appears to be an overreaction but still because the order dated 31st August, 1999 [not endorsed to the petitioner] contains the reason for termination, but has not been endorsed and conveyed to the petitioner and he has no official copy. Though the termination order (Annex. P-2) records that the services of the petitioner “are hereby terminated w.e.f. 31.8.1999 (After-noon)” which is endorsed only to the Civil Judge (Jr. Division), Charkhi Dadri with whom the petitioner was working as Steno Typist and additionally to the Civil Judge (Sr. Division), Bhiwani. What was conveyed to the petitioner is the subsequent order dated 1st September, 1999 (Annex.P-3) which terminates his service and reads as follows:-

Sh. Charanjit Gaba,  
Steno-typist to (CJ JD)  
Charkhi Dadri.

Sub: Termination of services

Memo

It is informed to you that your services has been terminated with effect from 31.8.1999 afternoon as per order of learned District and Sessions Judge, Bhiwani as informed undersigned vide endorsement no.3365-66/G dated 31.8.1999.

Dated 1.9.1999

sd/-Civil Judge (Junior Division),  
Charkhi Dadri

No.652/Dated 1.9.99

Forwarded to Ld. District and Sessions Judge, Bhiwani for information and necessary action.

sd/-Civil Judge (Junior Division),  
Charkhi Dadri”

4. The order dated 31st August, 1999 (Annex. P-2) is hereafter reproduced:-

“Order

On scrutiny of the office record regarding the sanctioned cadre strength of Steno-Typists of this Sessions Divisions, it has revealed that two steno-typists are working over and above the sanctioned strength. Therefore, the services of Mrs. Jyoti Bala, Leave Reserve Steno-Typist of the office of Civil Judge (Sr. Division), Bhiwani and Sh.Charanjit Gaba, Steno-typist of the Court of Sh. Ajay Prashar, Civil Judge (Junior Division),

Charkhi Dadri, being junior most steno-typists are hereby terminated w.e.f. 31.8.1999 (After-noon).

All concerned be informed.

Dt. 31.8.1999

sd/-District & Sessions Judge, Bhiwani

Endst. No.3365-66/G Dt. 31.8.1999

Copy forwarded to the following for information and necessary action:-

- 1.The Civil Judge, (Senior Division), Bhiwani
- 2.Sh.Ajay Prasher, Civil Judge (Jr.Divin.), Ch. Dadri.

sd/-District & Sessions Judge, Bhiwani.”

5. The order dated 31st August, 1999 (Annex. P-2) is reproduced for the sake of record so that both the orders can be read together in the right perspective which Mr. Kinra wants to press in this Court on behalf of his client that an unconveyed order would be hard to explain to a future employer and might result in a prolonged correspondence between the future employer and the Sessions Division, Bhiwani and the High Court to put the two together, which effort no employer will take and this might frustrate the rights of the petitioner to secure future employment.

6. There is another aspect in the present case which Mr. Kinra points out. The termination order passed by the District and Sessions Judge, Bhiwani has been given retrospective effect from 31st August, 1999 (After-noon) which is one day prior to the termination order dated 1st September, 1999 (Annex. P-3) and therefore, the petitioner would at least be entitled to one day salary. He will be free to approach the

authorities claiming one day salary which will carry 18% interest from the date of termination till payment.

7. Accordingly, this petition is dismissed since the petitioner had ceased to be eligible for the post of Steno Typist with the promulgation of the rules of service enhancing minimum essential recruitment academic qualifications but with the restricted protection afforded to the petitioner, as above.

(RAJIV NARAIN RAINA)  
JUDGE

8.11.2016  
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No