

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11767 of 2015
Date of Decision:- 12.04.2016

Mani Ram Sharma

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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?

Present: Mr. Sudershan Goel, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. Kuldeep Tiwari, Advocate
for respondent No.4.

RITU BAHRI, J. (Oral)

Petitioner has approached this Court for quashing of order dated 27.03.2015 whereby Pardeep Kumar (respondent No.5) was appointed as Superintending Engineer at Municipal Corporation, Gurgaon on deputation basis for a period of one year. Consequent to transfer of Pardeep Kumar, the petitioner was transferred to Municipal Corporation,

Ambala, against vacant post on 12.01.2015 (Annexure P-2/1) and thereafter he was relieved on 27.03.2015 (Annexure P-2/3). Petitioner had been promoted as Superintending Engineer, vide order dated 09.06.2014 (Annexure P-6).

As per Section 422 of the Haryana Municipal Corporation Act, the employees of Municipal Council, Gurgaon stood integrated into the Municipal Corporation, Gurgaon for all purpose and the Municipal Corporation, Gurgaon constituted a separate and independent cadre. The transfer outside his cadre could not be made against his consent. Vide order dated 16/17.12.2008 (Annexure P-5), respondent No.1 has accorded the sanction of the post/staff of Municipal Council, Gurgaon to be adjusted in the Municipal Corporation, Gurgaon. Thereafter, the entire staff of the Municipal Council, Gurgaon were deemed to be transferred and their services were integrated into as Municipal Corporation, Gurgaon and therefore his service conditions are governed by the Haryana Municipal Corporation Employee (Recruitment and Conditions) Service Rules 1988 read with Section 422 of the Haryana Municipal Corporation Act.

As per Rule 9 of Haryana Municipal Corporation (Recruitment and Condition) Service Rules, 1998 for recruitment to the post of Superintending Engineer and Executive Engineers by way of transfer or deputation, two years experience as Superintending Engineer is essential. Respondent No.5 had been appointed as Superintending Engineer on 09.06.2014 (Annexure P-7) and he was not having two years experience as on today.

In view of above said facts, during the pendency of this writ petition, today an affidavit has been filed by Additional Secretary to

Government of Haryana, Urban Local Bodies Department, on behalf of respondent No.1 and the same is taken on record. Vide order dated 05.04.2014 (Annexure R-1), Pardeep Kumar (respondent No.5), Superintending Engineer, has been repatriated to his parent department i.e. Engineer-in-Chief, Public Health Engineering Department, Haryana. At the same time, vide order dated 05.04.2016 (Annexure R-II), the petitioner, who is posted at Municipal Corporation, Ambala, has been given additional charge to the post of Superintending Engineer, Municipal Corporation, Gurgaon. As per Section 422 of the Haryana Municipal Corporation Act, the petitioner had been working in the Municipal Corporation, Gurgaon and had merged in the cadre of Municipal Corporation, Gurgaon, vide order dated 16/17.12.2008 (Annexure P-5). Hence, he could not be transferred outside the Municipal Corporation, Gurgaon, vide order dated 05.04.2016 (Annexure R-II). This order is set aside and directions to the official respondent(s) to appoint the petitioner at Municipal Corporation, Gurgaon, by modifying the order dated 05.04.2016 (Annexure R-II).

The official respondent(s) for all intents and purposes were aware about the provisions with regard to the transfer of an employee of Municipal Corporation, Gurgaon, could not be made outside his cadre, despite that the petitioner was transferred, vide order dated 12.01.2015 (Annexure P-2). Further, even by repatriating to Pardeep Kumar (respondent No.5) to his parent department, vide order dated 05.04.2016 (Annexure R-I), the petitioner has not been posted at Municipal Corporation, Gurgaon, however, he has been given additional charge to the post of Superintending Engineer, Municipal Corporation, Gurgaon. In this

background, costs of ₹20,000/- is imposed upon the official respondents.

Accordingly, the present writ petition stands disposed of.

April 12, 2016
naresh.k

(**RITU BAHRI**)
JUDGE