

(108)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11038 of 2016
Date of decision: 5.9.2016

Hoshiar Singh

.... Petitioner

Versus

State of Haryana and Others

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MRS. JUSTICE LISA GILL.

Present: Mr. H.S. Saini, Advocate for the petitioner.

S.S. Saron, J.

The petitioner Hoshiar Singh in the present writ petition has made the following substantive prayers:-

- (i) Issue a writ in the nature of quo warranto for quashing the appointment of the respondent No.5 to the post of Chief Inspector being based on bogus experience certificate and result of fraud and as he was ineligible and unqualified for the said post as per the statutory Recruitment Rules and despite being ineligible candidate, he has been selected/appointed to the public post in complete violation of Articles 14 and 16 of the Constitution of India particularly in view of the judgment of Hon'ble

Supreme Court in the case of Khub Ram v. Dalbir Singh & Others, reported as 2015 (3) SCT 74 (SC) (Annexure P-17) whereby the selection of the similarly situated Chief Inspector pertaining to the same selection, which was quashed by this Hon'ble Court, has been upheld by the Hon'ble Supreme Court.

- (ii) Further quash all the promotion orders to various posts including the order dated 04.07.2013 (Annexure P-14) whereby the respondent No.5 was granted promotion to the post of General Manager illegally and arbitrarily by the respondent No.1 because despite he having been found guilty in many cases and despite various deptt. enquiries pending against him, he has been ordered to be promoted to the high post of General Manager illegally and arbitrarily;
- (iii) And further issue a writ in the nature of mandamus directing the respondent No.1 to conduct the fair and high level probe into this illegal and arbitrary selection and subsequent promotions of the respondent No.5 after got registering of FIR under appropriate provisions of IPC and take appropriate penal/legal action against him in accordance with law;
- (iv) It is further prayed that the respondent may kindly be restrained from releasing all the retiral

dues to the respondent No.5 during the pendency of the present writ petition as he is going to retire on 31.05.2016 on attaining the age of superannuation.

The petitioner is a retired employee of Haryana Roadways, Jind. During service, he remained the office bearer of Anti-Corruption Union formed by the employees of the Transport Department to fight with the corrupt practices of the officers in the department. When some case of illegal practice was exposed from the records, in such matters, the voice was raised by the Union. After retirement, the petitioner being a public spirited person, it is submitted, has been raising his individual voice against the illegalities and irregularities committed by the Haryana Transport Department. While he was in service it is stated that he unearthed the bogus check way bills scams in the Jind Depot of the Haryana Roadways in the year 1999. In the present case, it is submitted by the petitioner that he has no personal interest or grudge against Udeyvir Singh (respondent No.5). His source of income is his monthly pension. He seeks indulgence of this Court in the larger public interest to highlight that as to how Udeyvir Singh (respondent No.5) was initially inducted in service against the post of Chief Inspector despite being ineligible and unqualified. Subsequently, he was promoted to the responsible posts. Despite the fact that the enquiries were pending against him, it is alleged that Udeyvir Singh (respondent No.5) managed to grab very high and responsible post of General Manager in the Transport Department.

According to the petitioner, it is a case of an employee whose initial appointment was de hors the recruitment rules and based on fraud in which he was held liable to the charges by the Vigilance Bureau of Haryana and departmental action was recommended against him but still despite having held guilty in the departmental inquiries against him on the complaints filed by the petitioner, no action penalizing him was taken by the State of Haryana through Additional Chief Secretary, Govt. of Haryana, Department of Transport, Civil Secretariat, Haryana (respondent No.1) and State Transport Commissioner, Haryana (respondent No.2) and instead of taken penal action against him, it is alleged that he was promoted to the post of General Manager vide impugned order dated 4.7.2013 (Annexure P-14). Now, he was being allowed to retire on 31.5.2016 on attaining the age of superannuation without taking any penal action against him in pursuance of the departmental inquiries holding him guilty of the charge.

The Haryana Subordinate Service Selection Board, Panchkula (respondent No.4) vide advertisement dated 7.5.1989 advertised posts of Chief Inspector in the Haryana Roadways in the pay scale of Rs.1400-2600. It is submitted that according to Recruitment Rules and condition of advertisement, the candidates applying for the post of Chief Inspector were to have educational qualification of Graduation and two years experience in the Government/Semi-Government or Public Undertakings/Roadways Fleet with Hindi upto Matriculation. In response to the said advertisement, Udeyvir Singh (respondent No.5) applied against the

said post; even though, according to the petitioner, he did not have experience of two years as required under the Rules.

It is to be noticed that the writ petition was filed on 25.5.2016 and then refilled on 27.5.2016. It was taken up on 31.5.2016. On the said date, learned counsel for the petitioner referred to Hari Bansh Lal v. Sahodar Prasad Mahto and others, 2010 (4) SCT 286 (SC) to contend that though public interest litigation is not maintainable in service matter, however, a writ of quo warranto would be maintainable. This Court noticed that in the said judgment it has been mentioned that for issuance of a writ of quo warranto, the High Court has to satisfy that appointment is contrary to statutory rules. However, no statutory rules have been mentioned in the petition or referred to by the leaned counsel for the petitioner during hearing. On his request to submit necessary statutory rules, the case was adjourned to 18.7.2016. On the said date, none appeared for the petitioner and it had been adjourned to today. As on date, Udeyvir Singh (respondent No.5) has admittedly retired on 31.5.2016. Udeyvir Singh (respondent No.5) was appointed as Chief Manager, Haryana Roadways vide order dated 12.10.1990 (Annexure P-3). Learned Counsel for the petitioner has submitted the Service Rules namely the Haryana Transport Department (State Service Class-III Haryana Roadways/Govt. Central Workshop) Rules 1987 ('Rules' – for short). Part-II of the Rules relate to 'recruitment to service'. In terms of the Rule 3 it is provided that service shall comprise the posts shown in Appendix-A to the Rules. The Rules that have been submitted are incomplete. On asking to show us the complete Rules, learned counsel for the petitioner has submitted that these were the only Rules available

with him which he got in response to a query raised under the Right to Information Act.

Be that as it may, Appendix –A of the Rules as has been submitted is not depicted. However, at serial No.15, it is mentioned Chief Inspector/Welfare Inspector and against their, it is mentioned (i) Graduate, (ii) 2 years experience in a Transport Fleet in a Govt., Semi-Govt. depts. or public undertaking. So it appears that for the post of Chief Inspector/Welfare Inspector, the qualifications are graduate and 2 years experience in a transport fleet in a Govt./Semi Govt. or public undertaking. Besides, the educational qualification is matriculation and the requirement of three years experience for the post of Inspector of Haryana Roadways/Station Supervisor, Grade-II is probably for promotion. As we have noticed that incomplete Rules have been submitted, therefore, we are unable to appreciate it in the correct prospective. In any case, Udeyvir Singh (respondent No.5) has submitted an Experience Certificate dated 21.6.1990 (Annexure P-10). The said certificate (Annexure P-10) has been issued by Kataria Tourist Corporation on 21.6.1990. It is mentioned that Udeyvir Singh (respondent No.5) had served in the said Corporation as a Conductor during the period from 5.5.1977 to 5.7.1977 and from 5.5.1978 to 20.2.1981 at different intervals and he was entrusted with the duty/job of booking for the Tourist/Marriage Buses by fixing his Headquarters at Delhi for such booking and his works were found satisfactory. He had worked for two and a half years and he was being paid Rs.20/- per day for the said purpose. He was kept independent for the said purpose at Delhi and given the liberty to book the business according to his convenient timings.

Learned Counsel for the petitioner has referred to the Vigilance report dated 29.8.1995 (Annexure P-13) in respect of the Experience Certificate (Annexure P-10) submitted by Udeyvir Singh (respondent No.5). It was noticed that Udeyvir Singh (Respondent No.5) had submitted that he passed matriculation examination in 1974, B.A. in 1978, M.A. (English) as a regular student in 1981 and passed M.A. (History) as private candidate in 1987. He had worked in the Haryana Confed Department from 27.2.1981 to October 1990 and was appointed as Chief Inspector on 12.10.1990 (Annexure P-3). State Vigilance Bureau noticed the oral statement of Ishwar Singh Kataria, owner of Kataria Bus Service, Panipat. He stated that Udeyvir Singh (respondent No.5) worked as part time on daily wages, however, simultaneously he attended M.A. classes from 9.00 a.m. to 2.00 p.m. at Maharishi Dayanand University, Rohtak. It was observed that in the circumstances when Kataria Tourist Corporation had no such record that the respondent was receiving his wages from them and were marking presence, it appeared that Sh. Ishwar Singh Kataria had issued the experience certificate later on without experience. Therefore, it was observed that this could not be said to be forged but could be said to be false; because due to non-availability of original experience certificate, no case could be registered against him because the case would not succeed without the original experience certificate. Therefore, the departmental inquiry against him was declined. It was also observed that it could not be said that the Transport Department would have issued the appointment letter without seeing the certificate and not being available on file. It appeared that the same had been got misplaced later on from the file; the

responsibility of which was of the officers as mentioned for which departmental inquiry was recommended. The allegations were held to be proved to the said extent.

The petitioner has submitted in his petition that Udeyvir Singh (respondent No.5) was charge-sheeted vide charge-sheet dated 30.12.1997 by the State Transport Commissioner, Haryana (respondent No.2) for committing fraud with the department to secure the appointment to the post of Chief Inspector and regular inquiry was held against him. The Inquiry Officer submitted his report to the State Transport Commissioner (respondent No.2) illegally, arbitrarily and on flimsy ground in which Udeyvir Singh (respondent No.5) was exonerated from the alleged charges by holding that since the department had failed to produce original records, therefore, merely on the basis of alleged affidavit, no due certificate and statement of the owner of Tourist Company, the charges were not proved. According to the petitioner, Udeyvir Singh (respondent No.5) thus succeeded to manage the departmental inquiry in his favour. Therefore, it is submitted that the action needs to be taken against Udeyvir Singh (respondent No.5) at this stage; besides, similar situated employee who had been appointed as Chief Inspector had been set aside by this Court in the case of Dalbir Singh, Ticket Verifier v. State of Haryana , CWP No.12711 of 1992 decided on 1.10.2010 (Annexure P-15). Letters Patent Appeal No.1510 of 2010 filed by Khub Ram against Dalbir Singh and others was dismissed by this Court on 29.11.2010 (Annexure P-16). SLP filed by Khub Ram was also dismissed on 29.4.2015 (Annexure P-17) reported 2015 (8) SCC 368. Therefore, it is submitted that the action is liable to be taken against Udeyvir

Singh (respondent No.5) as well. Besides, it is submitted that other payments are due from Udeyvir Singh (respondent No.5) which is mentioned by communication from the office of General Manager, Haryana Roadways, Jind dated 6.10.2010 (Annexure P-18) to the Director General, State Transport Haryana, Chandigarh.

We have given our thoughtful consideration to the entire matter. It is to be noticed that Udeyvir Singh (respondent No.5) was appointed on 12.10.1990 (Annexure P-3). The allegations against him that he submitted a false certificate dated 21.6.1990 (Annexure P-10) relating to his experience. The State Vigilance Bureau in its enquiry dated 29.8.1995 (Annexure P-13) had recommended departmental inquiry against Udeyvir Singh (respondent No.5). According to the petitioner himself, Udeyvir Singh (respondent No.5) has been exonerated in the departmental inquiry. He has since retired from service on 31.5.2016. Udeyvir Singh (respondent No.5) having been exonerated in the departmental inquiry, the date of his being exonerated is not mentioned but it appears to be somewhere after 1997 and a considerable time has lapsed. It is only when Udeyvir Singh (respondent No.5) was due to retire on 31.5.2016 that the present petition was filed on 25.5.2016 and then refilled on 27.5.2016.

In P.S. Sadasivaswamy v. State of Tamil Nadu, AIR 1974 SC 2271 it was held that it is not that there is any period of limitation for the Courts to exercise their powers under Article 226, now is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article

226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle the settled matters. Therefore, with the inclusion of the departmental inquiry, somewhere around 1997-98 it would be iniquitous for this Court to reopen the matter and that too after Udeyvir Singh (respondent No.5) has retired. A reference to the communication dated 6.10.2010 (Annexure P-18) from the office of General Manager, Haryana Roadways, Jind to Director General, State Transport Haryana, Chandigarh, it has inter alia been mentioned regarding recovery of Govt. house No.249 from Udayvir Singh (respondent No.5), Traffic Manager. It has been informed after rectifying the information earlier given that the permission of the above house was received from the Director General, State Transport Haryana, Chandigarh vide letter dated 31.10.2004. Thereafter, total recovery from the officer from November 2004 to 11.4.2006 at the penal rate against the office comes to Rs.110683/- which was the total amount of recovery due against the officer. Out of which, the officer had deposited Rs.15,000/- by draft dated 11.1.2010 and Rs.7284/- was deducted from the salary and recovery of Rs.88399/- was pending. This was the position as on 6.10.2010. By now Udeyvir Singh (respondent No.5) himself has paid all his dues. In any case, at the time of retirement after getting clearance certificate/no objection certificate, all dues must have been cleared. Therefore, report dated 6.10.2010 (Annexure P-18) is also of no consequence.

The petitioner at this stage referred to another inquiry report dated 10.4.2015 (Annexure P-23) in which the Joint

Transport Commissioner-II was appointed Inquiry Officer vide order dated 3.3.2015 to enquire into the complaint made by the petitioner against Udeyvir Singh (respondent No.5), Institutional Manager/T.M. State Transport, Jind now General Manager, Bhiwani. Various allegations were inquired into. It was concluded that on the basis of inquiry of General Manager, Jind, Udeyvir Singh (respondent No.5) had stayed at House No. 249 of Housing Board from 20.3.1992 to 11.4.2006. The official had not deposited the water-sewer bill for the above period with regard to which Jind office and Huda Sub Division, Jind time and again had asked him to deposit the bills. Therefore, the recovery of water-sewer/house rent was found to be due from Udeyvir Singh (respondent No.5) and the charges pending i.e. recovery of water-sewer bill and house rent were held to be proved. In case something has been held to be proved and something has yet to be recovered it is for the Department to proceed against the delinquent employee and recoveries in this regard before the retirement as already noticed must have been effected and in case it has not been effected it is for the State Government to recover the amount. As regards the department election against another employee and how it affects, is not clear and plea for quo-warranto after the person is not holding the office is clearly not maintainable and the pending inquiry if any are being raised only to pursue the petition.

The case of similarly situated employee namely Dalbir Singh, Ticket Verifier who got the selection of Chief Inspector in the Haryana Roadways and the selection of Khub Ram and others as Chief Inspector was set aside. It is to be noticed that the said petitions was filed in the year 1992 and was decided by this Court

on 1.10.2010 (Annexure P-15). Besides, Dalbir Singh, the petitioner in the said petition was himself a candidate for appointment to the post of Chief Inspector in Haryana Roadways which was advertised on 7.5.1989. Therefore, the present petition has no parity with the aforesaid petition inasmuch as the petitioner was not a candidate for the post of Chief Inspector and the appointment of Udeyvir Singh (respondent No.5) was made on 12.10.1990 (Annexure P-3) and a period of more than 25 years has lapsed since then. In the facts and circumstances, we are satisfied that the petition is misconceived and may have been filed for circumstances other than as have been projected.

Consequently, there is no merit in the petition and the same is accordingly dismissed.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

05.09.2016
amit

Note:-

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| 1. Whether speaking/reasoned | : | Yes |
| 2. Whether reportable | : | Yes |