

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

CWP No. 20113 of 2014

Date of decision:-07.04.2016

Anil Kumar & ors.

...Petitioners

versus

**Hry. Ind. & Infrastructure
Dev. Corpn. Ltd & ors.**

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Kumar, Advocate
for the petitioners.

Mr. R.S. Sihag, Advocate
for respondent Nos. 1 and 2.

Mr. Ramesh Goyat, Advocate
for respondent No. 3.

RITU BAHRI , J. (Oral)

Petitioners have approached this Court praying for issuance of writ in the nature of certiorari for quashing order dated 29.08.2014 (P-3) whereby respondent No. 3 has been ordered to be absorbed as Assistant Manager (General) against the provisions of the 'Recruitment and Promotion' Policy.

Brief facts of the case are that petitioners No. 1 and 8 have joined the Corporation as Clerks and were promoted as Assistants and petitioners No. 2 to 7 initially joined the Corporation as Peon-cum-

Chownkidar and were thereafter promoted to the post of Clerks and then to the post of Assistants. The date of promotions of petitioners as Assistant is as under:-

<i>Sr. No.</i>	<i>Name of petitioner</i>	<i>Date of promotion as Assistant</i>
1	Anil Kumar	20.07.2007
2	Jagmohan Singh Negi	20.07.2007
3	Surinder Kumar	20.07.2007
4	Hargain Singh	27.12.2007
5	Ram Avtar Sharma	19.12.2008
6	Sri Bhagwan	23.08.2010
7	Agya Ram	23.08.2010
8	Sikander Lamba	25.08.2010

Thereafter, a seniority list of Assistants was circulated by the Corporation vide circular dated 03.01.2011 wherein name of petitioner Nos. 1 to 7 figures at Sr. No. 16, 18 to 23 (P-1). The name of petitioner No. 8 was not in the circular. The promotions up to Sr. No. 15 have already been made and even Mange Ram at Sr. No. 17 has been promoted in SC category to the post of Assistant Manager (General) are working as Assistants in the Corporation and are eligible for the promotion to the post of Assistant Manager (General).

Petitioners are aggrieved on account of absorption of respondent No. 3, who was working as Manager in the Haryana Financial Corporation and was ordered to be absorbed as Assistant Manager (General) in the respondent-Corporation vide order 29.08.2014 (P-3). Respondent No. 3 joined the respondent-Corporation on 10.09.2014, as is clear from office order dated 19.09.2014 (P-4).

Thereafter, respondent No. 4 who was appointed as Technical Assistant under IT cadre in the Haryana State Co-op Bank Ltd and joined the bank on 03.10.2008, was deputed to the respondent-Corporation for a period of one year vide order dated 26.10.2012 (P-5). He joined as Assistant in the Corporation on 26.10.2012 thereafter, he submitted a representation in the month of August 2014 requesting to absorb him against a suitable post (P-6). Petitioners also gave their representation dated 09.09.2014 (P-7) questioning the move of absorption of respondent No. 4. Thereafter, petitioners came to know that their representation has been considered by the Corporation and the case of respondent No. 4 is put up before Board of Directors in its meeting scheduled on 26.09.2014. Respondent No. 4 was absorbed by downgrading the post of Manager (Purchase) which is lying vacant. But he was not eligible for the post of Assistant Manager (General) as he does not fulfill the eligibility condition of 05 years of experience and further there is no provision of making appointment in the respondent-Corporation by way of absorption, as the post of Assistant Manager (General) is only to be filled 100% by way of promotion.

Learned counsel for the petitioners argued that there is no provision under the Recruitment and Promotion Policy (P-2/A) governing the services of the petitioners, to make any appointment to post of Assistant Manager (General) by way of absorption. The post of

Assistant Manager (General) is only to be filled 100% by way of promotion. Thus, the absorption of respondent No. 3 as Assistant Manager (General) is against the above said policy.

Learned counsel further argued that respondent No. 4 is also being wrongly absorbed as Assistant Manager (General), as there is no provision under the Service Regulations of the Corporation to make any appointment by way of absorption. He has wrongly been promoted to the post of Assistant Manager (General) by downgrading the post of Manager (Purchase) and by ignoring the claim of the petitioners who are fully eligible.

Reference has been made to cases of ***S.S. Sodhi vs. State of Punjab and others, 1990(2) SCC 694, Vinod Kumar vs. State of Punjab, 1997(2) SCT 769, Union of India through Secy to Government of India and others vs. Puranjit Singh and anr, 2008 (1) SCT 818*** wherein consistent view has been taken that it would be wholly unwarranted to call another person on deputation unless there are some compelling reasons like criminal or disciplinary proceedings against an employee. Non-consideration of such senior employee for promotion was held to be illegal and arbitrary.

On the other hand, learned counsel appearing for respondent Nos. 1 and 2 argued that since respondent No. 3 along with other employees were declared surplus by the Haryana Financial

Corporation and he was rightly absorbed in the respondent-Corporation vide communication/letter dated 23.12.2013 and 27.06.2014 (R-1 and R-2) whereby Government of Haryana sought feasibility for absorption of the specified employees of H.F.C, who have been declared surplus, on transfer basis. After due consideration, respondent No. 3 was ordered to be permanently absorbed as Assistant Manager (General) on regular post, vide letter dated 29.08.2014. He was absorbed against the post of Assistant Liaison Officer, which is equivalent/identical to the post of Assistant Manager (General). Respondent No. 3 was absorbed one step below than his designation with the Haryana Financial Corporation.

Heard learned counsel for the parties.

Petitioners have placed on record letter dated 27.06.2014 (P-11) along with instructions dated 18.09.2003, by way of filing replication. As per the above said instructions, absorption can only be considered against the direct recruitment post and not against the promotional post and to be filled 100% by promotion in HSIIDC.

A bare perusal of letter dated 27.06.2014 further shows that the name of respondent No. 3 was inserted (hand written) by the Corporation, as his name does not find mentioned in order dated 27.06.2014 (P-11) placed on record by the petitioners. Further as per information sought by the petitioners under the RTI Act (P-13), it is clear that name of respondent No. 4 was under consideration for

absorption as Assistant Manager (General) against the vacant post of Manager (Purchase).

Reference at this stage can be made to office order dated 18.06.1999 whereby Recruitment & Promotion Policy for the employees of HSIIC were approved by the Board of Directors and as per this policy, the post of Assistant Manager is promotional post and is to be filled 100% by promotion.

In **Sodhi's case (supra)**, Hon'ble the Supreme Court was considering a case of an employee working in PSAMB and was aggrieved against the appointment of respondent No. 4 as Manager Marketing. His appeal was disposed of and Hon'ble the Supreme Court held that it is necessary for appointing authority to first consider the claim of departmental candidates.

In Vinod Kumar's case (supra), this Court was dealing with the case of petitioners who were substantive employee of M.C Ludhiana were seeking to fill the post of Secretary, Municipal Ludhiana by the method provided under Rule 5 of the Rules and not by giving extension to respondent No. 3 who was on deputation. This Court allowed the writ petition and observed as under:-

"6. After hearing learned counsel for the parties, we are of the view that this writ petition must succeed. Rule 5 regarding method of recruitment which has already been quoted above leaves no manner of doubt that the posts in the Corporation are to be filled either by promotion or direct recruitment and it is only in case that by adopting such method, no suitable person is forthcoming that the post can be allowed to be filled by a deputationist. Initially respondent No. 3 was brought on deputation for a period of one year at a time on till the

post was filled by direct recruitment. This was extended from time to time. The written-statement on the record does not show that any attempt was made to fill the post by direct recruitment, in which petitioners and all other eligible persons could apply. In case no suitable persons were forthcoming, perhaps the case could be considered for filling the post on deputation. Filling the post on deputation is always a temporary arrangement and that is why this temporary arrangement was made by giving the post to respondent No. 3 on deputation. From the record we find that respondent No. 3 had some access directly to the Chief Minister, who on his application directly-ordered that respondent No. 3 be adjusted permanently as Secretary of the Municipal Corporation. It is thereafter that efforts had been made in the noting to see that respondent No. 3 is permanently absorbed by invoking provisions of Rule 21 by relaxing the provisions of Rule 5 (supra) pertaining to method of recruitment. Had it been done in normal circumstances, perhaps nobody could have raised his finger. Having seen that no efforts were made to fill the post by direct recruitment, the question arises: can the post be allowed to be filled on deputation year after year by giving extensions and whether respondent No. 3 can be absorbed permanently as Secretary, Municipal Corporation, Ludhiana ? To our mind, the answer has to be in the negative. As held in S.S. Sodhi's case (supra) by the Apex Court and also by a Division Bench of this Court in P.C. Sharma's case (supra) where the very rule 5 came up for consideration that first method of promotion/direct recruitment has to be resorted to before filling the post on deputation. As observed above, deputationists hold the post to man it for the period till the post is filled in by regular method of promotion/direct recruitment. In a given case when despite efforts having been made repeatedly for filling the post by direct recruitment, no suitable person comes forth, perhaps the power of relaxation under Rule 21 maybe resorted to absorb a person who might have worked satisfactorily on deputation for quite some time. Here we find that the Chief Minister ordered the permanent absorption of respondent No. 3 and then a case was sought to be made to permanently absorb him. It would have been totally different case if the Chief Minister had ordered that the case for permanent absorption of respondent No. 3 maybe considered in accordance with law but here he had almost commanded that respondent No. 3 be absorbed and thereafter the then Finance Minister who was also holding the portfolio of Local Self Government ordered the implementation of the orders of the Chief Minister. The Chief Minister is as much bound by the rule of law as any other individual. Under these circumstances, no case for absorption of respondent No. 3 is made out as no efforts have been made to fill the post by the method provided under Rule 5. If such things are allowed, the persons who may be working in the Department or even a person who may be eligible for direct recruitment may never get a chance to hold that particular post and the person on deputation may get the post by permanent absorption.

In the present, it is not the case of the respondents that they had considered the case of the petitioners for promotion to the

post of Assistant Manager (General) while absorbing respondent No. 3 on the post of Assistant Manager (General) despite the fact that this post is to be filled 100% by promotion, as per Annexure P-2. Further perusal of Annexure P-13 clearly shows that respondent No. 4 who was appointed as Technical Assistant under IT cadre in the Haryana State Co-op Bank Ltd and joined the bank on 03.10.2008, was deputed to the respondent-Corporation for a period of one year vide order dated 26.10.2012 (P-5). He joined as Assistant in the Corporation on 26.10.2012. Thereafter, his name was under consideration for absorption as Assistant Manager (General) against the vacant post of Manager (Purchase), which is to be filled by direct recruitment. Thus, an attempt is being made to adjust him in the respondent-Corporation by downgrading the post of Manager (Purchase). Respondent No. 4 can be retained on deputation by not culminating the rights of the petitioners , who are waiting for their promotion as Assistant Manager (General).

For the reasons stated above and applying the ratio of the above mentioned judgments, the writ petition is allowed and order dated 29.08.2014 (P-3) is hereby quashed and further direction is given to the respondents to consider the case of the petitioners for promotion to the post of Assistant Manager (General), in accordance with law and Rules. As far the case of respondent No. 4 is concerned, since he was promoted to the post of Assistant Manager (General)

against the vacant post of Manager (Purchase), which is to be filled by direct recruitment, his case can be considered by the department for the above said post, after verifying the fact that this post is not to be filled by way of promotion. Further respondent No. 3 can be adjusted against the vacant post under the Direct Quota.

(RITU BAHRI)
JUDGE

07.04.2016

G Arora