

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

CWP No.3189 of 2015

Date of Decision:15.12.2016

Vishal Kumar Rattan

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Aayush Gupta, Advocate for the petitioner.

Mr. Vipul Aggarwal, Advocate for respondent No.1-UOI.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Shailendra Sharma, Advocate for respondent No.2.

Mr. K.B. Raheja, Advocate for respondent No.3.

Mr. Inderjeet Singh, Advocate for respondent No.4.

P.B. BAJANTHRI J. (ORAL)

In the instant writ petition, the petitioner has questioned the notification dated 24.7.2014 (Annexure P-8); further sought for writ in the nature of certiorari/quo-warranto for quashing the appointment of respondent No.4 as also for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner to the post of Junior Engineer (Civil) pursuant to the advertisement dated Nil (Annexure P-1).

Second respondent issued advertisement to fill up one post of Junior Engineer (Civil) in the year 2013. The petitioner is one of the candidate in the recruitment process for the post of Junior Engineer (Civil). Select list was prepared on 1.12.2013 in which one Shri Amritvir Singh was selected and appointed. Whereas name of the petitioner was kept in waiting list at serial No.2 below one Shri Yogesh Kumar. Shri Amritvir Singh joined the post of Junior Engineer (Civil) on 9.12.2013 and he has resigned

the post on 22.7.2014. Second respondent re-notified the post of Junior Engineer (Civil) on 24.7.2014. On the very next date i.e. 25.7.2014, Yogesh Kumar who was in the waiting list at serial No.1 over and above the petitioner was appointed and he has resigned the post on 30.9.2014. The petitioner was also candidate for the post of Junior Engineer (Civil) pursuant to the later notification dated 24.7.2014 and he was unsuccessful in the second notification. Fourth respondent herein was selected and appointed as a Junior Engineer (Civil) pursuant to the second notification dated 24.7.2014. He was appointed on 28.9.2014. In this background, the petitioner submitted a representation on 5.11.2014 (Annexure P-4) in which he has contended that his name was reflected in the select list of Junior Engineer (Civil) pursuant to the notification issued in the year 2013 when Amritvir Singh resigned from the post. Then name of Yogesh Kumar is required to be considered. Accordingly, it was considered and he was appointed. Further he resigned on 30.9.2014. Thereafter, the petitioner should have appointed against the post.

Learned counsel for the petitioner questioned the validity of the second notification dated 24.7.2014 and also sought for quashing of the appointment of fourth respondent and sought direction to the respondents to appoint him to the post of Junior Engineer (Civil) pursuant to the first notification with reference to the fact that his name was reflected at serial No.2 in the waiting list. Learned counsel for the petitioner submitted that resorting to second advertisement is incorrect for the reasons that first select list issued on 1.12.2013 would be in vogue for a period of one year that is from 1.12.2013 to 30.11.2014. Thus, the respondents have violated the conditions imposed in Annexure P-3. It was further submitted that the

petitioner name has been deleted from Annexure P-3 and only name of Amritvir Singh and Yogesh Kumar was retained on 2.12.2013 itself. Such action of the second respondent is contrary to principle of natural justice. In other words, the petitioner should have been notified before deleting his name. It was also contended that second respondent has not given the correct facts before advertising the post for the reasons that deletion of the petitioner's name on 1.12.2013 was not made known to him. Therefore, he could not approach the authorities or any Court. It was made known to the petitioner only when second notification was issued. Consequently, he has submitted a representation on 5.11.2014. Therefore, the action of the second respondent in not appointing the petitioner as and when Yogesh Kumar resigned the post so also with reference to the fact that acceptance of appointment by Yogesh Kumar is conditional one that he would be allowed to work for only two months. Therefore, action of the second respondent in appointing Yogesh Kumar so also re-advertising the post is not in accordance with the procedure.

On the other hand, learned counsel for the second respondent submitted that no doubt the petitioner has not been given any notice before deleting his name from Annexure P-3 but as per the policy of the second respondent when a notification is issued for the purpose of selection and appointment, one post would be reserved i.e. in waiting list against one advertised post. In the present case, only one post of Junior Engineer (Civil) was notified, therefore, second respondent has committed an error in publication of waiting list while reflecting two names. Thus, the same has been rectified on 2.12.2013 itself. It was further submitted that petitioner had a cause of action to challenge the 2nd notification as on 24.7.2014 the

date on which the post of Junior Engineer (Civil) was re-notified/freshly notified. On the other hand, the petitioner has participated in the process of recruitment with reference to the second notification/advertisement dated 24.7.2014 in which he was unsuccessful and he is aware of the fact that pursuant to the second notification, fourth respondent was appointed on 28.9.2014. The petitioner has opened his eyes for the purpose of taking advantage under the first notification on 5.11.2014 after participating in the second process and much later than the second advertisement dated 24.7.2014. Therefore, he is not permitted to challenge the notification dated 24.7.2014 having participated in the process of recruitment. Consequently, appointment of the fourth respondent is in accordance with the notification dated 24.7.2014. The petitioner has not made out a case so as to interfere with the notification dated 24.7.2014 so also appointment of the fourth respondent.

Learned counsel for third respondent submitted that he is only a formal party.

Learned counsel for the fourth respondent submitted that his selection and appointment is in accordance with law. The petitioner cannot question the validity of the second notification and if at all the grievance of the petitioner would be with reference to the first notification. First notification process would be ceased as and when second notification was issued. Therefore, the petitioner has not made out a case against fourth respondent insofar as selection and appointment to the post.

Heard learned counsel for the parties.

Second respondent before altering select list dated 1.12.2013 on 2.12.2013, the petitioner should have been given notice. The same has

not been done. Further while appointing Yogesh Kumar who was in the waiting list at serial No.1, it was made clear that before his appointment that he would be working for two months. Assuming that the list has been altered on 2.12.2013, second respondent should have informed the petitioner before altering his name from Annexure P-3. To that extent, action of the second respondent is deprecated. The petitioner's contention that he has not been given notice before deleting his name on 2.12.2013, such contention should have been taken by him by approaching second respondent or approaching this Court as and when Yogesh Kumar was appointed on 25.7.2014 so also on 24.7.2014 the date on which second respondent notified the advertisement to fill up the post of Junior Engineer (Civil). Further the petitioner having participated in the process of recruitment pursuant to the advertisement dated 24.7.2014 and being unsuccessful, he cannot question the validity of the advertisement dated 24.7.2014. Had he questioned the advertisement dated 24.7.2014 without participating in the process of recruitment then there would have been different thing. Thus, having regard to the conduct of the petitioner that he having participated in the process of recruitment dated 24.7.2014 and he knew that pursuant to the second notification, fourth respondent was appointed on 28.9.2014, thereafter he has submitted a representation on 5.11.2014 to rectify error or mistake committed by second respondent in appointing Yogesh Kumar and re-advertising the post on 24.7.2014.

Thus, the grievance of the petitioner would be belated as well as he is estopped from challenging notification dated 24.7.2014 having participated in the process of recruitment and being unsuccessful in the selection and appointment to the post of Junior Engineer (Civil) for the

second notification. Hence, the petitioner has not made out a case so as to interfere with the notification dated 24.7.2014 and appointment and selection of the fourth respondent to the post of Junior Engineer (Civil).

Accordingly, the petition stands dismissed.

15.12.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No