

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

COCP 1513 of 2015 (O&M)

Date of Decision: July 18, 2017

Harsimran Singh

.....Petitioner

Vs.

Hussan Lal, IAS and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-. -

Present:- Mr.D.S. Rawat, Advocate for the petitioner.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

Mr. S.K. Nehra, Advocate for the applicant- Dr. Rajinder Singh

-. -

M.M.S. BEDI, J.

The petitioner has filed the present petition under Sections 11 and 12 of the Contempt of Courts Act alleging that the judgment dated December 1, 2014 passed by this Court in CWP No. 17954 of 2011- Dr.Harsimran Singh Vs. State of Punjab and others, , has not been complied with by the respondents.

Before adverting to the allegations, it is deemed appropriate to appreciate the ratio of the judgment which is alleged to have been violated. The petitioner had sought a writ in the nature of quo –warranto against Dr. Rajinder Singh, Senior Lecturer, designated as Assistant Professor in the

Department of Ophthalmology, Government Medical College, Patiala. The said writ petition was allowed and the following direction was passed:-

“29. *For the foregoing reasons, the petition is allowed. A writ of quo warranto is issued to the State Government. The selection of the 5th respondent is nullified forthwith. The 5th respondent is ordered to be reverted to his previous post. The direct recruit post illegally occupied by him is declared vacant and will not be counted in the roster register as filled up and will be deemed to remain vacant from one day prior to the joining of the 5th respondent and will not be treated as consumed for the reason that an illegal and unconstitutional appointment made in breach of article 16 and in gross abuse of power is ab initio void as distinguished from a voidable appointment where on judicial review it is discovered after forensic debate as an appointment not being absolutely in conformity with service rules or the like [the corollaries when appointments are not made in accordance with rules as explained in State of West Bengal v. Aghore Nath Dey, (1993) 3 SCC 371] but was a result of a bona fide error of judgment committed by the appointing authority in ignorance or in misunderstanding of the law and on removal of such an incumbent of a post brought under judicial review will be taken as ‘consumed’ with all legal consequences flowing there from. A distinction will also have to be kept in mind between “illegal” and “irregular” appointments as explained in Secretary, State of Karnataka v. Umadevi, (2006) SCC 1 while examining cases*

whether a post stands consumed or not, in the event of discharge from service following an “unconstitutional”, “illegal” or “irregular” appointment. Valuable rights of others may rest on such declarations. It is also moot as to what would be the effect on “consumption” of post, and whether it should be deemed to be occupied or deemed vacant ab initio where such a declaration comes from the State department in the first instance upon termination of service or by Court for the first time on judicial review of administrative action setting aside the appointment. Therefore, it appears to follow a priori that a mere physical occupation of a vacancy/post when it is found illegally occupied and the appointment declared constitutionally bad by Court then it will not count mechanically towards “consumption” of post only to be thrown open for the next recruitment process and in such a case it can be argued, and I think successfully, that if the wait list period has not expired wherever rules fix its life span then person in waiting can be offered appointment if the name stands recommended or if the aggrieved party is already in Court claiming that the post is occupied by a usurper and he is next in waiting for direct recruitment in the merit list. As that I mean to say for the present in the context of this case is that such a usurper would take no credit towards experience or be heard to urge that he is entitled to retain salary for the period of usurpation on the principle of quantum meruit. He takes home nothing except a liability to return money, when I

see in this case that the 5th respondent applied in SC category in advance and in anticipation when the right to apply was not available. Since he has not filed reply or contested the case I would draw an adverse inference that he was a beneficiary of fraud practiced on public employment. Therefore, he cannot be heard to urge that the appointment was not caused by any fault of his nor did he practice deceit, misrepresentation or fraud and he should be let off altogether or somewhat lightly. How can the Court ignore this- I would have liked to ask him this question had he appeared and told his side of the story. Notwithstanding, he has reaped a rich harvest from February 2011 and now for a little short of four years. This petition was filed in the same year. It is now pay back time.

30. *Resultantly, Government is free to make suitable temporary arrangement to man the post by charge of current duty by an in-house person who is otherwise eligible for the post and as thought fit in the exigencies of administration. Had the petitioner not secured direct recruitment by an illegal and unconstitutional process, he may have continued as an ad hoc Senior Lecturer/Assistant Professor against direct quota post with right of confirmation on due date on his seniority within his promotion quota or have faced reversion in the face of a direct recruit available, had one been appointed in accordance with law. The 5th respondent has deprived third parties under the original advertisement, as had applied, of their valuable rights who may not have come forward for unknown reasons. This is where the aggrieved*

person seeking certiorari is lost in the morass and quo warranto takes over to rule the day.

31. *It is further ordered that in case, the 5th respondent has drawn salary and service benefits over and above those of his previous post, which he must have, apart from enjoying the elevated status, then the monetary difference is directed to be regurgitated jointly and severally by the 4th and 5th respondents from their salaries and pension (in case retired) calculated as payable in easy installments to reimburse the Government till the difference is satisfied in the Government Treasury.*
32. *However, such orders of recovery shall be passed only after holding an enquiry against the erring officer/officers who engineered and participated in making an unconstitutional appointment contrary to law and in violation of the constitutional scheme, by calling for their explanations including from those who actively or passively participated in the selection process at the Baba Farid University of Health Sciences, Faridkot so innocently, in such a pliable manner and without any murmur, not to say without reflection and due application of mind. Those involved in the portals of the university in the hurried interview process enabled matters to come to such a pass by failing to refer the vital issue to the State Government for advice for which it could have simply postponed the interviews for a week or two and awaited response. If the Public Service Commission had been discredited in its working that did not mean that they earn discredit for the university. Once bitten twice shy. Heavens would not have fallen*

had the interviews of only 11 contestants in the ophthalmology department been postponed for a week or two to await advice of State Government. In fact DRME should have done that, had his vision not been coloured by predication and predisposition of mind.

33. *So far as the University is concerned it was after all acting as a delegate of the State Government as an expert body to make the selection and was responsible to act fairly under the Advertisement I of 2010 and its terms and conditions unless changed by State Government in writing and addressed to it directly or acting through the department concerned routed through the proper channel in the chain of command together with the view the Welfare Department, Punjab on the subject.*
34. *The DRME, Punjab is not the State Government nor can pretend to be. He does not foot the salary bill of the 5th respondent which has gone into the pocket of a usurper of public office proactively helped by the former as the Head of the Department holding public office in public trust acting as a trustee of public property and governed by conduct exemplified by the doctrine of uberrimae fides but to the contrary he violated every shred of reason tearing articles 14 and 16 to bits. "All power is a trust; that we are accountable for its exercise; that from the people and for the people all springs, and all must exist." said Benjamin Disraeli, 1st Earl of Beaconsfield who twice served as Prime Minister of England."*

It is averred in the contempt petition that Dr. Rajinder Singh was working as Senior Lecturer (re-designated as Assistant Professor) despite a period of six months having lapsed after the judgment dated December 1, 2014.

In the reply filed by respondent No.1, the Secretary, Department of Medical Education and Research, it was brought to the notice of this Court that vide order dated August 6, 2015, respondent No.5 had been reverted to his previous post of Assistant Professor on adhoc basis against the direct quota posts and regarding the recovery of excess amount from respondent No.5, the process had been initiated vide order dated August 6, 2015. It was also brought to the notice of the Court that charge-sheet has been issued to Dr. Jai Kishan, former Director, Medical Education and Research, Punjab, vide letter dated December 29, 2015. Copy of the same has been attached with the reply as annexure R-1. So far as the delay in implementation of the order it concerned, it was clarified that the delay was not intentional and deliberate but was procedural for which unconditional apology was tendered. It was not out of place to mention here that respondent No.5 who was affected by the order in the above said writ petition had moved an application seeking to be impleaded as a party in the contempt petition by bringing it to the notice of the Court that he was previously working as Senior Lecturer (re-designated as Assistant Professor) in the Faculty of Ophthalmology along with petitioner and other candidates and they had been promoted on adhoc basis in the year 2007 by the same order of promotion and that he has already been ordered to be reverted to his previous post as per the judgment of the Court to the post of Senior Lecturer

(re-designated as Assistant Professor) on adhoc basis. He also brought to the notice of the Court that he along with Dr. Anil Kumar had been promoted with the petitioner and had also been ordered to be regularized vide Government order dated July 16, 2013.

In view of the orders having been complied with, the petitioner was unnecessarily claiming that the order has been violated.

It is not out of place to mention here that respondent No.5 had also filed an LPA No. 2133 of 2014 which was permitted to be withdrawn with liberty to move an application for recalling the order dated December 1, 2014 but he did not opt to move any application. However, petitioner Dr. Harsimran Singh had moved CM NO. 1485-CWP of 2017 for a direction that respondent No.5 should be reverted back to the direct quota post of Senior Lecturer on adhoc basis in the Department of Ophthalmology. The said application has already been dismissed by the Single Bench on May 3, 2017 by passing the following order:-

“Reply to the application has been filed in Court. The same is taken on record. Copy supplied. No clarification is required to bring observations regarding experience in Para.29 into the operative part of the judgment, which falls in Para.28 containing the directions issued only which have to be implemented. I also fail to see what locus standi the petitioner has vis a vis the 5th respondent as far as his experience gained on illegal appointment if not to rub salt on raw wounds. The petitioner succeeded while the 5th respondent lost his appointment.

Moreover, the instant clarification/ modification application is under the garb of review, which if allowed

might change the content and context of the order. There is also recognized rule against counsel appearing at the clarification/ modification/ review stage who was not the previous counsel, who argued the matter when the case was decided.

Consequently, the application has no merit and stands dismissed.”

Counsel for the petitioner was confronted with the order which had been passed by the Single Bench so far as the controversy raised by him regarding the previous post has been clarified by the Single Bench.

After going through the reply filed by respondent No.1 and perusal of the annexures appended therewith, this Court is of the considered opinion that there has not been any willful disobedience of the order passed by the State authorities. There has been some delay in implementation of the order which has been explained. There has not been any willful disobedience of the order or direction passed by this Court on December 1, 2014.

The Contempt petition is thus dismissed.

July 18, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.