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

CWP No.23110 of 2014 (O&M)

Date of Decision : 02.05.2017

Om Pal Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Anil Ghanghas, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Addl. A.G., Haryana
for respondents No.1 and 2.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Arvind Seth, Advocate
for respondents No.3 to 5, 7 and 8.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the action of respondents No.1 and 2 in clandestinely regularizing the services of respondents No.3 to 15 against the regular sanctioned posts of Law Officer (who had been appointed against non-existent posts of Law Trainees on fixed honorarium) by secretly and illegally abandoning the process of regular selection for the posts of Law Officer.

The brief facts are that on 01.09.2008, the respondents No.1 and 2 advertised that there was requirement of young Law Trainees who were desirous to undertake the drafting of replies, monitoring of legal cases and offering of legal advice. 6 such persons were required; 4 for the Head

Office and 2 for the Gurgaon Office. It was further disclosed that they had to be Law Graduate with first division and would be paid Rs.15,000/- as monthly honorarium in lump-sum. It is not disputed before me that in the HUDA service there are no posts of Law Trainees. Against these 6 posts which were advertised, ultimately respondents No.3, 4, 5, 7 and 8 were appointed as Law Trainees.

In the month of October, 2008 the respondents No.1 and 2 advertised 12 cadre posts of Law Officer in the regular pay scale of Rs.6500-10500. The petitioner applied for the same being eligible and was interviewed. After about 1 ½ year no result having been declared the petitioner applied for the first time to get information about the fate of the selection. By letter dated 14.03.2011 the respondent No.2 informed him that the result for selection has not been declared. The petitioner waited and then followed a series of RTI applications all on the same subject, which have been annexed as Annexures P-10, P-11, P-12, P-14 and P-15. By document (Annexure P-10) the information had specifically been requested about the selection, if any made for the posts of Law Officer in the Advertisement No.2008/05 and if so, when. In reply it was informed that the result of selection for Law Officer has been declared and certified copy of merit list was stated to have been attached and it was further informed that selection had been made in the year 2008 and in the merit list which was annexed the names of the respondents No.3 to 10 were mentioned, and that is how the petitioner has filed this petition.

The contention of the learned counsel for the petitioner is that the respondents No.3, 4, 5, 7 and 8 had never applied for the posts of Law Officer and had infact applied only for the posts of Law Trainees and consequently their appointment as Law Officer for posts for which they had never even applied and they had never even been considered and for which the eligibility conditions were different was completely illegal. In the written statement a strange story has been trotted out, which is at complete variance with the replies given to the petitioner under the RTI Act. In a bid to get over the allegation that the respondents No.3, 4, 5, 7 and 8 had never even applied for the posts of Law Officer and had never even been considered for that posts a very convoluted narrative has come forward. It is stated that the selection for the posts of Law Officer which was advertised by advertisement No.2008/05 was infact abandoned, because no candidate was found upto the mark. Even this may not be said to be illegal but what the official respondents did after that defies logic and betrays a complete go-bye to the principle of rule of law. The official respondents regularized the services of the respondents No.3, 4, 5, 7 and 8 as Law Officers (though interestingly in the written statement filed by the respondents No.1 and 2 it has only been stated that the services of the respondents No.3, 4, 5, 7 and 8 have been regularized and it is only from the reply filed by the respondents No.3, 4, 5, 7 and 8 that it has come out that actually their services were regularized on the posts of Law Officer). The audacity of the respondents No.1 and 2 amazes me. It is not unknown for individual litigants to try and obfuscate facts and furnish replies which may be considered to be less than honest but it is rare for a Govt. organization to file a reply with the explicit

purpose of trying to hide more than what should be revealed.

I am tempted to issue notice to Virat, who has signed this written statement and was the Secretary, HUDA, Panchkula on 07.01.2016 to show cause why proceedings under Section 340 Cr.P.C. be not taken against him but I refrain therefrom. I however, direct the Chief Secretary to place this judgment and my opinion about this officer on his service record and to consider the same while finalizing his Annual Confidential Report for the year 2017-2018.

Coming back to the appointment of the respondents No.3, 4, 5, 7 and 8 I have asked the counsel for the respondents pointedly as to how and in what circumstances a person who is appointed as a Trainee (which itself does not exist on the cadre) can get the benefit of regularization of services to the cadre post of Law Officer for which the eligibility conditions were different. The only explanation given by the learned counsel for the respondents is that these persons were actually working as Law Officers from the date of their appointment and hence their services were rightly regularized.

In my opinion, the argument is completely flawed. The services of a person can be regularized only if he is not appointed by back door method against a sanctioned post for which he is qualified subject to other conditions which may be imposed. At the cost of repetition it may be noticed that the respondents No.3, 4, 5, 7 and 8 were considered and appointed against the posts of Law Trainee and their services were regularized against the posts of Law Officer.

It may also be mentioned that apart from this bald assertion that the selection was abandoned, no material has been placed on record which would show that the Selection Committee noticed that none of the candidates who had applied for was suitable for the job and thereafter the competent authority passed an order deciding to abandon the selection process. No reason has been given why a fresh selection process was not initiated in which not only the petitioner or the respondents No.3, 4, 5, 7 and 8 but even other eligible candidates could have applied.

Another argument which has been raised is that the selection was made in the year 2008 and the petition has been filed in the year 2013. It can not be forgotten that after the interview took place in the month of June, 2009 information was being sought ever since 2011 and it was only in the year 2013 that it was disclosed that the respondents No.3, 4, 5, 7 and 8 had been appointed as Law Officers. Second argument is that the petitioner had no locus. I reject this argument because the respondents No.3, 4, 5, 7 and 8 had occupied the posts for which the petitioner had applied. In the circumstances it can not be held that the petitioner has no interest in it or no locus standi.

In the circumstances, I have no hesitation in setting aside the regularization of services of the respondents No.3, 4, 5, 7 and 8 as Law Officers.

The petition is allowed in the above terms.

Since the main case has been decided, the pending Civil Misc.
Application, if any, also stands disposed of.

02.05.2017
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No