

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

CWP No.24075 of 2015

Date of Decision:19.01.2017

Hari Om

... Petitioner

Vs.

State of Haryana and another

... Respondents

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

Present : Mr. Karan Singh, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J.

In the instant petition, the petitioner has sought for mandamus directing the respondents to accept the application form of the petitioner for the post of Naib Tehsildar and permit him to appear in the examination for the post of Naib Tehsildar pursuant to the notification from 16.11.2015 and further sought for consideration of his candidature for the post of Naib Tehsildar pursuant to the advertisement dated 6.10.2015.

The petitioner is stated to have been promoted as Kanungo on 23.8.2010 subject to certain conditions vide Annexure P-1. On 19.3.2014, the petitioner has been allowed pay and allowances attached to the post of Kanungo w.e.f. 1.9.2010 and further he was promoted on officiating/regular basis on 13.5.2015.

In this background question for consideration is whether

the petitioner is entitled to participate in the process of selection and appointment to the post of Naib Tehsildar or not?

Learned counsel for the petitioner submitted that having regard to the nature of promotion order dated 23.8.2010 and further that he was allowed pay and allowances attached to the post of Kanungo w.e.f. 1.9.2010 vide order dated 19.3.2014 read with regularization order dated 13.5.2015, he fulfills the qualification prescribed for the post of Naib Tehsildar.

On the other hand, learned counsel for the respondents submitted that the petitioner is regularly promoted to the post of Kanungo only on 13.5.2015, therefore, he do not fulfill the qualification of five years experience as Kanungo. Hence, rightly respondents have taken a decision in not permitting the petitioner to participate in the process of selection and appointment to the post of Naib Tehsildar. It was further contended that the petitioner has passed the prescribed examination for the post of Kanungo only in the year 2012. Even if the date of passing of examination is taken into consideration, still the petitioner do not fulfill five years of experience as on the date of advertisement to the post of Naib Tehsildar.

Heard learned counsel for the parties.

Crux of the matter is whether petitioner has five years of experience in the cadre of Kanungo or not? For the purpose of participating in the process of selection to the post of Naib Tehsildar.

In this regard, it is necessary to extract relevant rules

governing the post of Naib Tehsildar which reads as under:

2. Naib Tehsildar	(i) Graduate of a recognised University: (ii) Knowledge of Hindi upto Matric standard	1. By Promotion- (i) Graduate of a recognised University: Provided that in the case of Kanungos/District Revenue Accountants/Senior Revenue Accountants, who have already been working in the respective feeder cadre on a regular basis on the date of publication of the notification of these rules, the educational qualification shall be Matric instead of Graduate for the purpose of promotion; (ii) Knowledge of Hindi upto Matric standard (iii) Five years experience as kanungo, District Revenue Accountant or Senior Revenue Accountant of Fianncial Commissioner's Office, Haryana; 2. By Transfer- Five years experience on a post involving the performance of duties of a nature similar to the duties performed by the Naib-tehsildars governed under these rules

Perusal of the academic qualification and experience, if any, for appointment other than by direct recruitment for the post of Naib Tehsildar, the petitioner fulfills qualification of (i) and (ii) of para 2 of Appendix B of the Haryana Govt. Gaz. (Extra), July 13, 2007 (ASAR 22, 1929 SAKA). However, (iii) of para 2 of Appendix B of the Haryana Govt. Gaz. (Extra), July 13, 2007 (ASAR 22, 1929 SAKA) is relating to five years experience as Kanungo, District Revenue

Accountant or Senior Revenue Accountant of Financial Commissioner's Office, Haryana.

Perusal of fixation of five years experience as Kanungo do not distinguish whether a Kanungo had five years of experience on temporary basis or on permanent basis. What is requirement is five years experience as Kanungo. Rightly or wrongly, the petitioner was promoted on 23.8.2010 to the post of Kanungo and he has not been disturbed in discharging the duties of Kanungo post and further pay and allowances have been granted to him w.e.f. 1.9.2010 the date on which he has reported to the post of Kanungo. Thus, the petitioner fulfills the condition of five years of experience as Kanungo.

Having regard to the facts and circumstances of the present case, the respondents are directed to consider petitioner's name for Naib Tehsildar pursuant to the advertisement dated 6.10.2015 (Annexure P-5).

Petition stands allowed accordingly.

At this stage, learned counsel for the petitioner submitted that he had appeared for examination in the year 2015 and the result of the same has been kept in sealed cover due to pendency of the present litigation.

Accordingly, respondents are directed to open the seal cover and give effect to the same in accordance with law. If the petitioner is otherwise eligible for the post of Naib Tehsildar, he be appointed from the date of others appointment and he be extended

monetary benefits also. The above exercise shall be completed by the concerned respondents within a period of three months from today.

19.01.2017

rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

(P.B. Bajanthri)
Judge