

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

**Civil Writ Petition No.26811 of 2014
Decided on : 04.09.2017**

Braham Prakash

... Petitioner

Versus

Chief Secretary Government of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. C.R. Dahiya, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana
for respondents No.1 and 2.

Mr. Deepak Balyan, Advocate
for respondent No.3.

Mr. H.N. Mehtani, Advocate
for respondent No.4.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks quashing of the impugned charge-sheet dated 30.12.2009 (Annexure P-8) and order of removal dated 18.05.2012 (Annexure P-13) passed by respondent No.3 and order in appeal dated 01.10.2014 (Annexure P-15) passed by respondent No.1.

The facts can be put in a narrow compass to the extent that as per advertisement dated 16.09.2004 (Annexure P-2), the applications were invited by respondent-Commission on behalf of Haryana State Pollution Control Board (HSPCB) for filling up of 21 posts of Assistant Environmental Engineer and 4 posts of Environmental Engineer, mentioned at Category 8 and 9. The last date for submission of applications was

14.10.2004 and the upper age limit was 40 years. A communication was sent on 20.10.2004 (Annexure P-3) by the respondent-Board that person to be recruited was not be less than 17 years or more than 40 years of age on or before the first day of the month next preceding the last date of submission of application to the Commission. As per the said communication, it has been further provided that in case of candidates possessing requisite qualifications who are already in service of Government/Board/Corporation, the upper age limit should be such as prescribed by the Government from time to time. Resultantly, respondent-Commission issued a corrigendum dated 26.10.2014 (Annexure P-4) that the age will be counted on 01.09.2004 and the candidates should not be less than 17 years or more than 40 years (5 years relaxation for employees of Government/Board/Corporations).

The petitioner who was employed as Junior Engineer on *ad hoc* basis with the Panchayat Department, Haryana in the year 1984 and later in the year 1986 his services were regularized alleged that he became eligible for consideration and came within the permissible upper age limit, since his date of birth is 06.10.1961 on account of the relaxation provided by the Commission. He having been recommended for appointment on 02.12.2004 (Annexure P-5) came to be selected for the post of Assistant Environmental Engineer and accordingly also letter dated 14.12.2004 (Annexure P-6) was issued to him and resultantly he joined on 14.12.2004. It is the case of the petitioner that his case also considered by the Government and it was sent for approval.

On 30.12.2009 (Annexure P-8), after the petitioner had completed his probation period, the charge-sheet was issued that the petitioner was overage and was 43 years 8 months as on 14.10.2004 against the prescribed age of 40 years and was not eligible for appointment to the post of Assistant Environmental Engineer being overage. Apart from that there was another allegation that the appointment had been got through foul, unfair and unscrupulous means in violation of the provisions of the Service Regulations of the Employees of the Board being overage against the prescribed age of 40 years.

The petitioner, thereafter, filed his representation on 11.01.2010 (Annexure P-9). However, an Enquiry Officer was appointed and he submitted the report dated 04.10.2010 (Annexure P-10), wherein he came to the conclusion that appointment was irregular and the service regulations provided that maximum upper age limit was 40 years and there being no Government instructions providing for relaxation in the upper age for Government/Board/Corporation employees and, therefore, the petitioner was not eligible. However, it was also held that he did not get appointment through any foul, unfair and unscrupulous means.

Resultantly, show cause notice dated 30.12.2010 (Annexure P-11) alongwith the inquiry report was served upon the petitioner to submit his comments. The petitioner was, thereafter, give an due opportunity of hearing by the Chairman of the Board and he had appeared before him on 03.04.2012. Resultantly, the order of removal was passed on 18.05.2012 (Annexure P-13) under Regulation 4 (2) read

with Regulation 14 (1) of the Haryana State Pollution State (Group A, B, C and D) Service Regulations, 2004. The appeal was thereafter dismissed on 01.10.2014 (Annexure P-15) by keeping in mind the decision passed in **CWP No.3019 of 2012 'Phull Kumar Gaur Vs. State of Haryana and others'** preferred by three persons appointed as Environmental Engineers under similar circumstances against the same advertisement.

It is a matter of record that the appeals of the said persons had been dismissed by the Division Bench in **LPA Nos.1309, 1357 and 1374 of 2014 on 06.10.2015**. The Division Bench came to the conclusion that the relaxation without any communication in this respect by the Haryana State Pollution Control Board was not permissible as it could only have been granted by the Government and the Government has not issued any instructions. The appellants were also found to be more than 40 years and thus were not eligible for appointment in terms of statutory rules. Resultantly, it was held that once the eligibility conditions were not fulfilled mere appointment would not confer any right. The relevant part reads as under:-

“We do not find that such judgment provides any assistance to the argument raised. The appellants do not fulfill the eligibility conditions as per the Statutory Rules. Once the eligibility conditions are not fulfilled, mere fact that the appellants were appointed will not confer any right in them to continue on the appointed post. The eligibility conditions could not be waived off. The employer could not act against the Statutory Rules framed. Therefore, the Board cannot be estopped to take action against the appellants as the appellants were not eligible at the time of

appointment.”

Resultantly, the LPAs were dismissed by upholding the judgment of the learned Single Judge who had also dismissed the petitions of the Environmental Engineers.

Counsel for the respondents has further pointed out that **SLP No.4686 of 2014** in the case of Phull Kumar has also been dismissed on 23.12.2016.

Counsel for the petitioner has relied upon the Division Bench judgment passed in '**Atam Parkash Vs. State of Haryana' 1999 (4) SLR 421** to submit that there was no plea of concealment/misrepresentation and therefore he could not be denied employment. Reference was also made to the advise taken from the Chief Secretary that the petitioner may be allowed to continue in service of the Board as he was not found guilty at any stage of the recruitment process, in the opinion dated 31.01.2013 (Annexure P-14).

In the opinion of this Court, in similar circumstances once the matter has already been adjudicated on the judicial side and the finding has been recorded that the appointment was not as per regulations the same cannot as such be regularized by this Court against the statutory provisions. The advise as such of the Chief Secretary cannot as such be binding in any manner and neither does it refer to any statutory rules where any relaxation is to be granted to the petitioner. As noticed above the same controversy has already been adjudicated upon by the Division Bench and, therefore, the judgment relied by the counsel for the petitioner

in **Atam Parkash's case (supra)** is distinguishable.

Resultantly, this Court is of the opinion that the order of removal as such is not liable to be interfered with in the present circumstances. Accordingly, there is no merit in the present writ petition and same is dismissed.

SEPTEMBER 04, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No