

CWP No. 3137 of 2014

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

**CWP No. 3137 of 2014
Date of Decision: 21.09.2017**

Krishan Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Dinesh Arora, Advocate,
for the petitioner.

Mr. R.K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

On 29.08.2017, this Court had passed the following order:-

“By this petition, the petitioner is contending that he being an Assistant in the Forest Department of the Haryana Government, his name should have been recommended towards consideration for appointment to the HCS (Executive) from Register A-II, for appointment against the vacancies sought to be filled in the year 2012 and further, that even for future consideration, he be considered as a candidate under the said category from the Department of Forests, treating the department of Wild Life to be a separate department altogether.

The contention is that for the year 2012 and thereafter, the employees whose names have been recommended, have all been from the Wild Life Wing/Department (as per petitioner it is a department) and therefore, his name was not sent, because the head of the department has been given the power to nominate one person for consideration for such appointment, as per Register A-II.

The contention further is that simply because the Principal Chief Conservator of Forests, Haryana, has been given administrative control of the Wildlife Preservation Department as per the order Annexure P-3, dated 14.01.2002, that does not merge the Wildlife Preservation Department with the Forest Department and hence, the Principal Chief Conservator of Forests, Haryana, would be entitled to make two recommendations, one from the Forest Department and the other from the Wildlife Department.

In the reply filed by the respondents, it is stated in paragraph 5 of the preliminary submissions that the Wildlife Wing is a part of the Forest Department, as per the aforesaid order dated 14.01.2002.

Thus, the controversy entirely is as to whether the erstwhile Wildlife Preservation Department still continues to be a separate department altogether, with simply administrative control of it transferred to the Principal Chief Conservator of Forests, or whether it has merged into the Forest Department and now remains only a wing of that Department, as is contended by the respondents.

Though, on first blush, a reading of the order Annexure P-3 would seem to suggest that the Wildlife Preservation Department had simply been 'transferred' for the purpose of administrative control to the Principal Chief Conservator of Forests, however, what needs to be considered is as follows:-

The budget provision of the Wildlife Department is already shown to have been made over to the Forest Department, with the budget head numbered as 2406, but at the same time, the seniority and services of the staff of the Wildlife Wing being maintained separately, in which promotion will not be affected.

That being the position, where the chances of promotion of an employee of the Wildlife Wing are not to be affected by the issuance of the order dated 14.01.2002, Annexure P-3 obviously, all persons belonging to the Wildlife Preservation Department of the State of Haryana have to be given an equal opportunity of promotion as was already existent in them prior to the administrative control of the department having been given to

the Principal Chief Conservator of Forests. If that is so, then it would seem that nomination of a person from the Wildlife Department would have to be treated an independent nomination, to Register A-II, with another person to be nominated from the Department of Forests.

That, however, would otherwise seem to be an anomaly, in terms of the table contained in Rule 10 (1) of the Haryana Civil Services (Executive Branch) Rules 2008, by which the Chief Secretary to the Government of Haryana has been given the power to make three recommendation, the Financial Commissioner and Principal Secretary, Revenue and Disaster Management, having been empowered to make two recommendations, and the remaining heads of departments having been empowered to make one recommendation each. Therefore, as the head of one department, the Principal Chief Conservator of Forests would be entitled to make only one nomination.

Even so, in the opinion of this Court, the anomaly is to be resolved in the light of the order dated 14.01.2002, in which it is specified that chances of promotion of employees of the Wildlife Preservation Department are not to be affected.

Undoubtedly, appointment to the HCS (Executive), from Register A-II cannot be strictly termed as a promotion. However, again in the opinion of this Court, in the absence of an actual merger of the department, simply giving administrative control of the Department of Wildlife Preservation, to the Principal Chief Conservator of Forests, even retaining the cadres of the departments separately, with separate rules governing them, would not amount to the department of Wildlife becoming a Wing of the Forest Department.

Again without doubt, any number of cadres/sub-cadres can exist within a particular department and hence, the respondents otherwise would not be precluded from treating different cadres to be cadres within the same department; however, to repeat, with only the administrative control of the Wildlife Preservation Department brought under the Principal Chief

CWP No. 3137 of 2014

Conservator of Forests, that would not amount to a merger of the two departments. If the Government wishes to actually merge the two departments, into one, there would have been no reason for it to not do so, either by notification or by order, (as legally required).

Learned counsel for the State, in the aforesaid background, would give the details of selections made to the HCS (Executive) from Register A-II, against the vacancies from the year 2012, on the next date of hearing.

The position of appointment to the HCS (Executive) from the aforesaid Register, would be given on affidavit by the Deputy Secretary, General Administration, or any person holding a rank higher than that in the Department of General Administration, or the Department in Government which has control over such appointments.

Adjourned to 21.09.2017.

A copy of this order be given to learned counsel for the State under the signatures of the Special Secretary of this Court.”

Pursuant to the aforesaid order dated 29.08.2017, an affidavit of the Deputy Secretary to the Government of Haryana, Department of General Administration, has been filed in Court today by learned State counsel, which is taken on record. A copy thereof has been given to learned counsel for the petitioner.

As per the said affidavit, the selection process as regards the vacancies of the year 2012, has been completed by appointment of the three persons whose names are given in paragraph no. 5 of the affidavit.

Learned counsel for the petitioner submits that as regards that selection process he does not press his claim, but submits that the petitioner in terms of the aforesaid order dated 29.08.2017, be also considered eligible for nomination as a candidate from the Forest Department, with that department to be taken as a separate department to that of the Department of Wildlife, in future

selections.

Whereas as per the order already passed by this Court on 29.08.2017, the respondents would be bound to do that (subject naturally to any orders passed in appeal by either a Division Bench of this Court or by the Supreme Court), however, learned counsel for the State further points to paragraph 6 of the affidavit, in which it is stated that though recommendations for recruitment to the HCS (Executive Branch), from Register A-II, had been invited for the years 2014 and 2016, no selection/appointment was made against the vacancies occurring in those years, and now a decision has been taken to introduce a written test amongst all eligible Group-C employees from Register A-II, for further consideration for appointment to the HCS (Executive Branch).

The statutory rules in that regard are also being amended as per the affidavit.

Consequently, this Court having already held, vide its aforesaid order passed in this petition on 29.08.2017, that the order of the Govt. dated 14.01.2002 does not merge the Department of Wildlife Preservation with the Department of Forests, but gives only administrative control of the former department to the Principal Chief Conservator of Forests, the two departments have to be treated separately and therefore nominations from Register A-II are to be accordingly made, in terms of Rule 10 (1) of the HCS (Executive Branch) Rules 2008, that order would enure in favour of the petitioner, subject to any amendment made in the Rules, with regard to the source of recruitment from Register A-II, vide the amendment now proposed to be made by the State.

If however, the source of recruitment remains the same, i.e. each Head of the Department would have jurisdiction to nominate one person from his department for consideration for appointment to the said service from Register

CWP No. 3137 of 2014

A-II, the petitioner and others like him from the Forest Department, shall be considered as 'independent' nominees, separate from the Department of Wildlife Preservation.

This petition is accordingly disposed of with the aforesaid directions, with the Registry directed to tag the order of this Court dated 29.08.2017, along with this order.

September 21, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes.