

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 12965 of 2016

Date of Decision: May 24, 2018

Satvir Singh Sangwan

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate
for the petitioner

Mr. Gaurav Jindal, Addl. A.G. Haryana

:-

Sudhir Mittal, J.

The question for decision in this writ petition is whether the appointment of the petitioner as Superintendent in Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan, Tehsil Gohana, District Sonapat by way of transfer is legal or not?

2. The petitioner was working as Superintendent in the office of Principal Chief Conservator of Forest, Haryana, Panchkula. The Director, Medical Education & Research, Haryana circulated a letter dated 29.05.2015 to all departments in the State of Haryana for filling up certain posts by way of transfer. These posts existed in the Medical Education & Research Department, Haryana. One post of Superintendent was included in the posts so circulated. The last date for submission of applications was 30.07.2015. It is the admitted case of the parties that only one application was received for the post of Superintendent but the same was rejected.

Thus, the said post remained vacant.

3. Vide letter dated 18.09.2015, the petitioner submitted an application to the Director, Medical Education & Research, Haryana, asking for transfer to the vacant post of Superintendent in Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan (hereinafter referred to as 'the College'). A copy was endorsed to the Director of the College, directly. Thereafter, vide memo dated 05.10.2015, the Director, Medical Education & Research, Haryana, wrote to the Principal Chief Conservator of Forests, Haryana, to forward the application of the petitioner through proper channel alongwith requisite information. A letter dated 15.10.2015 was written by the Director of the College to the Director, Medical Education & Research, Haryana that the College had no objection in case the petitioner was transferred on the post of Superintendent. Meanwhile, application of the petitioner was forwarded through proper channels alongwith requisite documents. The Director, Medical Education & Research Haryana, therefore, wrote to the Director of the College to interview the candidate. The petitioner was interviewed on 18.01.2016 and vide memo of even date the Director of the College informed the Director General, Medical Education & Research, Haryana that he had no objection in case the petitioner was appointed on transfer basis. Vide letter dated 11.03.2016, the Government of Haryana transferred the petitioner to the College and the petitioner joined duties on 18.03.2016. However, vide impugned order dated 21.04.2016, the appointment letter dated 11.03.2016 was withdrawn and the petitioner was repatriated to his parent department without issuance of show cause notice. The order was challenged by the petitioner vide CWP No. 7527 of 2016, which was disposed of vide order dated 04.05.2016 as having been rendered infructuous because during its pendency the impugned order had been withdrawn. Liberty was, however, given to the department to proceed afresh in accordance with principles of natural justice. Thereafter, vide memo dated 13.05.2016, show cause notice was issued to the petitioner. This was followed by another notice dated

15.06.2016. The petitioner submitted a detailed reply. However, the same was not accepted and vide order dated 28.06.2016, he was again repatriated to his parent department after cancellation of his transfer order.

4. Hence, the present writ petition.

5. A short written statement has been filed by way of affidavit of Sh. Amarjit Singh, Joint Director (Admn.), Medical Education & Research Department on behalf of all the respondents. The stand taken is that the petitioner manipulated his appointment as Superintendent by way of transfer and the said post was never advertised or circulated. Only a post of Superintendent in the Directorate of Medical Education & Research, was circulated and the petitioner did not apply for the said post within the time prescribed in the letter i.e. 30.07.2015. Thereafter, in connivance with the Director of the College, the petitioner got himself transferred as he was himself looking after the correspondence in the office of the Principal Chief Conservator of Forests, Haryana. This was done by the petitioner as he was due for retirement on 30.04.2016. The College is situated close to his home town and this motivated him to get transferred. Moreover, after the petitioner was appointed by way of transfer, the staff of the College protested vide letter dated 25.03.2016 as their promotional avenue had been blocked. The Director of the College recommended the cancellation of the transfer vide his letter dated 26.03.2016 and, therefore, the petitioner was repatriated.

6. Learned senior counsel for the petitioner has raised two fold submissions :-

(a) the reason given in the impugned order that before appointing the petitioner he was not interviewed by the selection committee is fallacious because interview by the selection committee was actually necessary if more than one candidate had applied. Since the petitioner was the lone applicant there was no

to minutes of meeting dated 22.12.2010 (Annexure P-1) regarding setting up of three new Medical Colleges.

(b) The reason that the post in the College had not been circulated or advertised is also not sustainable in law, because the post of Superintendent in the College can be filled up by way of transfer and the said post is also to be filled up by the Director, Medical Education & Research, Haryana. The petitioner applied through proper channels. His case was recommended by the competent authority and letter of appointment was issued, thus, there is no illegality in the appointment of the petitioner.

7. Learned State counsel supports the impugned order by adopting the reasoning mentioned in the written statement.

8. The facts show that the post of Superintendent in the College, although can be filled up by way of transfer, was never advertised or circulated by the College or by the Directorate of Medical Education & Research, Haryana. The petitioner does not deny that he was due for retirement on 30.04.2016 and that his home town is situated in the vicinity of the College. It is also not denied by him that as Superintendent in the office of the Principal Chief Conservator of Forests, Haryana, he was himself handling the relevant communication. He also does not deny that he got in touch with the Director of the College, who advised him to get appointed by way of transfer. It is, thus, obvious that the petitioner manipulated his transfer. That in itself is sufficient to uphold the order of the repatriation. No Government employee can be permitted to manipulate the system so as to gain personal advantage at the cost of others. If the post had been circulated/advertised other qualified persons would have also got the opportunity to apply for the same. Denial of opportunity to others, is illegal as public appointment has to be made by selection of the best suited person.

9. The second argument of the petitioner that he being the sole applicant, there was no requirement of interview by the selection committee, can also be not accepted because by his own actions he ensured that he was the only applicant. Having acted in a mischievous manner, he can not be permitted to take advantage of the rules. That apart, the argument is in itself not acceptable because the requirement of no interview by selection in case of a single individual is only mentioned in the minutes of the meeting. The said stipulation does not find mention in the Haryana Medical Education Department miscellaneous (Group B) Service Rules, 1999 notified on 26.03.1999. Thus, the petitioner is not entitled to draw any benefit therefrom.

10. The writ petition is misconceived and is, accordingly, dismissed.

May 24, 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No