

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

CWP No.28040 of 2017 (O&M)

Date of decision: 23.08.2018

Smt. Amita Rani

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surender Pal, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Pawan Kumar, Senior Advocate,
with Mr. Shalender Mohan, Advocate,
for respondent No.2.

Ritu Bahri, J.

Petitioner is seeking a writ of certiorari for quashing/setting aside advertisement No.29/2017 (Annexure P-4), issued by respondent No.2, whereby posts are to be filled up by way of direct recruitment.

Petitioner initially joined the service of respondent No.2 i.e. State Council as a Clerk in HQ Cadre in the year 1989. Thereafter, she was promoted to the post of Assistant Programme Officer (APO) HQ on 28.02.2003 on the basis of seniority-cum-merit. The next promotional post in the hierarchy is the post of Programme Officer. This post became available on 24.05.2017. Since in the past, the said post had been filled by way of promotion, the petitioner made an application dated 08.06.2017 for consideration her case for promotion on the post of Programme Officer. Against, she made a representation dated 12.09.2017 (Annexure P-2). Vide

letter dated 06.10.2017 (Annexure P-3), she was informed that her case will

be considered. It is stated in the petition that in the year 2003, three employees namely Sh. D.K. Goel, Smt. Sunita Garg and the petitioner were promoted to the post of APO and after that almost all the staff members have been promoted to their respective next posts in the hierarchy, except the petitioner and no justification has been given, whey the petitioner has not been promoted despite the fact that she is fully eligible for the said post. Moreover, the post is also lying vacant w.e.f. 24.05.2017 on account of the promotion of Smt. Promila Ahuja (PO) to the post of CWP (Child Welfare Officer).

Upon notice, written statement on behalf of the respondents has been filed, wherein it has been stated that respondent No.2 is a non Government Organization and it is not undertaken by any department of the State Government or the Central Government, which receives funds under grant-in-aid to run its Child Welfare Activities. The State Council has drafted its Service Rules and the same are uploaded on the website for comments upto 31.03.2017. During the pendency of this petition, the final rules have been notified vide Annexure R-2. As per Rule 7 (3) of the above said rules, 1/3rd appointments to any post, except Class III and IV, have to be filled by by way of promotion and rest of the posts are to be filled by way of direct recruitment. As per Appendix, there are three posts of Programme Officers, out of which, two posts have already been filled up by way of promotion and the 3rd post is to be filled up by way of direct recruitment. Hence, advertisement No.29/2017 (Annexure P-4) has been rightly issued for filling up this post by way of direct recruitment. On the date of the advertisement, objections against the draft rules had already been sought on the website till 31.03.2017. Once, rules have been notified, petitioner does

not have any claim to get promotion on the post, which falls under the quota of direct recruitment. Final service rules have been placed on record as Annexure R-3.

Heard, counsel for the parties.

Reference, at this stage, can be made to a judgment passed by Hon'ble the Supreme Court in Deepak Aggarwal and another vs. State of Uttar Pradesh and others, 2011 (2) SLR 739, wherein promotion to the post of Deputy Excise Commissioner was in dispute. Before amendment of Rule 5 (3) of Uttar Pradesh Excise Group 'A Service Rules, 1983, post of Technical Officers and Statistical Officers were in the feeder cadre for promotion to the post of Deputy Excise Commissioner. However, vide 5th amendment of Rule 5 (3) of 1983 Rules, these posts were deleted from the feeder cadre for promotion. Hon'ble the Supreme Court held that removal of these two posts from the feeder cadre would lead to some stagnation for the officers working on these two posts. Mere upgradation of the post may not be sufficient compensation for the officers working on the two posts for loss of opportunity to be promoted on the post of Deputy Excise Commissioner. A direction was given to the Government to re-look at the promotion policy to provide some opportunity of further promotion to the officers working on these posts. However, ratio of this judgment cannot be applied in the present case. In the facts of the present case, as per Service Rules (Annexure R-3), 2/3rd posts are to be filled by way of promotion and 1/3rd posts are to be filled by way of direct recruitment. As per Appendix, there were four posts of Programme Officers and one post is to be filled up by direct recruitment and remaining posts are to be filled by promotion.

Case of the respondents, as per written statement, is that two posts have

already been filled up by way of promotion. Hence, as per advertisement No.29/2017 (Annexure P4), 3rd post is to be filled up by way of direct recruitment. It is not the case of the respondents that the feeder cadre post of the Assistant Programme Officer has been rendered with stagnation in new channel of promotion.

Even the judgment passed in Hardev Singh vs. UOI and another, 2012 (1) SCT 1 cannot be applied in the case of the petitioner because in that case, the selection process for promotion had started. During the pendency of that process, promotion policy had been changed. Hon'ble the Supreme Court was considering the case of promotion to the rank of Lieutenant General. Appellant-Hardev Singh was a Major in the Army. His case was considered for promotion to the rank of Lieutenant General by Special Selection Board twice, but as other officers were found better than the appellant, his could not be promoted. It was observed that the main grievance of the appellant was that there was change of promotional policy after starting the selection process. The promotion policy was changed w.e.f. 01.01.2009, whereas the selection process had started in December, 2008. After going through the record and the counter affidavit filed, it transpired that the first meeting of the Special Selection Board was convened on 09.01.2009. Hence, this meeting held was after the new policy, which came into effect on 01.01.2009. As per the new policy, performance of the officer has to be seen especially during the last view years. On this ground, the SLP was dismissed. Even facts of this judgment cannot be applied in favour of the petitioner, as in the present case, petitioner's application for promotion has never been taken up for consideration by the competent authority.

Reference, at this stage, can be made to a judgment passed in Chandigarh Administration through Director, Public Instructions vs. Usha Kheterpal Waie and others, 2011 AIR (SC) 2011, wherein Hon'ble the Supreme Court was examining a case, where on the basis of draft rules, advertisement for filling up the post of Principal was issued. Stand taken by the Chandigarh Administration was that Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000 had been notified and the Rules were made in consultation with the UPSC taking note of UGC guidelines and making Ph.D. as required qualification for the post of Principal. In this backdrop, the post of Principal was advertised, wherein Ph.D. was mentioned as essential qualification. Pursuant to the advertisement, some of the candidates approached the Tribunal. The Tribunal allowed their application. The said order of the Tribunal was challenged before the High Court and the High Court dismissed the petition vide order dated 26.10.2005. Feeling aggrieved, appellant filed SLP before Hon'ble the Supreme Court. Hon'ble the Supreme Court, while referring to the judgment passed in Abraham Jacob vs. Union of India, 1998 (2) SCT 70, held that it was open to the Government to regular the service conditions of the employees for whom the rules were made, even if they were in their draft stage, provided there is a clear intention on the part of the Government to enforce those rules in the near future. It was further held that the Tribunal and the High Court had committed error in holding that the appellant could not prescribe the qualifications of Ph.D. for the post of Principal merely because earlier the said education qualification was not prescribed or insisted. The Recruitment Rules were made in consultation with UPSC, to give effect to the UGC

guidelines, which prescribed Ph.D. degree as the eligibility qualification for direct recruitment of Principals. In several States, Ph.D. is a requirement for direct recruitment to the post of a college Principal. When the said qualification is not unrelated to the duties and functions of the post of Principal and is reasonably relevant to maintain the high standards of education, there is absolutely no reason to interfere with the provision of the said requirement as an eligibility requirement. It was further held that the Tribunal and the High Court were not justified in holding that 1976 Punjab Rules were not applicable on the ground that no material had been placed to show that they were followed while appointing a Principal in the past. With the above observations, appeal filed by appellant-Chandigarh Administration was allowed.

Keeping in view the above judgment passed in **Chandigarh Administration's** case (supra), this Court is of the view that the impugned advertisement has been rightly issued as per draft rules (Annexure R-2). Moreover, during the pendency of this petition, main rules have also been notified in December, 2017 (Annexure R-3). Therefore, no ground to interfere in the impugned advertisement, as sought for, is made out.

No merits.

Dismissed.

23.08.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No