

224
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2018.08.27 14:29
I attest to the accuracy and
authenticity of this document

CWP No. 8055 of 2015 (O/M)
Date of decision : 9.8.2018

Raj Kumar Jain

..... Petitioner (s)

Versus

The High Court of Punjab and Haryana and another

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Parminder Singh, Advocate,
for petitioner.

Mr. Vikas Suri, Advocate,
for respondent No. 1.

Mr. Puneet Bali, Senior Advocate, with,
Mr. Vibhav Jain, Advocate, and
Mr. Arun Gupta, Advocate,
for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

:-

:-

KULDIP SINGH, J.

Petitioner, Raj Kumar Jain, who is working as Additional and Sessions Judge, Karnal, in State of Haryana, has invoked the writ jurisdiction of this Court under Articles 226 and 227 of Constitution of India, for quashing order dated 27.1.2015 (Annexure-P-8), by which representation of petitioner dated 3.11.2014 (Annexure-P-7), was rejected, overlooking the fact that the Administrative Instructions dated 11.3.2011 were already redundant by way of Administrative Instructions, appended to Rules, issued on dated 6.6.2012 with retrospective effect from 1.1.2011. Thus, promotion of respondent No. 2 on the basis of those Rules is illegal and arbitrary.

Prayer is also made for directing the promotion of petitioner with effect from 22.5.2012, the date from which respondent No. 2, junior to petitioner has been promoted as Additional District and Sessions Judge. Prayer is also made for quashing order 7.8.2015 (Annexure-P-6), vide which respondent No. 2 has been promoted as Additional District and Sessions Judge, retrospectively, keeping in view the fact that Administrative Instructions dated 11.3.2011, governing promotion, had already become redundant by way of Annexure D, appended to Rules dated 6.6.2012, retrospectively with effect from 1.1.2011.

Petitioner joined as a Civil Judge-Cum-Judicial Magistrate as a member of Haryana Civil Service (Judicial Branch) on 28.7.1997. He became the member of Superior Judicial Service on 9.11.2012. Respondent No. 2, namely, Dr. Sanjeev Arya joined the service of respondent as a member of Haryana Civil Service (Judicial Branch) on 28.7.1997 as a Civil Judge-cum-Judicial Magistrate and was promoted as an Additional Civil Judge (Senior Division) in March, 2005. He was transferred as such to District Courts Narwana on 28.5.2007. Respondent No. 2 has been promoted as an Additional District and Sessions Judge with effect from 22.5.2012. It has been further stated that promotion to the post of Additional District and Sessions Judge under Rule 6 (1) of Haryana Superior Judicial Service Rules, 2007, is made to the extent of 50 per cent from amongst the Civil Judges (Senior Division)/Chief Judicial Magistrates/Additional Civil Judge (Senior Division) on the basis of principle of merit-cum-seniority and passing of suitability test. The other part of the rule is not relevant for the purpose of present petition. 23 posts of Additional District and Sessions Judges in State of Haryana were notified to be filled in by way of promotion

on the basis of principle of merit-cum-seniority and passing of suitability test. The written test was conducted on 5.2.2012. Against 23 posts, 46 Judicial Officers were called to appear in the written test. Viva voce was held from 27.3.2012 to 29.3.2012. It is claimed that criteria required for evaluation is arbitrary. Another set of rules were notified on 6.6.2012 with effect from 1.11.2011. It is stated that respondent No. 2 was granted adverse remarks in ACR. He approached this Court by way of filing CWP No. 11170 of 2012 and CWP No. 15682 of 2012. The writ petitions were allowed by a Division Bench of this Court on 21.12.2013 and ACR of respondent No. 2 was upgraded from 'C-Below Average', 'Integrity Doubtful' to 'B+ Good'. Accordingly, he was ordered to be considered for the post of Additional District and Sessions Judge. However, he has been illegally promoted in consequence of Administrative Instructions dated 6.6.2012.

The High Court has taken the stand that petitioner had participated in selection process of assessment of suitability test. It was stated that matter for filling up 23 vacancies of Additional District and Sessions Judges under Rule 6 (1) of Haryana Superior Judicial Service Rules, 2007, was initiated in the year 2012. At that time, the criteria dated 30.10.2007 was taken into consideration i.e. officer having three 'B+ Good' report for preceding five years and who are not having any 'Integrity Doubtful' report in any ACR of the last five years. The officers, fulfilling said criteria, were called for assessing and testing the merit and suitability. Even those officers, whose reports are 'C Average' and against whom disciplinary proceedings are pending, were called for assessing and testing of their merit and suitability under said Rules. For this purpose, the Committee

of Six Senior Most Judges excluding the Chief Justice was formed. It was stated that petitioner Raj Kumar Jain and other officers did not qualify for promotion as Additional District and Sessions Judges against 23 vacancies as the name of petitioner figured at Serial No. 41 in the merit list and only 23 Haryana Civil Service (Judicial Branch) Officers in the said merit list were recommended for promotion to the post of Additional District and Sessions Judges. Regarding respondent No. 2 Dr. Sanjeev Arya, it was stated that he was designated as Additional Civil Judge (Senior Division) in Full Court meeting held on 23.2.2005. He was graded 'C Below Average', 'Integrity Doubtful' for the year 2007-2008. He was reverted as Civil Judge (Junior Division)-cum-Judicial Magistrate by Full Court meeting held on 8.8.2012. Dr. Sanjeev Arya (respondent No. 2) has challenged the said order by way of filing CWP No. 11170 of 2012 before this Court. The said writ petition was allowed by a Division Bench of this Court on 21.12.2013 and his reversion was held to be illegal, on the ground that he could not be reverted to lower rank without holding a regular inquiry and his gradation was upgraded from 'C Below Average' and 'Integrity Doubtful' to 'B+ Good'. Shri Phalit Sharma, who is now working as Additional District and Sessions Judge, Rewari, and was immediate junior of respondent No. 2 Dr. Sanjeev Arya, was promoted as Additional District and Sessions Judge, as a result of promotions held in the year 2012. At that time, criteria dated 30.10.2007 and criteria formulated, vide report dated 3.5.2010 for promotion of Additional District and Sessions Judge, was taken into consideration. As the ACR of Dr. Sanjeev Arya was upgraded, therefore, he was held entitled to consequential benefits. He was considered for promotion when his immediate juniors Phalit Sharma and Ashwani Kumar were promoted on

22.5.2012. The suitability test was organized for Dr. Sanjeev Arya on 26.5.2014, which he passed. Therefore, he was placed immediate above Phalit Sharma.

We have heard the learned counsel for petitioner, learned counsel for respondent No. 1 and learned senior counsel for respondent No. 2 and have carefully gone through the file.

It comes out that the main grouse of petitioner is that Dr. Sanjeev Arya, who is promoted later on, was placed above him in the selection of 2012 by creating one supernumerary post in addition to 23 vacancies, which were notified. Admittedly, petitioner had appeared in the said examination in the year 2012, but failed to come on merit of first 23 candidates. Therefore, he was not appointed. Dr. Sanjeev Arya, on the other hand, on the basis of judgment in his favour by a Division Bench of this Court in CWP No. 11170 of 2012 on 21.12.2013, was held entitled to all the benefits. Accordingly, after his writ petition was allowed by a Division Bench of this Court, a suitability test was conducted for him on 26.5.2014 and viva voce on 1.7.2014. As he qualified the said test, therefore, he was placed above his immediate junior Phalit Sharma and below his immediate senior Jasbir Singh Sidhu.

We are of the view that on account of setting aside of reversion of Dr. Sanjeev Arya and upgradation of his ACR, he was held entitled to all consequential benefits, which have been granted to him. The question regarding preparing merit list and vires of Rules have been separately challenged in CWP No. 23028 of 2013, which will be decided separately. However, so far as present case is concerned, Dr. Sanjeev Arya (respondent No. 2) was rightly granted the benefit, upon setting aside of his demotion and

upgradation of ACR. The High Court applied the appropriate rules as prevailing at the time of test. He was entitled to be placed above his immediate junior, which has been done. There is no illegality or infirmity in the impugned order, granting promotion to respondent No. 2. Consequently, we do not find any merit in the writ petition and same is dismissed. However, it will be subject to decision of CWP No. 23028 of 2013, titled as *Vimal Kumar and others Versus State of Haryana and others*, wherein petitioners have challenged the vires of rules, administrative instructions, criteria for promotion and certain rules for promotion.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

9.8.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No