

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

CWP-6096-2018

Date of Decision: March 20, 2018

Virender Prasad Juyal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjiv Gupta, Advocate, for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana, and
Mr. Gaurav Jindal, Addl. AG, Haryana,
for respondent Nos. 1 and 3.

Mr. Kanwal Goel, Advocate, for respondent No. 2.

ARUN PALLI, J. (ORAL)

The petitioner is aggrieved by an order, dated 06.02.2018 (Annexure P-5), received on 08.03.2018, vide which his appointment has since been cancelled.

The facts that are required to be noticed are limited.

The petitioner competed for selection to the post of Assistant District Attorney, in response to Advertisement No. 6/2015, published on 17.11.2015, in the 'ESM' General category. In terms of the advertisement, 7 posts were reserved in the ESM category. The petitioner was duly selected by the Haryana Public Service Commission (respondent No. 2), and was placed at No. 7 in the order of merit, in the select list. Pursuant to the

recommendations made by the Commission, a letter of appointment was issued to the petitioner on 10.08.2017 (Annexure P-3). And, he consequently joined on 11.08.2017. However, subsequently one of the candidates, namely, Pawan Kumar (Roll No. 20253), who had applied in the 'BCA-ESM' category, represented to the Commission: that he was not called for interview, even though the last candidate, permitted to participate in the interview, had secured less marks than him. Upon verification, it was found that Pawan Kumar had indeed applied in the 'BCA-ESM' category, and owing to an inadvertent error, his claim was considered only as a 'BCA' candidate, and not in the 'ESM' category. Further, he had also secured more marks in the written test than the cut-off marks in the 'ESM' category. Resultantly, he was interviewed by the Commission, had obtained more marks than the last recommended candidate in the 'ESM' category. Accordingly, the Commission sent the revised recommendation to the Government for further necessary action. And, in the revised recommendation, the name of Pawan Kumar was reflected at Sr. No. 6. Faced with this situation, the Government withdrew/cancelled the appointment of the petitioner.

The limited grievance that the petitioner has is; that vide impugned order, dated 06.02.2018, the Government has since withdrawn/cancelled his appointment, but without affording any notice or opportunity of hearing. Rather, it has been observed that in terms of Clause-6 of the appointment letter, dated 10.08.2017 (Annexure P-3), the petitioner was not required to be issued any notice before terminating his services.

Ex facie, the reason assigned by the respondents to deprive the petitioner of even a notice before cancelling his appointment, is erroneous. Even otherwise, Clause-6 of the letter of appointment; ***“you will remain on probation for a period of two years which can be extended upto three years. Your appointment during probation period can be terminated without assigning any reason or giving any notice”***, shall have no bearing on the matter at hands, as that would have come in operation only while assessing the work and conduct of the petitioner at the relevant stage.

Faced with this, learned State counsel submits that let the impugned order be set aside, for the respondents shall pass a fresh order, after affording a notice and opportunity to the petitioner. Though, he also asserts that Pawan Kumar, being concededly higher in order of merit, and having been ignored owing to an accidental omission, at the end of the Commission, shall have to be offered appointment in terms of the revised recommendations.

In response, learned counsel for the petitioner submits that indisputably, Pawan Kumar, reflected at No. 6 and Shiv Kumar, who has been placed at No. 7, in the revised recommendation, had secured higher marks than the petitioner, and thus the petitioner, perhaps, cannot question their selection. But, he submits that petitioner can still be adjusted, for a candidate, namely, Sunil Kumar, reflected at No. 3 in the revised recommendation, has since not chosen to join.

As to this, learned State counsel submits that all these issues shall be duly factored in while passing a fresh and a comprehensive order,

after affording an opportunity to the petitioner.

That being so, the impugned order, dated 06.02.2018 (Annexure P-5) is set aside. And the petition is disposed of in the above terms.

(ARUN PALLI)
JUDGE

March 20, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO