

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

**CWP No.11220 of 2019
Date of decision:17.09.2019**

Monika Juneja

... Petitioner

Vs.

Managing Director, Uttar Haryana
Bijli Vitran Nigam Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Parveen Kumar Rohilla, Advocate
for the petitioner.

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

Mr. R.K.Choudhary, Advocate
for respondent no.5.

AMIT RAWAL J.

Challenge in present writ petition is for quashing of the order dated 19.04.2019 (Annexure P-4) whereby services of petitioner have been replaced by another person.

The facts which emanate from the pleadings are that in May 2009, some posts had fallen vacant in the office of XEN Central Store, Uttar Haryana Bijli Vitran Nigam Limited including the post of Steno and Data Entry Operator on the contract basis i.e. at DC rates. The petitioner applied for the said post being fully eligible. In the application, it was stated that she is graduate B.Com and having knowledge of shorthand and computer.

Mr. Parveen Kumar Rohilla, learned counsel appearing on behalf of the petitioner submitted that after completion of contract, services of the petitioner were extended from time to time and during all this period, her record had been impeccable in the absence of any complaint. Till 22.04.2019, she has been working as Data Entry Operator but was not allowed to assess the department on the premise that she did not fulfill the conditions. In fact, petitioner acquired the knowledge that one respondent no.5, who was also working in the office as Lower Division Clerk made certain complaint against petitioner regarding her qualification as he wanted to blackmail her, much less sexually harassed resulting into registration of FIR no.260 dated 01.04.2017 under Sections 354, 506 and 509 of Indian Penal Code. The petitioner was served with a show cause notice which was duly replied whereby alleged computer certificate issued by one M/s Balaji Computer Center was emphatically denied. It was contended that on the date of appointment as per information received under Right to Information Act, the qualification for the post of Lower Division Clerk by way of direct recruitment was 10/10+2 (vocational) with at least 50% marks or equivalent and above (for ex-serviceman 10+2 only) or graduate from any Board/University recognized by the Government of Haryana with working knowledge of computer covering various topics i.e. computer fundamentals, operation of Internet/E-Mail, MS Office (MS Word, Excel and Power Point) passed type test in Hindi at the speed of 25 words per minute or in English at the speed of 30 words per minute respectively and data punching speed of 8000 keys depressions per hour on computer and must have passed

Hindi/Sanskrit upto Matric Standard. Vide Annexure P-8, Executive Engineer, Central Stores, Uttar Haryana Bijli Vitran Nigam Limited, Panipat issued a certificate dated 06.11.2017 to the fact that Monika has been working as Data Entry Operator (on contract) since 2009 and had been well conversant with the office work of Accounts Section, Head Clerk Section as well as Drawing Section. She is stated to have good knowledge of Account and Administrative Sections being faithful, honest and hard worker.

In support of the contention, reliance has been laid to the judgment of Hon'ble Supreme Court in **Hargurpratap Singh Vs. State of Punjab and others 2007(13) SCC 292** where action of department in substituting the contractual employees with another set of employees had been deprecated.

Per contra, Mr. Hitesh Pandit, learned Additional Advocate General, Haryana and Mr. R.K.Choudhary, Advocate appearing on behalf of respondent no.5 submitted that one Sh. Ravinder Sharma made a complaint against petitioner that her appointment was against rules and regulations as minimum qualification required for DEO was graduation with 50% marks and 'O' Level Certificate of one year computer diploma whereas at that relevant point of time, petitioner did not clear her graduation, evident from final marks sheet. The matter was thoroughly enquired into by the vigilance department of the Nigam and after investigation, it was found that her certificate issued by M/s Balaji Computer Center was bogus. She was

served with show cause notice and on receipt of reply, her services were terminated and she was not allowed to join and therefore, it is not a case of unfair practice being perpetuated by respondents in replacing the petitioner with another set of contractual employees. In other words, the contractor/outsourcing agency was requested to send another person fulfilling the requisite qualification for the post of Data Entry Operator.

In rebuttal, Mr. Rohilla, Advocate submitted that petitioner completed her one year computer diploma from the State Government approved Center Hartron, Panipat on 11.04.2017 (Annexure P-6).

I have heard learned counsel for parties, appraised paper book and of view that there is force and merit in the submissions of Mr. Rohilla.

It is a matter of record that UHBVNL vide notification dated 18.10.2006 in exercise of its powers conferred under Section 56(3) (vi) of Haryana Electricity Reforms Act, 1997 read with Electricity Act, 2003 notified amendment in the existing recruitment and promotion policy of Ministerial Service Staff laying down the following qualification for the post of Lower Division Clerk:-

“Lower Division Clerk

80% posts will be filled up by direct recruitment out of the persons having the following qualification:-

i) 10/10+2 (vocational) with at least 50% marks or equivalent and above (for ex-serviceman 10+2 only) or graduate from any Board/University recognized by the Government of Haryana with working knowledge of computer covering the following

topics

a) Computer Fundamentals.

b) Operation of Internet/E-Mail.

c) MS Office (MS Word, Excel and Power Point).

d) Passed type test in Hindi at the speed of 25 words per minute or in English at the speed of 30 words per minute respectively and data punching speed of 8000 keys depressions per hours on computer.

iii) Must have passed Hindi/Sanskrit upto Matric Standard.”

On going through the aforementioned notification, it is evident that there is no requirement of having any computer application diploma. It is only knowledge of the computer i.e. computer fundamental. The petitioner's contention has been fortified from the certificate dated 06.11.2017 (Annexure P-8) of Executive Engineer, Central Store, UHBVN, Panipat in the following terms:-

“To Whom It May Concern

It is certified that Smt. Monika D/o Sh. Mohan Lal Muthreja has been working as Data Entry Operator (on contract) in this Store since June 2009 to date and she is well conversant with the office work of Account Section, Head Clerk Section as well as Drawing Section. She has a good knowledge of Account Section & Administrative Section. She is faithful, honest and hard worker. The work & conduct is satisfactory.

I wish her success in life.

*Sd/-
Executive Engineer,
Central Stores, UHBVN,
Panipat.”*

However, department relied upon amended rules for holding petitioner to be responsible but fact of the matter is that entire reply is bereft of averment as to whether petitioner, was ever associated or confronted with by any member of vigilance with regard to the diploma certificate issued by M/s Balaji Computer Center nor there is any report from the said institute. It is clear case of nursing rancour against the petitioner at the behest of respondent no.5 who managed to make complaint against her through one Mr. Sharma. I would not be commenting further, for, it may not affect service career of respondent no.5 but factum of registration of FIR, ibid has not been denied in the absence of any reply by respondent no.5.

The law with regard to replacement of contractual employees with another set of employees is no longer *res integra* in view of the law laid down by the Hon'ble Supreme Court in **Hargurpratap Singh's case (supra)**.

Since work and conduct of petitioner had been found satisfactory for the last 10 years, in my view, there could be hardly any material for the respondents not to permit the petitioner to join the service or issue any termination order, instead would request to the outsourcing agency i.e. respondent no.4 to send another Data Entry Operator in place of petitioner.

For the reasons aforementioned, action of the respondents in sending request to respondent no.4 is not sustainable, suffers from illegality and perversity and same is hereby set aside.

The writ petition is allowed and respondents are directed to permit the petitioner to continue the services until and unless the regular employees are appointed.

(AMIT RAWAL)
JUDGE

September 17, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No