

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 16.01.2019****CWP No.11031 of 2013**

Anil Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shiv Kumar, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Satyawan Ahlawat, Advocate, for respondent No.4.

RAJIV NARAIN RAINA, J.

1. The petitioner and the 5th respondent, namely, Naresh Kumar were selected as Drivers (HTV) in a selection process conducted by the Haryana Staff Selection Commission (for short 'the Commission') in response to Advertisement No.1/2008 inviting applications from eligible candidates for filling 91 posts. By a corrigendum dated 24.02.2011, the posts were decreased to 84. The advertised vacancies were available for allocation to various Departments, Boards and Corporations in the State of Haryana. Both the petitioner and the 5th respondent belong to BC-B category. The prescribed educational qualifications for the post were: (i) Middle/Matric or its equivalent from recognized Board; (ii) Hindi/Sanskrit upto Matric level; (iii) Valid Driving Licence for Heavy Transport Vehicle (HTV); & (iv) 2/3/5 years experience of Heavy Transport Vehicle (HTV). After holding driving

proficiency test and interview/s, the result was declared on 19.04.2012. The petitioner is a matriculate. His name was recommended to the Director, Sports & Youth Affairs Department, Haryana, Panchkula by letter dated 16.05.2012 for appointment. Similarly, the name of the 5th respondent was sponsored to the Dairy Development Department, Haryana. The petitioner had joined the Sports & Youth Affairs Department, Haryana, whereas the 5th respondent, namely, Naresh Kumar was not offered appointment by the Haryana Dairy Development Corporation Limited because of Rules required matriculation while Naresh Kumar was Middle pass. Accordingly, his name was returned to the Commission. The Commission recommended the name of the 5th respondent to the Sports Department, Haryana resulting in the displacement of the petitioner. This is how the petitioner's name was recommended to the Haryana Dairy Development Cooperative Federation Ltd (for short "the Federation"). The Commission's action in amending its recommendations and remitting the name of the petitioner from Sports Department, Haryana to the Federation is what has brought the petitioner to Court praying that a direction be issued to the official respondents to retain him in the service of the Sports Department, Haryana.

2. The defence of the Commission is that when it came to its notice that Haryana Dairy Development Cooperative Federation Limited did not offer appointment to Naresh Kumar on the ground that his qualification 8th standard (Middle) was not the minimum prescribed in the Rules (Matric) and hence his name was returned, they had recommended the name of Naresh Kumar to the Sports Department, Haryana since the petitioner possesses the qualification of Matriculation. Therefore, no illegality has been committed by the Commission in withdrawing the name of the petitioner

from Sports Department, Haryana and thereafter recommending his name to the Federation. The post of Driver is a common cadre post and as per terms of the advertisement both Middle/Matric qualified candidates were eligible. Thus, no valid cause of action subsists to the petitioner and the present writ petition deserves to be dismissed.

3. The Department of Sports & Youth Affairs, Haryana has filed a separate reply opposing the prayer of the petitioner for a mandamus directing the respondents to join the petitioner as a Driver in the office of the Director, Sports and Youth Affairs Department, Haryana. It is not disputed that the name of the petitioner was recommended to the Department and he joined service on 13.06.2012. Thereafter, the Department received a communication from the Commission in supersession of the appointment letter dated 16.05.2012 amending the recommendation and thereby remitting the name of the petitioner to the office of the Managing Director, Haryana Dairy Development Cooperative Federation Limited. As a result of this, the petitioner was dislocated and relieved on 28.09.2012 by the Sports Department to enable him to join service with the Federation.

4. Mr. Shiv Kumar, learned counsel appearing for the petitioner, contends that when Commission had made its recommendation sending the name of the petitioner to the Sports Department, it has no further jurisdiction or power to change the employer as that power lies within the jurisdiction of the Appointing Authority i.e. the State Government, the Commission being only a recommendatory authority to make selections and to forward names of successful candidates for being offered appointment. It is not the fault of the petitioner that Naresh Kumar did not fulfill the requisite educational

qualification for service in the Federation. It was for the State Government to have found another berth for Naresh Kumar without causing the displacement of the petitioner without just cause and valid justification, especially when the petitioner had already served for a few months before he was relieved. The Commission had no authority to re-scrutinize the application forms after the requisition was forwarded and received by the Department/State Government. He argued that, in any eventuality, the post should have been re-advertised and a fresh test should have been conducted since the selection and recommendation cannot be upset arbitrarily against the petitioner. There is a qualitative difference in status between service under the State Government and the Federation. Moreover, no show cause notice or opportunity of hearing was given to the petitioner for changing his name from the Sports Department to the Federation by handing him over a fresh appointment letter. Neither was a reason for the change informed beforehand.

5. Aggrieved, the petitioner firstly sought information through his brother under the Right to Information Act, 2005 to know the reasons for the change over and the appointment of Naresh Kumar in his place. The information was refused by the Commission vide letter dated 11.03.2013. In these circumstances, the petitioner has been forced to file the present petition.

6. Heard.

7. I find substance in the contention of the petitioner that the Commission had become *functus officio* having made its recommendations, which led to the petitioner's appointment in the Sports Department,

Haryana. The distribution of vacancies earmarked 5 posts for BC-B category, but nothing is indicated in the advertisement how those would be distributed between various Departments, Boards and Corporations of Haryana. Accordingly it is urged that the power to distribute lies with the State Government. The State Government accepted the recommendations of the Commission and allocated Sports Department, Haryana to the petitioner. It is evident from the written statement of the State that it has not taken any independent decision and has bowed down to the dictate of the Commission. It was for the State Government to find another berth for Naresh Kumar, but not at the expense of the petitioner, who had accepted the offer of appointment and joined where he was asked to. I have no doubt that the change has been brought about suddenly without associating the petitioner. The right of service in the Sports Department, Haryana came to be vested in the petitioner and for no fault of his; he cannot be transplanted in the Federation service against his wishes and without his consent, which service is not the same as Government service.

8. Learned counsel for the petitioner submits that the service of the State is far superior than service in the Federation in terms of conditions of service, status and protections of law as a civil servant. As a result of arbitrary action, the petitioner has been discriminated against and the nature of his job changed in form, character and content. It is a fact that the petitioner had joined service and was working in the Sports Department when out of blue he was relieved to join service of the Federation. The action of the Commission is held to be unfair, arbitrary, unreasonable and without jurisdiction. It was for the State to adjust Naresh Kumar, but not at

the cost of the petitioner and only because he was better qualified than Naresh Kumar he cannot be disadvantaged.

9. In view of the above discussion, the petition is allowed. The actions of the Commission beyond the date when it sent recommendations to the State are illegal and are quashed. The petitioner is reinstated to the Sports Department, Haryana. The State Government may adjust the 5th respondent elsewhere.

16.01.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>