

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.19338 of 2019 (O&M)
Date of Decision.23.07.2019

Anil Kumar and another

...Petitioners

Vs

State of Haryana and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manoj Chahal, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

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AMIT RAWAL J. (ORAL)

Petitioners in instant writ petition prayed as follows:-

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondent No.2 to forward the application of the petitioners to appear in the HCS Examination from Register A-II-2019 to the HPSC i.e. respondent No.4 further directing it to consider the candidature of the petitioners for the said examination allowing them to participate in the process for recruitment, in the interest of justice”

It is contended that petitioner No.1 joined Municipal Council Tohana, District Fatehabad as Peon on 5.2.2003 and on 9.6.2010 promoted to the post of Clerk whereas petitioner No.2 joined Municipal Committee Bhuna on 16.12.2004 as Clerk. Vide advertisement No.4/2019 dated 13.06.2019 (Annexure P-1), Haryana Public Service Commission caused an advertisement for the post of

Haryana Civil (Executive Branch) from Register A-II of Members of Group 'C' for the year 2019. Closing date mentioned in the advertisement was 8.7.2019. Eligibility criteria laid down in the aforesaid advertisement was written test and after short-listing interview with following qualification was to be conducted:-

“(a) (i) has completed eight years continuous Government Service;

(ii) has not attained the age of fifty years on the first day of November immediately preceding the date of submission of names by concerned authorities.

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

(iv) is clear from vigilance angle;

(b) is a Graduate from a recognized university.”

Petitioner being fully eligible submitted their applications through proper channel, which were forwarded by their respective offices to respondent No.3 on 1.7.2019 and 2.7.2019 respectively. Respondent No.3 further forwarded both applications with his recommendation to Deputy Commissioner, Fatehabad but same has not been received from any concerned quarter. Petitioners submitted representations dated 11.07.2019 (Annexure P-5 and P-6 respectively) but no action has been taken so far, thus, urges this Court for issuing direction to respondents to consider their candidature and allow them to appear in HCS Examination.

Per contra, Ms. Shruti Jain Goyal, DAG, Haryana submitted that Municipal Councils and Municipal Committees are not departments as per communication dated 24.06.2019 circulated to all

departments with list of 79 departments as Head of Department of State Government and 31 as Administrative Secretaries wherein names of Executive Officer, Municipal Council, Tohana and Secretary, Municipal Committee, Bhuna are not mentioned. Moreover, applications were required to be submitted through respective Administrative Secretaries of departments. Note (III) of advertisement prescribes that only State Government employees would be eligible for recruitment and since, petitioners are not state government employees, their candidature cannot be considered favourably.

I have heard learned counsel for parties, appraised paper book and of the view that there is no force and merit in submissions of Mr. Chahal. Municipal Corporation, Council and Committees are creation of statute and came into existence with 74th Amendment Act of 1992 in Constitution of India in the shape of local governments. The Hon'ble Supreme Court of India in **Union Public Service Commisison Vs. Dr. Jamuna Kurup and others 2008(11) SCC 10** while dealing with case of contractual Medical Officer (Ayurved) under Municipal Corporation, Delhi held as under:-

“(i) A Municipal Corporation is not 'government' and municipal employees are not government servants governed by Article 309 to 311.

(ii) Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants.

(iii) Therefore, all persons employed by MCD whether permanent or contractual will be employees of MCD.”

A Division Bench of this Court in **Rajwinder Singh and others Vs. State of Punjab and another 2012(3) RCR (Civil) 183**

while dealing with matter of Panchayat Secretaries claiming treatment as Government servant held that Panchayats or Municipalities are the local authorities, a separate and distinct juristic entity to carry out the purpose of Constitution, amenable to writ jurisdiction being 'State' within meaning of Article 12. But for the purposes of Part XIV, the employees engaged for discharging functions of the Municipalities and Panchayats cannot be said to be holding civil post, thus, claim of petitioners that they should be treated as a Government servant is a mere wish and not a right.

In view of such circumstances, petitioners at the very outset failed to clear the first condition of being government employees, thus, their grievance cannot be vindicated in the manner and mode as sought in writ petition.

No ground for interference is made out.

Dismissed.

(AMIT RAWAL)
JUDGE

July 23, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No