

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

CWP No.20055 of 2017

Date of Decision: July 11, 2019

Zile Singh & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioners.

Mr. Harish Nain, AAG, Haryana,
for the State.

Mr. Chander Mohan Sharma, Sr.Panel Counsel,
for respondent No.2.

Mr. K.K.Chaudhary, Advocate for
Mr. C.S.Bakshi, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

Prayer in the present writ petition is for issuance of a writ in the nature of mandamus directing the respondents to adjust the petitioners in the Cooperative Sugar Mills or other Cooperative Institutions and relax the eligibility criteria/conditions on account of the fact that the petitioners are erstwhile employees of Bhuna Cooperative Sugar Mill, which has been closed as well as for writ of certiorari quashing the appointments made by the official respondents to be arbitrary.

It is contended that in the year 2006, Bhuna Cooperative Sugar Mill started incurring losses and on 20.03.2006, Chief Minister, Haryana in

unison decided to sell the Mill along with the liabilities of staff etc. with an assurance to the petitioners that they would be adjusted/absorbed in other Cooperative Sugar Mills. Since no action was taken, petitioners constrained to file 11 writ petitions in this Court, which were disposed of vide common order dated 28.01.2015 (Annexure P-1), wherein it was conceded that the department should explore the possibility of adjusting all the ex-employees of the erstwhile Bhuna Cooperative Sugar Mills including the petitioners on the posts of their respective categories against available vacant posts in other Cooperative Sugar Mills, as well as other Cooperative Institutions subject to fulfillment of the eligibility criteria and to endeavour in adjusting all the employees.

Mr. Keshav Pratap Singh, learned counsel representing the petitioners submitted that in pursuance to the directions, the respondents made certain arbitrary appointments without following the due process of law. Contempt petition was also filed. The qualifications till 2007 were the same, but there was a change after 2007. Petitioners have been working as Peon, Cane Kamdar, Mali, Driver, Sweeper, Turner, Fitter Helper, Workshop Coolie, Watchman, Helper, Khalasi, Tubewell Operator etc. However, vide speaking order dated 18.12.2015 (Annexure P-2), most of the employees did not come forward to join the duties and approached this Court, but the relaxation in the age and service rules are wanting and appointments can be treated as afresh and few of the employees can not be adjusted despite of the seniority in respective category as they possessed less qualification and would be considered on lower posts. However, the attention of this Court was also drawn to reply of respondent No.4, wherein petitioner Nos.2, 7, 10, 12 and 23 have been found to be eligible for

adjustment as per their seniority, but on the condition that the adjustment would be only as and when posts of their respective categories would fall vacant, whereas petitioner No.6 has already been issued the appointment letter and rest of the petitioners can be recommended for adjustment. Most of the employees do not fulfill the requisite qualification. In order to countenance the aforementioned contention, attention of this Court was drawn to Annexure P-5 reflecting that number of posts of Cane Operators and Clerks are lying vacant.

Per contra, Mr. Harish Nain, learned Assistant Advocate General, Haryana, representing the State submitted that posts have not fallen vacant and even did not deny the contents of the reply and submitted that the petitioners, referred to above, would be adjusted only when the posts are vacant. There is no challenge to the order Annexure P-2, though it reflects that a person having lesser qualification can be adjusted on a lower post and, thus, prayed for dismissal of the writ petition.

Learned counsel for the petitioner, in rebuttal, submitted that the Court can always mould the relief even if the specific prayer is not made.

I have heard the learned counsel for the parties and appraised the paper book.

It is a fit case where mandamus is required to be issued to the department and the reason is not one but many.

It is conceded position on record that the petitioners have earlier also approached this Court and appropriate directions were issued to consider their grievance. The grievance, in such circumstances, cannot continue for infinite period. The department is legitimately expected to

address the cause of the petitioners and bring it to the logical conclusion.

The argument of adjustment of few of the petitioners on occurrence of the vacancy is also fallacious. On going through the contents of the written statement of respondent No.4, there is no denial to the averments made in Para 7 of the writ petition. It would be apt to reproduce Para 7 of the writ petition vis-a-vis 3 of written statement of respondent No.4 as the reply of respondent No.3 is verbatim to that of respondent No.4. The same read thus:-

“Para 7 of the writ petition

That even as on today various posts are lying vacant in the different Sugar Mills and other cooperative institutions, the petitioners had applied for the information regarding the vacant posts under the Right to Information Act, 2005. It has come in the RTI information that still more than 500 posts are vacant in different Cooperative institutions and Cooperative Sugar Mills. Information regarding vacant posts in all the sugar mills is attached herewith as Annexure P/5. Information regarding vacant post in Central Cooperative Bank is attached herewith as Annexure P/6.

Para 3 of the written statement

That in compliance of above said orders, the comments from Haryana State Federation of Cooperative Sugar Mills Ltd. were sought and it is clear from the comments that some of the petitioners have already been recommended for adjustment, some have taken VRS and most of others do not fulfill the requisite qualifications. Only petitioners at Sr.No.2, 7, 10, 12 & 13 are eligible for adjustment and they will be adjusted on their seniority as and when post of their respective category falls vacant. Petitioner No.6 has already been issued the appointment letter and he has already joined the service.

As an upshot of my aforementioned findings, the writ petition

is allowed. Petitioner Nos. 2, 7, 10, 12 and 23 are directed to be appointed on the posts already lying vacant and as regards the other petitioners, the respondents will call upon them to give an indemnity or undertaking for accepting the lower post owing to the acquisition of lower qualification. Let this exercise be done within a period of three months from the date of receipt of certified copy of this order. In case no action is taken, it will entail into costs of ₹ 1,00,000/-, upon the person who is responsible for not taking the decision.

July 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No