IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-10518-CWP of 2019 and
CWP-2676 of 2016
Date of decision: 12.09.2019

Pawan Kumar and others .... Petitioners

versus

State of Haryana and another .... Respondents

CWP-3237 of 2016 (O&M)

Narender Kumar and another .... Petitioners

versus

State of Haryana and another .... Respondents

CWP-3462 of 2016 (O&M)

Anand Kumar and another .... Petitioners

versus

State of Haryana and another .... Respondents

CWP-4764 of 2017

Jatinder Kumar and another .... Petitioners

versus

State of Haryana and another .... Respondents

CWP-14244 of 2017 (O&M)

Sikander and others .... Petitioners

versus

State of Haryana and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajnish K. Gupta, Advocate
for the petitioners in CWP-2676, 3237 and 3462 of 2016
and for respondents No.6 to 14, 17, 18, 21, 27 and 30 in
CWP-14244 of 2017.

Mr. Sandeep Panwar, Advocate for
the petitioners in CWP-14244 of 2017.

Mr. Vivek Sharma, Advocate for the petitioners
in CWP-4764 of 2017.

Mr. I.P.S. Kohli, Advocate

Ms. Safia Gupta, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate
for respondent No.2.

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HARSIMRAN SINGH SETHI, J. .

By this order, the above mentioned writ petitions, which involve the same question of law and similar facts are being disposed of. For the sake of brevity, the facts as mentioned in CWP No.2676 of 2016 are being taken.

All the petitioners were appointed as Auction Recorder with the respondents-Haryana State Agricultural Marketing Board (hereinafter, referred as 'Board') after following due procedure. The employees of the Board are covered by the Haryana State Agricultural Marketing Board Service Rules, 2008 (hereinafter, referred as '2008 Rules') as amended from time to time. Under the 2008 Rules, the next promotion from the post of Auction Recorder is that of Accountant. The method of recruitment for the post of Accountant as envisaged in 2008 Rules is that 90% posts of the Accountants are to be filled up by direct recruitment; by transfer or by deputation of the officials, who are already in service of the State Government, Board, Corporations or Statutory bodies and 10% of the posts are to be filled from amongst the Mandi Supervisor-cum-Fee Collector/Auction Recorders. Large number of posts of Accountants were lying vacant with the respondent-Board and most of the vacant posts were of direct quota to be filled by way of direct recruitment, as under 2008 Rules, 90% posts are to be filled by way of direct recruitment. In the absence of direct recruits, the petitioners herein, who were holding substantive rank of Auction Recorder, were given current duty charge vide orders dated 11.07.2013 (Annexure P/3) and 19.08.2013 (Annexure P/2). As per the said orders, promotion made to the post of Accountant was on *adhoc* basis against the direct quota posts, with a clear condition that the said arrangement is only a stop gap arrangement and the incumbents so promoted can be reverted back at any point of time without assigning any reason or prior notice. Petitioners continued working on the said posts.

Vide impugned order dated 01.02.2016 (Annexure P/6), terms and conditions of the stop gap promotion of the petitioners, who were promoted as accountant against the direct quota posts on adhoc basis, as stop gap arrangement, were changed and it was directed that though they will continue to discharge the duties of Accountant but in their own pay scale of substantive rank of Auction Recorder without any extra remuneration of the post of Accountant. The said order is under challenge in the present writ petition.

The grievance, which is being raised by the petitioners, is that no doubt, the petitioners were promoted against the direct quota posts but as they were discharging duties of the higher post, they were rightly given the pay scale of the said posts keeping in view the settled principle of law, but vide impugned order dated 01.02.2016 (Annexure P/6), though, they were asked to discharge the duties on the post of Accountant but in the pay scale of their substantive appointment of Auction Recorder, which is contrary to law. The prayer of the petitioners is that they are entitled for the pay scale of the post of Accountant of which they were discharging duties and should be allowed to continue on the post of Accountant till regular incumbents are appointed against the said direct quota posts.

While issuing notice of motion on 10.02.2016, this Court stayed the operation of the impugned order dated 01.02.2016 (Annexure P/6) and petitioners continued working on the posts of Accountant. It is stated by the learned counsel for the petitioners that in all the writ petitions, except CWP No.4764 of 2017, the petitioners are being paid salary of the post of Accountant, of which post they are discharging duties.

Upon notice of motion, reply has been filed by the respondent No.2 which is the contesting respondent. In the reply, respondent No.2 stated that the petitioners were not entitled for promotion against direct quota posts and Auction Recorders are only entitled for promotion against 10% quota as 90% of posts of Accountant are reserved for direct recruits but as there was no direct recruits available, the petitioners were given promotion as stop gap arrangement but they were wrongly granted the benefit of the pay scale of the post of Accountant as well. Further, respondents stated that the vacancies against which the petitioners have been promoted as Accountant as stop gap arrangement, have already been notified to the Haryana Staff Selection Commission for advertisement and selection and those vacancies are likely to be filled up soon. Further, the respondents have stated that pay of the posts of Accountant was withdrawn from the petitioners keeping in view the conditions laid down in promotion order, wherein, it was stated that adhoc promotion given, can be withdrawn at any given point of time without show cause notice.

During the pendency of the writ petitions, the respondents have filed another application being C.M. No.10518-CWP of 2019 for vacation of interim stay granted on 10.02.2016. In the said application, respondents have stated that the petitioners were promoted as accountant on adhoc basis against the posts meant for direct quota and now the direct recruits have already been selected through proper channel and are available to be appointed but the posts are being held by the petitioners keeping in view the interim stay granted by this Court and, therefore, interim stay may be vacated so that the direct recruits, against whose posts, the petitioners are working as stop gap arrangement could be appointed. In the reply to the said application, the petitioners have stated that after the recruitment from direct quota, still there are some posts of Accountant lying vacant, therefore, there is no need to revert the petitioners to their original posts of Auction recorder.

Counsel for the respondents states that there is no need of the petitioners to discharge the duties of the higher posts as duties of the posts of Accountant will be performed by the regular selected employees and Corporation does not need the employees from the lower cadre to discharge duties of the higher posts.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not disputed that according to the Rules governing service i.e. 2008 Rules, the petitioners have right only against 10% of posts and they have no right to claim promotion against direct quota posts. It is further admitted that when the petitioners were given promotion as stop gap arrangement on higher posts in the year 2013, there was shortage of direct recruits and as the request has been sent to the Haryana Staff Selection Commission for recruiting the direct appointees on the post of Accountant and they were yet to be selected, and it was only as an interregnum by way of stop gap arrangement, the petitioners were promoted on the post of Accountant have been filled on regular basis therefore, in order to appoint regularly selected Accountants, respondents be allowed to revert the petitioners on their substantive post of Auction Recorder. Respondents have further stated that prayer of the petitioners to allow them to continue working on the post of Accountant beyond 10% quota, may kindly be rejected as the said prayer is contrary to 2008 Rules and any direction which is contrary to the Rules governing the service cannot be given to an employer. Respondents have further stated that petitioners were promoted against the direct quota posts, due to unavailability of the direct recruits and now direct recruits have been selected and according to the respondents they have sufficient numbers of Accountants to discharge the duties of the post of Accountants and there is no need to grant the petitioners stop gap arrangement promotion beyond their quota of 10% therefore, petitioners cannot be allowed to continue to hold the post of Accountant as once the direct recruits have been appointed against the posts meant for them, respondents are well within their right to revert the petitioners on their substantive rank i.e. Auction Recorder. Keeping in view the terms and conditions incorporated in their ad-hoc promotion order.

Counsel for the petitioners argues that some posts of Accountant are still lying vacant with the respondents and petitioners may be allowed to continue to work on the said posts.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The discretion to allow the petitioners to continue to work on the said posts of Accountant on ad-hoc basis, beyond their quota is primarily of the employer. If an employer needs extra men to work on the posts of Accountant, they are well within their right to grant stop gap arrangement promotion beyond the quota if no one is eligible to discharge the duties of the said post in accordance to rule governing the service but the same cannot be claimed as a matter of right and this Court cannot give direction to the respondents to deploy more people than their requirement on the post of Accountant and that too, when the said direction which is being asked for, will violate the rules governing the service. As the requirement of the manpower to discharge the duties of a particular post is to be seen by the employer/department and not by this Court. The prayer of the petitioners to allow them to continue on the post of Accountant beyond their quota will be contrary to law and is, thus, rejected.

The next argument which is being raised by the petitioners is that once, in the year 2013, while discharging duties as stop gap arrangement on the post of Accountant, petitioners were promoted in the regular pay scale, the said pay scale could not have been withdrawn by the respondents by passing the impugned order. It is the respondents, who directed the petitioners to discharge duties on the post of Accountant on ad-hoc basis and respondents needed extra hand to discharge the duties of the said post and petitioners were rightly given the pay of the post on which they were asked to discharged the duties. Withdrawal of the benefit of pay vide impugned order dated 01.02.2016 by the respondents is contrary to the settled principle of law. Counsel for the petitioners argues that as per the settled principle of law, employees who are discharging duties of the higher posts are entitled for the pay and perks of the posts on which they are discharging duties. To support his claim, counsel for the petitioners relies on **Subhash Chander vs. State of Haryana and others 2012(1) S.C.T. 603; State of Punjab and another vs. Deep Singh Sahota 2014(11) SCT 58; Pritam Singh Dhaliwal vs. State of Punjab and another 2004(4) S.C.T.403; Gurmej Singh vs. State of Punjab 1995(3) S.C.T. 279; Municipal Committee, Samalkha vs. Shree Bhagwan 2006(1) S.C.T.569; Selvaraj vs. Lt. Governor of Island, Port Blair and others (1998) 4 SCC 291; Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others (1998) 5 SCC 87** and **Arindam Chattopadhyay and others vs. State of West Bengal and others (2013) 4 S.C.C. 152.**

Counsel for the respondents has not been able to point out as to why, the petitioners, who have been discharging duties of higher post of Accountant are not entitled for the grant of pay of the said post. Further, no reason has been given, as to why, in the impugned order, when the petitioners were still allowed to continue to work on the post of Accountant, they were made to work in their own pay scale of the substantive rank rather than the pay of the said higher posts of which they were discharging duties. In the absence of any cogent reason, coupled with the fact that as per the settled principle of law as noted above, employees are entitled for the pay of the post, of which they were discharging duties, respondents are under an obligation to pay the petitioners, the salary of the posts of Accountant till they discharge duties of the said posts. Counsel for the respondents states that during the pendency of the present writ petitions, as the operation of the impugned order was stayed, the petitioners have been paid the salary of the posts of Accountant and, therefore, argument which is being raised on their behalf claiming salary of the post of Accountant is without any basis. Thus, the same stands admitted by the learned counsel for the petitioners.

Counsel appearing for the petitioners in CWP No.4764 of 2017 states that the petitioner in the said writ petition, though, are discharging duties of the post of Accountant but have not been paid salary of the said posts.

Counsel for the respondents very fairly states that keeping in view the order passed today, wherein it is held that employees working on the post of Accountant though on ad-hoc basis but are entitled for the pay of the post of Accountant, even while working as stop gap arrangement as the petitioners in CWP No.4764 of 2017 were discharging the duties of higher post, an appropriate order will be passed granting them the benefits.

Keeping in view the above, claim of the petitioners to allow them to continue to hold the post of Accountant meant for direct quota posts is rejected being contrary to the rules governing the service. Respondents are well within their right to revert the petitioners to their substantive rank i.e.

Auction Recorder. However, it is made clear that in case services of the petitioners are still needed to discharge duties of the post of Accountant against the posts which are still vacant as stop gap arrangement basis, respondents will be within their right to allow them to continue if they wish to do so if permissible under law and does not cause any prejudice to other employees.

The impugned order dated 01.02.2016 (Annexure P/6) is held illegal only to the extent that the petitioners were made to work on the posts of Accountants in their own pay scale and is set aside only qua said count.

In CWP No.14244 of 2017, action of the respondents, giving current duty charge on the post of Accountant to the petitioners in other writ petitions, has been challenged. Keeping in view the order passed, wherein the prayer of the respondents for reverting the petitioners to their original posts of Auction Recorder has been accepted, the prayer made in the CWP No.14244 of 2017 has been rendered infructuous. Further, if the petitioners feel aggrieved against any of the action of the respondents, they will be free to approach this Court by availing appropriate remedy.

All the writ petitions stand disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

12.09.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No