

CWP-2555-2018 (O&M)

213

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

**CWP-2555-2018 (O&M)
Date of decision : 15.10.2019**

Rajesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Anurag Goyal, Advocate
for the applicant in CM-9745-2018.

AMIT RAWAL, J. (ORAL)

Challenge in present writ petition is to the order dated 09.01.2018 (Annexure P-5), which, according to the averments, has been passed at the back of the petitioner, by the authority, who had no role to play, for, according to submissions of Mr. R.K. Malik, learned Senior Counsel assisted by Mr. Sandeep Dhull, learned counsel appearing on behalf of the petitioner, petitioner in pursuance to selection process initiated by way of advertisement No.12/2013 caused by Director, Medical Education and Research, Haryana, was appointed as Lab Technician, vide appointment letter dated 11.08.2014 (Annexure P-1). After rendering almost three (3) years of service, petitioner was served with a show cause notice dated 10.07.2017 (Annexure P-2), alleging therein that he was over-age as

CWP-2555-2018 (O&M)

per terms and conditions of advertisement. The aforementioned show cause notice was duly replied explaining that petitioner was not over-age as he was belonged to Economically Backward Person in General Category, for such class, there was relaxation of five years in age. In such circumstances, his age at the relevant point of time, was within the prescribed limit. Even the respondents had also taken opinion of Legal Advisor of Bhagat Phool Singh, Government Medical College, Khanpur Kalan, vide Annexure P-4 dated 18.08.2017, accordingly, vide Annexure P-4, show cause notice was consigned subject to verification of instructions dated 09.02.1979 (Annexure A-2).

It was next contended that once the competent authority had already decided to file the case, it was not within the domain of Additional Chief Secretary, Government of Haryana, Medical Education and Research Department/respondent No.1, to entertain the complaint of disgruntled person, namely, Rakesh Kumar, sought to be impleaded, vide CM No.9745-2018, as respondent No.4 to form opinion at the back of the petitioner. In support of his contentions, he relies upon the decision dated 25.04.2005, of the Division Bench of this Court, rendered in **CWP No.6241 of 2005** titled as **“Pawan Kumar V/s State of Haryana and others”** (Annexure P-6).

Per contra, Mr. Kiran Pal Singh, AAG, Haryana, submitted that appointment of petitioner was bad for the reason that he was overage as per terms and conditions of advertisement, for, his date of birth is 21.08.1970 and on the last date of submission of application form i.e. 06.02.2014, he was forty three (43) years five (5) months and fifteen (15) days' old. Though petitioner is belonging to Economically Backward Person of

CWP-2555-2018 (O&M)

General Category, which was only notified by the Government, vide notification dated 28.02.2013, but there were no instructions with regard to age relaxation for the persons belonging to Economically Backward Person of General Category. Instructions in respect of relaxation of five years of upper age limit were issued by the Government on 05.02.2015, whereas the advertisement is of the year 2013, therefore, instructions dated 05.02.2015, granting upper age relaxation, would not be applicable to the petitioner, thus, the impugned order dated 09.01.2018 (Annexure P-5), terminating the services of petitioner, is perfectly legal and justified and urges this Court for dismissal of present writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that the impugned order dated 09.01.2018 (Annexure P-5) is not sustainable in the eyes of law.

It would be in the fitness of things to extract the relevant portion of impugned order, which reads as under:-

"Reference your office letter No.BPS/ME-II/17/1338 dated 14.11.2017 on the subject noted above.

2. In connection with complaint made against the appointment of Sh. Rajesh on the post of Lab Technician, the matter has been considered by the competent authority and it has been found that the allegations levelled in the complaint are correct to the extent that his appointment is not made as pr rule and a show cause notice needs to be issued to Sh. Rajesh S/o Sh. Rakesh Dutt, Lab Technician to terminate his services. It is also ordered that stern action be taken against the erring officers for this serious lapse. You are, therefore, requested to take both actions into the matter under intimation to the Government immediately."

It is conceded position on record that the petitioner was served

CWP-2555-2018 (O&M)

with show cause notice with regard to his age, which was duly replied, but the same was consigned, vide decision dated 18.08.2017, subject to verification of Annexure A-2, Adv. 2/2013 of S.S.C. Haryana. For the sake of brevity, contents of order dated 18.08.2017 (Annexure P-4), read as under:-

"It is opined that the show cause notice may be filed subject to verification of Annexure A-2, Adv. 2/2013 of S.S.C. Haryana, submitted by Sh. Rajesh, with his reply to show cause notice."

Action of the respondents is totally against the canons of service jurisprudence as no person can be condemned unheard without holding regular enquiry or putting across any material. The respondents formed an opinion that complaint was found to be correct, but there was no reference of documents. At one point of time, this Court intended to take appropriate action, but finding that the Officer at the helm of affairs may not be having the legal acumen.

Keeping in view the aforementioned facts and circumstances, the impugned order, under challenge, on the face of it, has taken away the valuable right of petitioner, which cannot be done at his back, accordingly, is set aside. However, this order will not prevent the respondents to proceed further and take action in pursuance to decision dated 18.08.2017 (Annexure P-4).

With the aforesaid observations, the present writ petition stands disposed of.

There is an application bearing CM No.9745-CWP of 2018 for impleading the applicant as respondent No.4. Since the learned counsel for the applicant has already withdrawn the writ petition, therefore, no separate

CWP-2555-2018 (O&M)

order is required to be passed in present application and accordingly, the same is also disposed of as having been rendered infructuous.

15.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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