

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6851-2018
Date of decision: 10.01.2019

Anil Kumar

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Dhruv Sharma, Advocate for
 Mr. Kuldeep Tiwari, Advocate for respondent No. 3.

RITU BAHRI, J. (Oral).

The petitioner is seeking quashing of the order dated 19.02.2018 (Annexure P-8) vide which he has been reverted from the post of Junior Technical Supervisor to the post of Technical Assistant and recovery has been imposed upon him.

The petitioner was appointed on the post of Technical Assistant on regular basis on 30.08.2007 on the recommendations of Selection Committee (Annexure P-1). In the year 2010 one post of Junior Technical Supervisor became vacant on account of relieving of Dr. Aditya Arya and the petitioner was given additional charge of the said post vide order dated 09.02.2010 (Annexure P-2). In para 5 of the writ petition it is stated that in the centre of plant biotechnology, there are two sanctioned post of Junior Technical Supervisor. He made a request for promotion to the post of Junior Technical Supervisor in April, 2017 (Annexure P-3). The petitioner was at Sr. No. 1 as per seniority list dated 31.08.2015 (Annexure P-4) and he was

fulfilling all the qualification for the post of Junior Technical Supervisor and

his case was processed by respondent No. 3. He was promoted to the post of Junior Technical Supervisor vide order dated 30.08.2017 (Annexure P-5) and he joined on 02.09.2017 (Annexure P-6). Thereafter without issuing him notice, the respondents have issued an order on 19.02.2018 (Annexure P-8) whereby the petitioner has been reverted to the post of Technical Assistant. This reversion has been made on the basis of letter dated 15.02.2016 (Annexure P-9).

On notice of this petition, written statement has been filed on behalf of respondents No. 1 to 3 and they have placed on record the instructions dated 15.02.2016 issued by the Finance Department (Annexure R-1) whereby it has been laid down that if the post is lying vacant for more than two years it should not be filled up without prior approval of the Finance Department. In the present case, the post is lying vacant since 09.02.2010 when Dr. Aditi Arya had left and it had to be filled up after taking prior approval from the Finance Department and disciplinary proceedings for major penalty under Rule 7 of Haryana Civil Service (Punishment and Appeal) Rules 2016 have been initiated against Sh. Anurag Vardhan, Ex-Senior Administrative Officer, who was retired on 31.12.2017, for this patent error.

In the present case the post had been lying vacant since 09.02.2010 and the petitioner was promoted on 30.08.2017 (Annexure P-5) and the post was vacant for more than 5 years and no prior approval from the Finance Department has been taken. Keeping in view that necessary disciplinary proceedings have been initiated by the Department against Sh. Anurag Vardhan, Ex-Senior Administrative Officer, the petitioner has no right to continue on the said post.

However, keeping in view that he was not at fault for being promoted to this post, no recovery is to be effected from the petitioner keeping in view the judgment passed in *CWP-2799-2008 Budh Ram and others V/s. State of Haryana and others*, decided on 22.05.2009. This writ petition is partly allowed and the order dated 19.02.2018 (Annexure P-8) is being modified that no recovery shall be effected from the petitioner.

10.01.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No