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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 13601-1993 (O&M)
DATE OF DECISION:-25.02.2020

C.R. YADAV

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Joginder Pal Sharma, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RITU BAHRI, J.(Oral)

This writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of *Certiorari* for quashing the seniority list dated 02.09.1993 (Annexure P-1), whereby the petitioner has been shown junior to respondent Nos. 2 to 14.

Brief facts of the case are that the petitioner was appointed as a Class-III employee in Haryana Civil Services (Executive Branch) through Register A-II, which was prepared under Rule 5 of the Punjab Civil Services (Executive Branch) Rules, 1930 as applicable to the State of Haryana.

Pursuant to the notification dated 11.03.1985 (Annexure P-11), State of Haryana took a decision to make a special recruitment of HCS Executive Branch as per proviso to Rule 5 of the Punjab Civil Services (Executive Branch)

Rules, 1930 to fill up 7 vacancies of the year 1983 as per the following sources:-

Sr. No.	Sources	No. of Vacancies
a	District Revenue Officers/ Tehsildars, Naib Tehsildars	4
b	Class III Government employees	2
c	Block Development and Panchayat Officers	1

Pursuant to this notification, the petitioner was appointed vide order dated 01.09.1988 (Annexure P-4) as HCS Executive Branch as Chief Stamp Auditor. Prior to this notification (Annexure P-11), vacancies of 1982-83 were advertised and private respondents 2 to 14 were appointed against those vacancies which were 11 in numbers. The grievance of the petitioner is that the seniority list (Annexure P-1), whereby he has been placed below the candidates, who were recruited with respect to the vacancies of the year 1982-83 which were 11 in number, is faulty and incorrect.

Learned counsel for the petitioner has argued that petitioner is eligible to be appointed to the HCS Executive Cadre with respect to the vacancies in the year 1980 and hence, he has been wrongly placed below the private respondents in the seniority list (Annexure P-1).

On notice of the writ petition, reply has been filed by the respondents. As per the reply filed by private respondent No. 14, the preliminary objection taken is that the petitioner is seeking that he should be given the seniority at Sr. No. 101 instead of Sr. No. 118. However, he has not impleaded Sh. Ram Chander, Sr. No. 113; Sh. Ram Chander Sharma, Sr. No. 114; Sh. Kamal Kumar Gupta, Sr. No. 115 and Sh. Veer Bhan Arora, Sr. No. 117 as they are the employees who will be eventually affected if the seniority is to be

disturbed. On ground of non-joinder of the necessary parties, a prayer is made that the writ petition be dismissed. Further stand taken is that the selection of private respondents with respect to the vacancies of the year 1982 and 1983 has come up for consideration and upheld by this Court by judgment (Annexure R-14/1) in the case of ***Wazir Singh Versus The State of Haryana, CWP No. 13315-1992***. A perusal of this judgment shows that the State of Haryana on 11.03.1985 has notified 3 vacancies belonging to Register A-1. This Court had examined that the vacancies which became available in the year 1983 which were notified in 11.03.1985 and the Commission had recommended three names i.e. R.C.Sharma, Ram Chander and Ashok Vashishat for appointment to HCS Executive Branch. This selection was challenged by two CWP Nos. 8855 of 1988 and 11555 of 1988 and it came up for hearing before the Full bench of this Court and the writ petitions were allowed. A fresh selection process was carried out. This judgment is reported as ***Kamal Kumar Gupta Versus State of Haryana, 1991 SLR (1) 91***. After the Full Bench judgment the Commission reconsidered the whole matter and recommended the names of K.K.Gupta, R.C. Sharma and Ram Chander. However, the Commission did not find Ashok Kumar Vashisht-respondent No. 4 suitable and not recommended his name. An amendment was made in the notification 11.03.1985 on 21.01.1992 where 03 vacancies were notified the number was increased to 04. The Government recommended to the commission that respondent No. 4 be allowed to continue to work against the newly created vacancy but the Commission rejected the request. When the Commissioner did not agree with the proposal of the Government to allow respondent No. 4(Ashok Vashisht) to continue on the newly created post the Council of Ministers overruled the Commission and appointed respondent No. 4 to the newly created post on 21.01.1992.

This Court in ***Wazir Singh' case (supra)*** held that he has ultimately found suitable for appointment, the persons already appointed including respondent No. 4 would not be disturbed and they would continue to hold the posts. After allowing the writ petition, the direction was given to the State Government to re-consider the case of the petitioner by ignoring the remarks for the year 1985-86 which stand expunged as per Rules. In case, he is found suitable for appointment, a supernumerary post will be created for the petitioner.

A perusal of this judgment shows that initial appointment made by the initial notification dated 11.03.1985 now attained finality. In the facts of the present case, he has been appointed as per notification dated 11.03.1985, therefore, he has no right to claim appointment as per any vacancies which were existed in the year 1983. The petitioner was appointed by way of special recruitment by notification dated 11.03.1985 (Annexure P-11) and for the purpose of seniority rule is Rule 20 (b) which reads as under:-

“(b) In the case of members appointed to the Service through Special recruitment under the proviso to rule 5, the seniority shall be fixed by the State Government in the order of merit determined by the Selection Committee or the Public Service Commission, as the case may be, shall be placed below the members appointed through regular registers against vacancies in respect of the same year in which the special recruitment is made. The seniority inter se of persons appointed through special recruitment from various sources shall be fixed in blocks arranged according to descending order of pay scales of the posts from which recruitment is made, in which atleast one person from each source shall be included, but if the number of persons appointed from a source is four or more, two persons from that source shall be included in the block. The second and subsequent blocks shall, if necessary, be repeated to include all available persons from various sources. If the pay scales of two or

more posts from which recruitment is made are the same then the seniority of such members shall be determined by the length of their service in such posts and if the length of their service is also the same the older member shall be senior to the younger member.”

As per the above said rule, if a member of Class III services appointed through special recruitment under the proviso to Rule 5, the seniority shall be fixed by the State Government in the order of merit determined by the Selection Commission or the Public Service Commission. It is not the case of the petitioner that while selecting/making filling up 7 vacancies as per notification dated 11.03.1985 (Annexure P-11), the seniority of the petitioner has not been rightly fixed. The seniority of the petitioner has been rightly given to the 07 vacancies under the proviso to Rule 5 of the above said Rules.

In view of the above, no case is made out to interfere in the seniority list (Annexure P-1).

The writ petition is dismissed.

25th February, 2020
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*