

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 490 of 2020 (O&M)

Date of Decision: 25th September, 2020

Secretary, Haryana Vidhan Sabha, Chandigarh and others

....Appellants

VERSUS

Dayanand Sheokand

....Respondent

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Deepak Balyan, Additional Advocate General, Haryana
for the Appellants.

Mr. Raman B. Garg, Advocate for the Respondent.

Dr. S. Muralidhar, J.

1. The present appeal, which has been jointly filed by the Haryana Vidhan Sabha and the State of Haryana through their respective officials, is directed against the judgment dated 26th February, 2020 passed by the learned Single Judge of this Court, allowing CWP No. 7904 of 2015 filed by the Respondent.

2. By the impugned judgment, the learned Single Judge set aside the order dated 21st November, 2012 passed by the Speaker, Haryana Vidhan Sabha, reverting the Respondent from the post of officiating Deputy Secretary, on which he was officiating till his retirement on 30th April, 2011, to the post of Under Secretary. Further, a consequential direction was issued directing the present Appellants to grant to the Respondent “salary for the period he was officiating as Deputy Secretary as also count the same towards his pension and pensionary benefits”. The arrears were directed to be paid with simple interest at 6% per annum from the date on which the Respondent became entitled to the aforementioned amount till the date of its payment. It was directed that if the amounts due were not paid within a period of two months from the date of receipt of certified copy of the order, the Appellants herein

would be liable to pay simple interest at 12% per annum after the expiry of the period of two months.

3. The background facts are that the Respondent was working as Under Secretary in the Secretariat of the Haryana Vidhan Sabha. In terms of the Rule 7 (a) of the Haryana Vidhan Sabha Secretariat Service Rules, 1981 (hereinafter 'the Service Rules of 1981'), the Speaker of the Haryana Vidhan Sabha is the Appointing Authority. Further, in terms of Rule 8 of the Service Rules of 1981, the post of Deputy Secretary is to be filled either by direct recruitment or by promotion from among the Under Secretaries. For promotion, the minimum required qualification was LL.B (Professional) with 3 years' experience as Under Secretary or as Secretary to the Speaker in the Haryana Vidhan Sabha Secretariat.

4. Admittedly, the Respondent did not possess the requisite qualification of LL.B (Professional) at the relevant time. Nevertheless, he was promoted as officiating Deputy Secretary by an order dated 1st January, 2010. The said order stated that his promotion was subject to the approval of the relevant amendment in the Service Rules of 1981.

5. The amendment proposed to the Service Rules of 1981 was to the effect that for promotion to the post of Deputy Secretary, a graduate degree along with 2 years' experience as Under Secretary or Secretary to the Speaker would suffice. However, this amendment was notified in the Haryana Government Gazette only on 27th August 2012, whereas the Respondent retired on 30th April, 2011.

6. It requires to be noted that the Respondent was further promoted as officiating Joint Secretary on 28th April 2011, for a period of three days prior to his retirement on 30th April, 2011. This promotion was against a leave vacancy, and further subject to the approval of the Government for relaxing the basic qualification of LL.B (Professional). However, the Government of Haryana did not agree to such relaxation. As a result, by an order dated 8th July 2011, the Respondent was reverted to the post of officiating Deputy Secretary with effect from 28th April, 2011.

7. With the amended rules having been notified only on 27th August 2012, it was clear that on the date the Respondent was promoted as officiating Deputy Secretary, he was not qualified to be so promoted, as he did not possess the LL.B (Professional) degree. The Respondent was accordingly, by an order dated 21st November 2012, reverted from the post of officiating Deputy Secretary to the post of Under Secretary with effect from 1st January, 2010. The said order was challenged by the Respondent by filing CWP No. 7904 of 2015 in this Court, which came to be allowed by the impugned judgment of the learned Single Judge.

8. This Court has heard the submissions of Mr. Deepak Balyan, learned Additional Advocate General, Haryana and Mr. Raman B. Garg, learned Counsel appearing for the Respondent.

9. There is no dispute that on the date the Respondent was promoted as officiating Deputy Secretary i.e. 1st January, 2010, he did not fulfill the basic eligibility criteria for that post viz., possessing LL.B (Professional) degree. It appears that in anticipation of the proposed amendment to the Service Rules of 1981 which sought to substitute that requirement with a graduate degree, the Respondent was promoted as officiating Deputy Secretary. There can therefore be no doubt that the promotion of the Respondent as officiating Deputy Secretary with effect from on 1st January 2010 was contrary to the Service Rules of 1981.

10. With the amendment to the Service Rules of 1981, substituting the eligibility qualification for promotion to the post of Deputy Secretary of LL.B (Professional) with any graduate degree having been notified only on 27th August 2012, and with prospective effect, the promotion of the Respondent as officiating Deputy Secretary was rendered illegal. Once the promotion itself was rendered illegal, the question of the Respondent being eligible to receive the payment for the period during which he was officiating Deputy Secretary did not arise. In other words, the automatic consequence of the illegality of the promotion was that the Respondent could not expect to be paid the pay scale attached to such promotional post for the period he served as such.

11. While Mr. Raman B. Garg, learned Counsel for the Respondent could not dispute that the amendment to the Service Rules of 1981 notified on 27th August, 2012 was prospective, thereby rendering illegal the Respondent's promotion on 1st January, 2010 as officiating Deputy Secretary, he sought to justify the direction issued by the learned Single Judge regarding granting the Respondent the pay scale attached to the post by referring to the judgment of the Full Bench of this Court in ***Subhash Chander v. State of Haryana, 2012 (1) SCT 603.***

12. In the considered view of the Court, this submission is misconceived. All that the decision in ***Subhash Chander (supra)*** held is that an employee shall be entitled to the salary of the post on the higher grade on which he was officiating. However, the major inarticulate premise of the decision is that the person so officiating should be eligible to do so. The decision in ***Subhash Chander (supra)*** cannot be understood as holding that the person officiating on the higher post would be entitled to the pay attached to that post, notwithstanding that such person did not satisfy the basic eligibility criteria for holding such post. Consequently, the decision in ***Subhash Chander (supra)*** is of no assistance to the Respondent.

13. For the aforementioned reasons, the Court finds that the impugned judgment dated 26th February, 2020 of the learned Single Judge, holding the Respondent to be entitled to the pay scale attached to the post of Deputy Secretary for the period during which he was officiating on that post, to be unsustainable in law. The consequential directions in the impugned judgment are also unsustainable. The impugned judgment of the learned Single Judge is accordingly set aside. The appeal is allowed. No order as to costs.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

25th September, 2020
jk