

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
117 (PROCEEDINGS THROUGH V.C.)**

CWP-13419-2020

Date of decision: 11.09.2020

RAJPAL SINGH RATHEE

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jatinder Kumar Kamboj, Advocate,
for the petitioner.

Ms. Kirti Singh, DAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.

The present writ petition has been preferred by the petitioner for quashing of the order dated 11.08.2020 (Annexure P-6), vide which the petitioner has been repatriated to his parent department, alleging it to be in violation of the principles of natural justice as no notice has been given to the petitioner nor have any cogent reasons been assigned and, therefore, being arbitrary cannot be sustained. Assertion has also been made that the petitioner is working on the post of Section Officer for the last around eight years and, therefore, was required to be confirmed as per the provisions of the Haryana Civil Service Rules and Government Instructions issued from time to time in this regard. The consequential benefits were also prayed for by placing reliance upon a judgment passed by this Court on 17.11.2018 in CWP No. 7312 of 2016 (Annexure P-5) vide which claim for grant of pay scale/emoluments of the higher post of Section Officer along with interest

had been granted.

It is the contention of the learned counsel for the petitioner that the petitioner has passed his SAS Part-I examination. He having been qualified the SAS Part-I examination was appointed against the vacant post of SAS Section Officer in SAS Cadre in order to meet shortage of SAS Officers in the State of Haryana by relaxing Rules of the post of Section Officer. This was so asserted on the plea that the SAS examination was not being conducted regularly and frequently. Petitioner along with some other similarly placed persons, who had passed SAS Part-I examination but had not passed SAS Part-II examination, was appointed against the vacant post of SAS Section Officer in own pay scale with ₹100/- as special pay of the post of Section Officer. Copy of the order dated 14.12.2012 granting appointment to the petitioner against the vacant post of Section Officer is appended as Annexure P-1. It was submitted that the petitioner had been continuously working as Section Officer to the entire satisfaction of the authorities from the date of his appointment. There is no complaint with regard to his work and conduct. Now vide impugned order dated 11.08.2020 (Annexure P-6), petitioner stands repatriated to his parent department which has been challenged by him.

It is the further contention of the learned counsel for the petitioner that the order of repatriation has been passed without giving him any opportunity of hearing. During the period of eight years while he was working as Section Officer, only two times SAS Part-II examination was conducted which, unfortunately, the petitioner failed to qualify. It has also been asserted that the order of repatriation has been passed without giving any notice to the petitioner especially when nothing adverse has been found

with regard to the work and conduct of the petitioner. That apart, it is asserted that after a lapse of eight years, order of repatriation would be harsh and inequitable. Petitioner is entitled for confirmation as per the provisions of the Haryana Civil Service Rules and Government Instructions issued from time to time in this regard and, therefore, the petitioner could not be repatriated.

When the case came up for hearing before this Court on 03.09.2020, following order was passed by this Court:-

“ Learned counsel for the petitioner prays for an adjournment to refer to the rule, which entitles the petitioner to continue on the post of Section Officer Part I Post although the appointment is as stop-gap arrangement if the examination of Section Officer Part II is not held within a period of one year. This, counsel for the petitioner, asserts as the Court was of the opinion that the order of appointment of the petitioner dated 14.12.2012 (Annexure P-1) clearly makes it at the discretion of the appointing authority to revert back the petitioner to his parent department on or prior to the availability of SAS qualified person or on any other administrative ground. It may be added here that this appointment was purely on stop-gap-arrangement basis in SAS cadre against the post of Stenographer/stenotypist/Clerk etc. The reason for repatriation of the petitioner, as is apparent from the order dated 11.08.2020 (Annexure P-6) is that he has failed to qualify both the parts of Haryana State Subordinate Accounts Service Examination (Ordinary Branch), which is an essential requirement for

recruitment to the post of Section Officer.

List on **11.09.2020.**”

In pursuance to the said order, learned counsel for the petitioner has placed on record the Haryana State Accounts Subordinate (Group C) Service Rules, 2013 through email. A circular dated 04.04.1995 has also been placed on record, according to which, a decision had been taken by the Government of Haryana, Finance Department, that there will be no limit of chances for appearing in SAS examination. Counsel for the petitioner has, on the basis of the Instructions dated 04.04.1995, submitted that there being no limit of chances for appearing in SAS examination, repatriation of the petitioner is unjustified.

Counsel has taken me through the Haryana State Accounts Subordinate (Group C) Service Rules, 2013 and on perusal of the same, it would indicate that Rule 7 deals with the qualifications which an employee is required to possess which are laid down in Column 2 of Appendix B of these Rules. Rule 9 deals with the method of recruitment in the case of Section Officer. According to this, 30% is by direct recruitment and 70% by promotion or by transfers/deputation of an official already in the service of any State Government or the Government of India.

Counsel for the petitioner has, on the basis of these Rules, contended that the petitioner has been appointed against the post of SAS Section Officer by relaxation of the Rules with regard to the qualifications against the 70% promotion quota by deputation. Referring to Rule 10, it is asserted that the period of probation has been fixed as two years and after the completion of two years, petitioner automatically stood confirmed as a SAS Section Officer and, therefore, there was no question of repatriation of

the petitioner to his original post in his parent department as now he was holding a substantive post of Section Officer against a permanent vacancy. He, therefore, contends that the impugned order cannot sustain and deserves to be set aside.

Counsel for the State, on the other hand, has contended that all these pleas, which have been taken by the petitioner's counsel, have been dealt with by a Co-ordinate Bench while deciding CWP No. 12807 of 2020 titled as Anil Kumar and another vs. State of Haryana and others, decided on 01.09.2020. The writ petition preferred on behalf of the petitioners therein, who are identically placed as the petitioner herein and had raised the same pleas as have been raised by the petitioner in this petition, stands rejected. She, therefore, submits that the writ petition deserves dismissal.

I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings as well as the statutory Rules and the Instructions.

The Co-ordinate Bench has dealt with the order of appointment dated 14.12.2012 (Annexure P-1) of the petitioner against the post of Section Officer, which is identical for all the similarly placed employees who had cleared Part-I of the Haryana State Subordinate Accounts Service Examination (Ordinary Branch) and had not qualified Part-II of the said examination. The Court, after re-production of the said conditions, has come to a conclusion that it was a pure stop-gap arrangement and the officials, so appointed, would have no right to the post of SAS Section Officer (OB). It had also been mentioned that the said appointment will not confer any right/claim of regular/permanent appointment as SAS Section Officer and the pay scale and other benefits attached to the post. The

appointees could be reverted back to their parent department on or prior to the availability of SAS qualified persons or on any other administrative grounds. To put end to any doubt, it was also mentioned that the appointment will not confer any right for experience, seniority and probation etc. to the post of Section Officer. Above all, the petitioner is still unqualified as he does not possess the qualifications required for appointment to the post of Section Officer as he has not passed the Part-II examinations of the Haryana State Subordinate Accounts Service Examination (Ordinary Branch), which were held in the years 2014 and 2019.

In the light of the nature of the appointment of the petitioner, there was no doubt, as is apparent from the conditions which have been accepted by the petitioner, that he was not required to be given any show cause notice and the principles of *audi alteram partem* would not be applicable. Once the petitioner does not possess the minimum essential qualifications for appointment to the post of Section Officer, he cannot claim it as a matter of right to continue on the said post. The Haryana Civil Services Rules, on which the petitioner intends to rely upon, grant the benefit of absorption only for a person who has been appointed on regular basis on the post after having possessed the essential qualifications. Petitioner being not qualified, the question of he being on probation does not arise what to say of confirmation on the said post of Section Officer.

The pleas, which have been raised by the petitioner and recorded above, have also been duly considered and dealt with by a Co-ordinate Bench in Anil Kumar's case (*supra*). This Court agrees with the judgment passed by the Co-ordinate Bench and adopts the reasoning given

therein to reject the claim of the petitioner.

The present writ petition being devoid of any merit, therefore,
stands dismissed.

September 11, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No