

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23349 of 2014

Date of Decision: 12.02.2020.

Tarun Kumar

...Petitioner

Versus

Haryana Urban Development Authority & another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

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

Mr. R. D. Bawa Advocate with Mr. Randhir Bawa, Advocate
for the respondents.

B.S. Walia, J.

1) Prayer in the writ petition under Article 226 of the Constitution of India is for the issuance of a writ of Certiorari for quashing the impugned termination order Annexure P/3 dated 31.10.2014 and for grant of consequential benefits.

2) Brief facts of the case leading to the filing of the writ petition are that vide advertisement No.1/2010, the Haryana Staff Selection Commission, Haryana, (hereinafter referred to as 'the Commission), advertised 14 posts of Network Engineers.

3). Petitioner being eligible applied in response thereto under the BC-B category and appeared for interview on 13.01.2012. Result was declared by the Haryana Staff Selection Commission on 31.01.2013 and the petitioner was selected within the advertised posts. Pursuant to

recommendation of names of selected candidates by the Haryana Staff Selection Commission vide Annexure R-1 dated 31.01.2013, the petitioner vide Annexure P-1, dated 28.02.2013 was directed to appear in the office of the Chief Administrator for verification of documents of qualification and experience. After verification of documents of qualifications and experience, the petitioner was offered appointment as Network Engineer vide letter Annexure P-2 dated 22.08.2013.

4. That pursuant to the issuance of appointment letter Annexure P-2 dated 22.08.2013, the petitioner joined service. However, in view of receipt of complaint Annexure R-1/3 dated 31.05.2013 that number of selected candidates had obtained fake certificates from un recognized universities which were not approved from govt., / All India Technical Education Board/UGC, besides number of candidates had submitted fake experience certificates, a Committee was constituted vide order No. EA-1-2014/18912-16 dated 25.07.2014 to verify the documents of 03 candidates who had already joined HUDA i.e. verification / checking of the documents i.e. educational qualifications, experience etc as well as genuineness of the Institutes relating to appointment to the post of Network Engineer.

5. That the petitioner appeared before said committee along with the certificates as directed but vide order Annexure P/3 dated 31.10.2014 the services of the petitioners were terminated on the ground that the knowledge of the petitioner in regard to development of software on examination by Experts was not found satisfactory in the on spot practical test as the petitioner failed to perform in accordance with the experience submitted by him, on the basis of which, the Committee judged that the certificates acquired by the petitioner did not match with the knowledge possessed by him, therefore, did not recommend the appointment of the

petitioner, as per the terms and conditions of the appointment letter, whereupon the services of the petitioner were dispensed with, with immediate effect. Relevant extract of the order of termination, Annexure P/3, is reproduced as under :-

“Subject: Regarding verification/checking of the documents i.e. educational qualifications, experience etc. as well as genuineness of the Institutes relating to appointment to the post of Network Engineer in HUDA.

It is intimated that on receipt of the complaints/shortcomings in respect of your documents regarding educational qualification and experience certificates as well as genuineness of the Institutes, Committee under the Chairmanship of the Administrator (HQ) HUDA, was constituted to verify/check the said documents. The Committee examined the documents enclosed with the original application form received from HSSC and compared the same with the original documents and observed as under:-

- (i) He is having qualifications of B. Sc. (First Division) from University of Rajasthan, Jaipur and 1 year Diploma in Computer Hardware & Networking from i-Care Technology, Hisar.
- (ii) He is having experience of more than 1 year as Network Consultant from Achariya Techonologies Pvt. Ltd., Hisar.
- (iii) His knowledge in regard to development of software was being examined by the experts and not found satisfactory.

Furthermore on the spot practical test was taken from the

candidate and he failed to perform in accordance with the experience certificate submitted by him. The committee judged that the certificates so acquired by the candidate does not match with the knowledge of the candidate possesses and hence, does not recommend the appointment of the candidate as per the terms and conditions of the appointment letter.

In view of the recommendations of the Committee, you are not found suitable for the post of Network Engineer, therefore, your services are dispensed with, with immediate effect.

This has the approval of the Ld. Chief Administrator, HUDA, Panchkula.”

6. That the impugned order has been challenged on the ground that the Committee was constituted for re-verification of documents of Network Engineers already appointed in HUDA i.e. for re-verifying the genuineness of the certificates and the Committee on verification had not found the certificates of qualification and experience of the petitioner as not genuine but the services of the petitioners were terminated on the ground that the Committee was of the opinion that the petitioner did not have adequate knowledge. It is the stand on behalf of the petitioner that the Committee was never appointed to re interview and conduct fresh selection of the petitioner and under the rules, the powers of selection of the post of Network Engineer vested in the Commission and HUDA had made a request to the Commission to make the selection of Network Engineers and the Committee comprising of experts constituted by the Commission had found the petitioner fully eligible for the said post, therefore, the Committee appointed for re-verification had no jurisdiction to go into the question

whether the petitioner was having adequate knowledge, therefore, the action of the Committee was without jurisdiction, consequently, on the basis of report of said Committee, services of the petitioner could not have been dispensed with. It is also the plea on behalf of the petitioner that before issuance of the impugned order Annexure P/3 no show cause notice, or opportunity of any kind was granted to the petitioner and had any opportunity been granted to the petitioner, he could have explained that the function assigned to the Committee was only to verify the certificates besides it was not even remotely the case of the Committee that the certificates of the petitioner were not genuine and since the Committee was never entrusted with the function of re-selection, impugned order Annexure P/3, was liable to be quashed being without jurisdiction, that the petitioner was not even aware that the Committee would conduct re selection.

6. Learned Counsel for the respondents on the other hand contended that on receipt of the names of 14 candidates including 02 candidates in the waiting list from the Secretary of the Haryana Staff Selection Commission, Panchkula, vide letter dated 31.01.2013, for the post of Network Engineers, the documents of recommended candidates were got checked and verified by a Committee under the Chairmanship of Administrator (HQ) HUDA and the Committee verified the documents of the candidates and found only 4 candidates including the petitioner eligible and as per the recommendations of the Committee, the petitioner was issued appointment letter dated 22.08.2013 and appointed in HUDA on the post of Network Engineer with the condition that he would be on probation for a period of two years, that on receipt of complaints Annexure R-1/3 a Committee was constituted under the Chairmanship of Administrator (HQ)

appeared before the Committee, which conducted meeting on 18.09.2014 to examine the documents and qualification, experience and other related issues and observed that the petitioners knowledge in regard to development of software on examination by an expert was not satisfactory in the on spot, practical test in which he failed to perform in accordance with the experience certificate submitted, on the basis of which, the Committee judged that the certificates acquired by the petitioner did not match with the knowledge of the petitioner. Consequentially, services of the petitioner were dispensed with, with immediate effect and since the petitioner was on probation, his services were rightly dispensed with for although the petitioner was selected by the Commission, verification of qualification/experience was to be done by the respondents.

7. That learned counsel for the petitioner contends that the selection Committee constituted by the Commission comprised of technical experts and the only right of the Appointing Authority was to examine the validity and authenticity of the documents before issuance of appointment letter to a candidate which was done as is evident from preliminary submission No.2 and 3 as per which on receipt of names of candidates recommended by the Secretary, Haryana Staff Selection Commission, Panchkula, vide letter Annexure R/1 dated 31.01.2013, the Committee verified the documents of the candidates and found various candidates including the petitioner eligible, and on the recommendations of the Committee, the petitioner was appointed in HUDA, vide Annexure R/2 dated 22.08.2013. Learned Counsel further contended that the Committee constituted was merely to re-verify the certificates of the Network Engineers already appointed in HUDA but not to conduct re selection.

8. I have considered the submissions of learned counsel for the parties. Admittedly selection for the post of Network Engineers was made by the Commission, through a Committee, which was assisted by technical experts. Thereafter, names of the candidates including the petitioner were recommended by the Commission vide Annexure R1/1, for the post of Network Engineer, vide letter dated 31.01.2013 and the respondents got the documents of the candidates recommended vide Annexure R/1/1 checked and verified by a Committee which found the candidates including the petitioner eligible, whereupon, the petitioner was appointed as Network Engineer in HUDA, vide letter Annexure P/2 dated 22.08.2013. Committee was constituted merely for re-verification of original documents of Network Engineers already appointed in HUDA, whereas as is evident from Annexure P/3, the Committee exceeded its jurisdiction and proceeded to conduct reselection. As per the rules applicable, the power of selection of Network Engineers vests exclusively with the Commission. The respondents could have merely verified the issuance of certificates relied upon by the petitioner from the Institute / Organization by which it was claimed to have been issued. It is not the case of the Committee that the original certificates of qualification, experience etc. of the petitioner were not authentic. The committee could not have conducted a fresh selection. Likewise reliance on Condition 2 of the letter of appointment is also without any basis. Condition No. 2 in the letter of appointment reads as under :

“2. You will be on probation for a period of two years, which can be extended upto three years. During the period of probation, your services can be terminated at any time without

any notice and without assigning any reason thereof, if your work and conduct are not found satisfactory. ”

The stand of the respondents that the services of the petitioner were terminated as per condition No. 2 of letter of appointment as he was still under probation does not stand judicial scrutiny as firstly the impugned orders were not passed in accordance with condition No. 2 as is evident from the tenor of the constitution of Committee as is evident from Annexure P-3 which reveals that although the Committee was constituted for re verification of the original documents, yet the respondents exceeded their jurisdiction qua the mandate to the Committee and conducted re selection despite the fact that the authority for selection vests exclusively with the Commission. The Committee constituted by the respondents exceeded its jurisdiction by going beyond verifying and checking the original documents of the petitioner and overriding the recommendation of the Commission, which were based on the recommendations of a Selection Committee, which was duly assisted by technical experts. The termination orders were passed without giving any opportunity to the petitioner to submit objections that the function entrusted to the Committee was only to verify the certificates. Even otherwise, it is not the stand of the Committee that the certificates of the petitioner were not genuine. The termination was recommended only on the ground that the petitioner did not perform well in accordance with the spot practical test, therefore, the certificates did not match with the knowledge possessed by the candidate. The same was clearly beyond the scope of the Committee and neither was the petitioner put to notice that a test was to be conducted. Besides, the impugned orders are stigmatic and required compliance with the principles of Natural Justice

which is missing.

10. Accordingly in the light of the position as noted above, the writ petition is allowed. Impugned order Annexure P/3 dated 31.10.2014 is quashed. Petitioner is held entitled to reinstatement with continuity of service and all consequential benefits.

12.02.2020
'rajesh.k.khurana.

(B.S. Walia)
Judge

Whether speaking/ reasoned
Whether reportable

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Yes/No
Yes/No