

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 76-2020

Date of decision:-06.01.2020

Nitish Seth

.....Petitioner

vs.

State of Haryana and ors.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

RITU BAHRI, J.(Oral)

Petitioner is seeking issuance of directions to the respondents to issue him appointment letter for the post of Assistant Architect in the Department of Architect, Haryana on regular basis against the outsource post.

Pursuant to advertisement dated 07.03.2013 (P-1), petitioner applied for the post of Assistant Architect. The four posts of Assistant Architect has been advertised on contract basis initially for a period of one year and extendable on yearly basis. The requisite qualification which was required for the above posts was degree or its equivalent diploma in Architecture from a recognized University or Institute. An Oral Aptitude Test of the petitioner was taken by the Committee where the certificates of educational qualifications of the petitioner was checked. The petitioner was selected for the post of Assistant Architect on contract basis and was issued appointment letter by respondent No. 3. At the time of joining of service, the petitioner was asked by the respondents to submit a service agreement,

which was furnished by the petitioner. However, on 22.07.2016 (P-3), the services of the petitioner was terminated by respondent No. 4 without seeking approval of respondent Nos. 2 and 3, who were the competent authority for Group B post on contractual basis. On 22.07.2016, the petitioner gave his representation through proper channel for forwarding his case for extension/approval to the Additional Chief Secretary i.e respondent No. 3, as his services were extended upto 2016. As no action was taken on the representation of the petitioner, he filed CWP No. 18160-2016 in which respondents undertook to permit the petitioner to continue till he is replaced by a regularly selected candidate. The petitioner was re-employed on 04.07.2018 and was issued appointment letter, subject to fresh medical fitness certificate. The term of the services of the petitioner was again fixed for one year, which was to expire in July, 2019 but the same stands extended upto 31.12.2019. On 21.05.2018, CWP No. 18160-2016 was dismissed as having become rendered infructuous (P-6).

Thereafter, HPSC issued advertisement for filling up various posts in different departments of the State of Haryana which includes 07 posts of Assistant Architect in the department of Architecture, Haryana on regular basis out of which 03 posts fell to reserve category and 04 posts fell to the General Category. However, vide letter dated 30.05.2019, the Additional Chief Secretary, Haryana Finance Department has accorded its concurrence to the conversion of two posts of Assistant Architect belonging to Outsource Category into Regular category posts on the request of Department of Architecture. Thereafter, petitioner who is working on contract basis on the post of Assistant Architect, applied for the said post.

Then, HPSC issued a corrigendum in partial modification in the advertisement that on receipt of requisition from Additional Chief Secretary to Government of Haryana, Architecture Department, vide letter dated 11.06.2019, the total number of posts have been increased from 07 to 08 by adding one additional post in General Category.

Petitioner gave his representation dated 23.09.2019 (P-12) before respondent No. 4 stating that the department has been repeatedly projecting his appointment on contractual basis whereas the letters dated 12.06.2014 and 22.06.2015 (P-10 and P-11) do not say so and instead shows that the petitioner is working against one of the two outsource posts, which have been converted into regular posts.

Thereafter, HPSC announced the date of Competitive test to be held on 03.10.2019. The petitioner then gave his reminder to his representation requesting to decide his representation before the date of competitive test i.e 03.10.2019. The petitioner again gave reminder dated 14.10.2019 (P-14) and thereafter, petitioner was asked to submit fresh service agreement that he is working on contract basis. The petitioner has further not been paid salary from September, 2019 and his claim was rejected on 31.10.2019 and subsequently he filed CWP No. 32388-2019, which was allowed on 15.11.2019 (P-20) and direction was given to the respondents to decide his representation dated 23.09.2019 (P-12) by passing a speaking order within four weeks. However, respondents again asked the petitioner to sign service agreement and the respondents did not release the salary of the petitioner and he gave representation to release his salary.

However, instead of releasing his salary, his claim was rejected by

respondent No. 3 on 06.12.2019 (P-24) on the ground that in view of order dated 20.04.2018, the service of the petitioner is on contract basis as such his representation for issuance of appointment letter on out-source post now converted into regular post is rejected because it is the post which has been converted into regular post and not its occupant. Hence the present petition.

After hearing learned counsel for the petitioner and Ms. Shruti Jain, Addl.A.G. Haryana, who is present in the Court, it transpires that petitioner was working on contract basis since 2013 and his term was extended from time to time, subject to the condition that he will be replaced after the regular candidates joins. On this condition, the petitioner executed service agreement. Subsequently, he was relieved on 22.07.2016 in the absence of receipt of concurrence of Finance Department till 22.07.2016. Petitioner challenged his relieving order dated 22.07.2016 by way of filing CWP No. 18160-2016 in which petitioner was permitted to continue on the post till he is replaced by regular recruited candidate. Thus, the employment of the petitioner in 2013 was contractual in nature for a period of one year on consolidated salary and the petitioner was permitted to join afresh and continue till the regular candidate joins the department through HPSC, whichever is earlier on original terms and conditions including the additional condition "That you will not have any claim of previous service as mentioned in the order dated 20.04.2018 of this Court". Petitioner executed the service agreement on 12.09.2018 with the department after his fresh appointment for one year i.e 11.07.2018 to 10.07.2019. Vide letter dated 30.05.2019, the post of Assistant Architect was regularised but not the services of the employees. But thereafter, inspite of letters/reminders issued

by the department, petitioner did not execute the service agreement with the department for the extended period up to 31.12.21019 but submitted a representation on 23.09.2019 for giving him regular appiontment letter relating to his adjustment against regular post on conversion of outsource posts into regular posts.

This act of the petitioner is against the statement made by his counsel (in CWP No. 18160-2016) on instructions from the petitioner that he is neither seeking reinstatement nor any consequential benefits. The petitioner was only issued fresh appointment letter till the regular candidate joins. The case of the petitioner has rightly been not considered for regular category posts as the appointment to the regular category post of Group B are done through HPSC which is a statutory body of Haryana Government after following the requisite procedure.

The writ petition is dismissed being devoid of any merits.

06.01.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No