

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-6037-2020(O&M)

Date of decision:-09.11.2021

Devender Kumar Bansal

...Petitioner

Versus

Haryana School Education Board, Bhiwani and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.R.K. Malik, Sr.Advocate with
Mr.Samrat Malik, Advocate
for the petitioner.

Mr.Krishan Kumar Gupta, Advocate
for respondents No.1 and 2.

Mr.Sharad Aggarwal, AAG, Haryana.

H.S. MADAAN, J.

1. Briefly stated, the facts of the case as per version of the petitioner are that, he was appointed as a Computer Operator on regular basis with respondent No.1 – Haryana School Education Board, Bhiwani in February, 1987; in the year 1989 he was promoted as Senior Computer Operator followed by other promotion as Senior System Executive on 19.12.2016; he had completed the probation period on 19.12.2017; the

Board of Directors of Haryana School Education Board, Bhiwani, which is the competent authority to modify the regulations had taken a decision on 7.10.2017 that for promotion to the post of Senior System Executive, three years experience as System Executive/Senior Computer Operator is required instead of as System Executive because System Executive/Senior Computer Operator is the same post; such decision was duly approved by Additional Chief Secretary, School Education Department, Haryana; that although decision of Board of Directors approved by Additional Chief Secretary, School Education Department, Haryana could not be upset by Director General, School Education, Haryana even then on the basis of letter dated 11.2.2020 of Director General, School Education Department, Haryana, reversion order dated 25.2.2020 was passed vide which the petitioner was ordered to be reverted from the post of Senior System Executive to the post of Senior Computer Operator. That order is being impugned by way of filing the present writ petition pointing out that before passing of the order neither any show cause notice was issued to the petitioner nor any opportunity of being heard was afforded to him.

2. On notice, the respondents appeared. A short reply was filed on behalf of respondents No.3 and 4 contending that the petitioner had got temporary promotion vide executive order dated 19.12.2016 of Board of School Education, Bhiwani, subject to the condition as per the Board Rules and Regulations, as amended from time to time; that from the requisition of the audit, the matter was referred to Director General, Secondary Education, Haryana to accord sanction in the Employees Regulation already approved by the Government; however that request

was filed and the petitioner was reverted to his original post with immediate effect vide order dated 11.2.2020 since the petitioner did not fulfil the educational and other qualifications for the said post. Such respondents prayed for dismissal of the writ petition.

3. In the reply filed on behalf of respondents No.1 and 2, they have taken up several preliminary objections including one that the petitioner has no legal right to challenge the order of cancellation of promotion and consequent reversion to the feeder post of Senior Computer Operator effected vide the impugned order; the petitioner was not even eligible for the post in terms of Service Regulations, namely “The Board of School Education, Haryana, Bhiwani (Employees Service) Regulations, 1990”; as a matter of fact, the petitioner had joined as Computer Operator and was then promoted as Senior Computer Operator; that despite the fact that petitioner was not eligible for the promotion to the post of Senior System Executive, still he managed to get the promotion vide order dated 19.12.2016 wherein it was clearly provided that the promotion was temporary and subject to the other conditions as per Board's Rules and Regulations, as amended from time to time; as per the Service Regulations for appointment by promotion to the post of Senior System Executive, three years experience as System Executive was required; the petitioner had never worked as System Executive and was rather working as Senior Computer Operator, therefore, he was not eligible for the promotion to the post of Senior System Executive; still he managed to get the promotion vide order dated 19.12.2016, copy Annexure P1, however, the Local Audit Department, which conduct pre-

audit for each of the payment had raised an objection for releasing salary to the petitioner for the post, for which he was not even eligible; the Local Audit Department had raised an objection that unless the Service Regulations are amended, salary to the petitioner could not be released on the basis of executive orders, therefore the matter was sent to the Government, which has got superintending control over the Board in terms of Section 19 of the Haryana Board of School Education Act, 1969; the matter was examined and it was found that there was no requirement to amend the service regulations since a Computer Operator cannot be equated with System Executive because of distinction in the nature of work of both the posts; the Computer Operator holding any post in the hierarchy has to do the typing work and data entry work etc., whereas a System Executive is required to determine an organization's system needs and install network hardware and software and making need upgrades and repairs to networks and ensure that the system operates correctly etc.; in view of such distinction in the nature of work of both the posts, the State Government refused to allow the amendment of the Staff Regulations in exercise of its superintending powers and the decision was conveyed through the Administrative Department i.e. respondent No.4; that the petitioner has neither challenged Service Regulations nor the decision of the Government refusing to amend the service regulations. On merits, the pleas taken in the preliminary objections were reiterated, whereas praying for dismissal of the writ petition.

4. I have heard learned counsel for the parties besides going through the record.

5. Admittedly, the petitioner was promoted as Senior System Executive on 19.12.2016 and had completed probation period on 19.12.2017. The decision of the Board of Directors had been approved by Additional Chief Secretary, School Education Department, Haryana. According to the respondents promotion had been given wrongly to him since he did not possess requisite qualifications and experience for the promotion. According to the respondents, the petitioner had managed to get the promotion, in that way an accusing finger is being pointed out towards the authorities, which had granted promotion to the petitioner. Such authorities are none-else but the officers of the respondents. If for a moment, it is taken that the petitioner was not having requisite qualifications and experience for the promoted job, then why he was granted promotion at the first instance. The officers concerned could not shut their eyes to the factual and legal position including requirement of minimum qualification while promoting the petitioner. Necessary approval had been granted by the Government also.

6. Now comes the question, whether the petitioner could have been reverted to his feeder post in such a manner, the answer is in negative. Even if, the respondents felt that the promotion granted to the petitioner has not been so done legally and validly and it deserved to be withdrawn, then rules of natural justice required that at least an opportunity of being heard should have been afforded to the petitioner getting his version. Passing the reversion order in such a manner cannot be justified by any stretch of imagination.

7. Counsel for the respondents referred to various judgments in

support of his contention that no opportunity of being heard ought to have been given to the petitioner. The first judgment relied upon by him happened to be **LIC of India Versus Hansraj, 2005(9) Scale 538**. In that judgment Hon'ble Apex Court has discussed the probation with regard to situations when order of punishment though made in violation of principle of natural justice may still be not set aside. Such eventualities being (i) Where no prejudice is caused to the person concerned (ii) When violation of natural justice is alleged the quashing of order would lead to revival of another order which is itself illegal.

8. The situation in this case is quite different. Merely by saying that petitioner had managed to get order with regard to his promotion does not shield the respondents from explaining as to why allegedly wrong promotion was granted to the petitioner. The officers and other authorities of respondents were not expected to be so much ignorant, naïve and novice so as to pass order granting promotion to the petitioner without due application of mind, unmindful of the requirement of the basic publication and without considering the pros and cons of their action. If that order was to be reversed, then at least an opportunity of being heard should have been provided to the petitioner. Acting in the manner in which the respondents have done cannot be justified by any stretch of imagination. The petitioner has been brought down from the promoted post to his earlier post clearly causing prejudice to him and the case is not covered by any of the eventuality enumerated in judgment **LIC of India Versus Hansraj** (supra).

9. For the similar reasons, the other authorities pressed into

service i.e. *State of Manipur and others Versus Y.Token Singh and others, 2007(5) SCC 65* and *Raj Singh Versus The State of Haryana and Ors. 2013(14) S.C.T. 452* do not help the respondents in any manner. The rules of natural justice and procedural rules cannot be given go by in such a light and casual manner, rather they call for due compliance.

10. Therefore, the impugned order is liable to be set aside by way of acceptance of the present writ petition, which is so done accordingly.

11. However, the respondents would be at liberty to serve a show-cause notice upon the petitioner as to why he should not be reverted to his earlier post before promotion, get his response thereto and then proceed to pass appropriate order in the matter in accordance with law.

09.11.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No