

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 7558 of 2021 (O&M)
Date of decision : August 26, 2021

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Sonia

.....Petitioner

vs.

Haryana Electricity Regulatory Commission

.....Respondent

(Case taken up through video conferencing.)

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sanjay Kaushal, Senior Advocate
with Mr. Ishaan Bhardwaj, Advocate for the petitioner.

Mr. Sanjeev Kaushik, Advocate and
Mr. Rohit Kaushik, Advocate for the respondent.

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H. S. Madaan, J.

1. Petitioner – Sonia, aged 31 years, d/o Sh. Jai Narayan r/o House No. 709/29, Tilak Nagar, Rohtak, Haryana, has brought the instant civil writ petition under Articles 226 and 227 of the Constitution of India, against respondent Haryana Electricity Regulatory Commission, Panchkula, praying for issuance of a writ in the nature of certiorari for quashing of decision/notice dated 24.3.2021 (Annexure P-14), vide which respondent-Commission

has decided to revert the petitioner to the post of Assistant Director (Economics), at the same level at which the petitioner was working on contract basis, besides craving for issuance of a writ in the nature of prohibition restraining the respondent from reverting the petitioner to the earlier post and for issuance of a writ in the nature of mandamus directing the respondent to allow the petitioner to continue on the post of Deputy Director (Economics), on the basis of her appointment letter dated 24.12.2018 (Annexure P-10) etc.

2. Inter alia in the writ petition, it is contended that respondent – Commission had issued advertisement/notice in the year 2014, inviting applications for the post of Assistant Director (Economics), in the Commission, on contract basis for a period of one year, which could be extended from time to time subject to performance. The petitioner being fully eligible for the said post had applied for the same and she was selected for the post after following due selection process and was posted as Assistant Director (Economics) on contract basis on 18.11.2014. The petitioner accordingly joined as such on 20.11.2014. The petitioner had been appointed as Assistant Director (Economics) on contract basis against the post of Deputy Director (Economics) and was duly allotted the work of the post of Deputy Director (Economics) by the respondent – Commission.

3. That subsequently on 13.12.2018, the respondent-Commission had framed the Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service)

Regulations, 2016 (hereinafter referred to as 'the Regulations'). Regulation 14 of the said Regulations lays down the eligibility criterion for the short-term contract appointments. A perusal of Appendix 'A' and 'D' to the Regulations, goes to show that it does not lay down terms and conditions/eligibility criteria for the post of Assistant Director (Economics), whereas it lays down qualifications, experience and recruitment policy for the post of Deputy Director (Economics); that since the petitioner was duly qualified for the post of Deputy Director (Economics) and also had requisite experience to be appointed on that post by way of permanent absorption as per provisions of Appendix 'A' and 'D', the petitioner applied to the respondent - Commission for her absorption on the post of Deputy Director (Economics) on permanent basis in the year December 2018; that after following due procedure, a decision was taken in the 91st meeting of the Commission held on 24.12.2018 and consequently, the petitioner was ordered to be permanently absorbed on the vacant post of Deputy Director (Economics) w.e.f. 24.12.2018; that she was issued appointment letter on that very date and she had submitted her joining report to the respondent -Commission on 24.12.2018 itself.

4. The petitioner has been serving as Deputy Director (Economics), on permanent basis since the year 2018 and she had been given appreciation letters on various occasions; that her such appointment/absorption was given approval by the

Haryana Assembly also.

5. However, on 24.3.2021, the respondent – Commission issued a show cause notice to the petitioner in an arbitrary manner for her reversion to the post of Assistant Director (Economics), on the ground that in the application dated 15.12.2018 submitted by the petitioner seeking permanent absorption in the service of Commission, the petitioner had concealed the fact that she was working on contract basis and while putting up the application for consideration of the Commission, the petitioner holding the charge of Deputy Secretary (Personnel), had failed to highlight the provision for absorption in the Commission, since it was meant for regular employees and not for employees working on contract basis. The petitioner was granted 15 days time i.e. upto 9.4.2021 to show cause as to why she should not be reverted to the post of Assistant Director (Economics).

6. As a matter of fact, the respondent – Commission has already decided to revert the petitioner to the post of Assistant Director (Economics) and issuance of impugned show cause notice is merely an eye wash and formality. The petitioner has denied the allegations of concealment of fact by her. It is alleged that the notice is stigmatic; the proposed penalty is a major penalty in terms of Haryana Civil Services (Punishment and Appeal) Rules, 2016; no such procedure has been or is being followed. According to the petitioner she is a permanent employee working in the

respondent-Commission and was appointed by way of due process.

The petitioner has assailed the impugned notice on various grounds, in the end praying for acceptance of the writ petition.

7. In the written statement filed on behalf of the respondent, preliminary objections have been taken with regard to maintainability of the writ petition, contending that it is premature, since it has been filed against the show cause notice; that the petitioner instead of filing reply to the show cause notice has rushed to this Court by way of filing the instant writ petition; that serving a show cause notice does not give rise to any cause of action, since it does not amount to an adverse order affecting the rights of the petitioner; that the petitioner has not availed of alternative remedy of filing appeal against the order, which was to be passed after considering her representation. It has been contended that in Judgment *Union of India and others vs. Kunnisetty Satyanarayana (2006) 12 SCC 28*, the Hon'ble Apex Court has observed that ordinarily no writ lies against a charge sheet or show cause notice.

8. In the written statement several judgments have been referred to in support of case of the respondent. According to the respondent absorption/regularization of the service of the petitioner was void ab initio. The respondent-Commission had issued notice dated 24.3.2021 Annexure P-14, asking the petitioner to show cause within a period of 15 days as to why she may not be reverted to the post of Assistant Director (Economics), which she

was holding prior to absorption; that there are two other employees also against whom similar action has been taken by the respondents; that claim raised by the petitioner that respondent has pick and chose policy, is not made out. The pleas taken in the preliminary objections have been reiterated, while replying to the petition on merits. In the end the respondent craved for dismissal of the writ petition.

9. The petitioner filed replication, controverting the allegations in the written reply, reiterating the averments in the writ petition.

10. I have heard learned counsel for the petitioner, learned counsel for the respondent, besides going through the record.

11. Admittedly, there is relationship of employee and employer between the petitioner and respondent. The employer has got administrative control over the employees working on its establishment. If the employer feels that an employee has committed some misconduct or has indulged in an activity, which is in violation of conduct rules or for that matter has procured some advantage from the employer by concealment of any material fact, then the employer has certainly a right to seek explanation from the employee in that regard. The employee should not show over-anxiety or over-reaction simply because the employer has asked him/her to explain certain facts.

12. In the present case, the petitioner is feeling

aggrieved by notice dated 24.3.2021 copy Annexure P-14, vide which she has been asked to show cause as to why she should not be reverted to the post of Assistant Director (Economics), which she was holding prior to regularization. The case of the petitioner is that the respondent-Commission has already decided to revert her to the post of Assistant Director (Economics), as the wording of show cause notice suggests and getting the explanation from her is just an eye wash. As such though ordinarily, a writ petition challenging such show cause notice may not be maintainable but it is certainly maintainable when show cause notice is issued with a prejudiced mind having pre-determined guilt of the accused and taking a decision to impose punishment upon her. To fortify such contention, learned counsel for the petitioner has referred to decision taken by the respondent – Commission in its meeting dated 24.3.2021, where also the wording used is that 'In view of the foregoing discussion, Commission decides to revert Smt. Bhawna, Jr. Scale Stenographer and Sh. Sanjeev Kumar, Assistant Librarian to the post of Clerk-cum-Computer Operator at level 2 on the post in which they were working as contractual employee at par with, similarly situated employee who have joined Commission prior to them as contractual Hon'ble Supreme Court of India. Similarly, Ms. Sonia, Deputy Director (Economics) is reverted to the post of Assistant Director (Economics) in the pay scale of Rs.53100-167800 at level 9 i.e. at the post in which she was working as Contractual employee.' Though such notice and

decision could have been better worded, but it has to be seen that the respondent proposed to take action of reversion to the original post upon the petitioner and therefore for doing that an opportunity was decided to be afforded to the petitioner to present her view point, therefore no inference of pre-meditation or pre-determination on the part of respondent to revert the petitioner to the post of Assistant Director (Economics), can be inferred.

13. Furthermore, there are no allegations of any malice or mala fide against the members or Chairman of the Commission, which might have prompted them to take action of reversion to the original post against the petitioner. It is also to be taken note of that petitioner is not the only employee against whom action is contemplated. As per version of the respondent, two more employees, who are similarly placed, are being proceeded against.

14. The question which arises is whether any wrong committed while promoting an employee and permanently absorbing him/her in the department, can be undone or not and whether passage of long time turns a wrong into right and employer becomes helpless in taking action in that regard. It can certainly be not so. The wrong done or some illegality committed in the process can certainly be probed, as per law observing Rule of natural justice in the light of Service Rules. Furthermore, it is not a case of review of any promotion carried out by earlier members of the Commission, rather a wrong is being sought to be undone, the malice at a very initial stage. The petitioner has just

been asked to render an explanation in that regard. If the respondent is not satisfied by the reply and pass any order adversely affecting the service of the petitioner, then she can take recourse to the remedies available to her under the law, on administrative side or judicial side, if so advised.

15. Learned counsel for the petitioner has referred to various judgments in support of such contentions, the first being *M/s Siemens Ltd. vs. State of Maharashtra and others 2006 (12) SCC 33* . That case had somewhat different facts, in as much as, the appellant Company was served with a show cause notice raising a demand to pay taxes; the writ petition was found to be maintainable observing that it was for the reason that notice had been issued with pre-meditation, in as much as, the statutory authority had already applied its mind and formed opinion about appellant's liability.

16. In this very judgment, in para 9, it was observed that although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction . In this case the show cause notice cannot be said to have been issued without jurisdiction because respondent employer has got every right to issue such type of notice to its employee- the petitioner. Therefore, this judgment does not help the petitioner.

17. As regards, the next judgment, *K.I. Shephard*

and others vs. Union of India and others 1988 AIR (SC) 686, it was observed that Courts must not enter into constitutional issues and interpretation of provisions of the statutes, unless it is necessary for the decision of the dispute. This judgment also does not provide any help to the petitioner.

18. Coming to the third judgment, Orxy Fisheries Pvt. Ltd. vs. Union of India 2010 (13) SCC 427 it was observed that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It was further observed that at the said stage, the authority issuing the charge sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt, because if that is done the entire proceedings initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony. Again the observations were made in different context and facts and circumstances were quite distinct. The matter related to the shipment of frozen food by the appellant and there was a complaint regarding its quality. The consignment was rejected and debit memo was prepared, which represented the material cost and destruction charges, asking the appellant to settle the same. Here the position is quite different. The petitioner has been informed regarding the charge against her and proposal to take action against her and it does not reflect that decision to take such action has already been taken by the respondent.

19. Similarly, the other two judgments pressed into service i.e. M/s Bharat Marine Co. vs. The Commissioner of Customs and another in W.P. 21941 of 2014 of Madras High Court and Ranjit Singh Sidhu P.E.S. vs. The State of Punjab 1990 (2) SLR 314 do not find application to the present case on account of different facts and circumstances as well as the context in which such observations had been made.

20. On the other hand, learned counsel for the respondent has contended that there is no question of the respondent nursing any prejudice against the petitioner and there was no occasion for them to have already made up their mind to revert the petitioner to the post of Assistant Director (Economics), rather when an illegality in the appointment was detected, on being pointed out by other candidates in fray, for appointment/promotion, as Deputy Director, the respondent before taking any action in the matter, thought it proper and appropriate to offer an opportunity of being heard to the petitioner and present her version in that regard. The petitioner instead of doing so, has rushed to this Court by filing the present writ petition challenging the show cause notice wrongly, labelling it as decision, seeking stay of her reversion. Learned counsel for the respondent has also referred to various judgments contending that the present writ petition is not maintainable, such judgments are discussed hereunder.

21. In Executive engineer, Bihar State Housing

Board vs. Ramesh Kumar Singh and others, in Civil Appeal No. 11187 of 1995 (arising out of S.L.P. (C)No. 10042 of 1993), decided on 22.11.1995, the Apex Court dealt with show cause notice against eviction issued to the petitioner by competent authority under Housing Boards Act; the petitioner had disputed jurisdiction of the competent authority on the ground that he was not tenant of the Board, but he had not challenged the vires of the statutory provision governing the matter, it was observed that the dispute raised question of facts and the writ petition under Article 226 was not the proper remedy.

22. In *The Special Director and another vs. Mohd. Ghulam Ghouse and another, in Criminal Appeal No. 35 of 2004 (arising out of SLP(Crl.) No. 2914 of 2003), decided on 9.1.2004*, the Apex Court had observed that in a writ against show cause notice for initiating departmental proceedings, prayer for interim stay against proceedings on show cause notice is not to be entertained unless the court is satisfied that the same was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into the facts. It was further observed that even if the question of jurisdiction can be raised and adjudicated before the authority concerned, the writ court should not interfere and deprive the authority of its statutory power by grant of such an interim relief to which the petitioner may not be entitled to even on merits.

23. In *Commissioner of Central Excise, Haldia vs.*

M/s Krishna Wax (P) Ltd., (SC): Law Finder Doc. Id # 1621710,

it was observed by the Hon'ble Supreme Court that writ petition should normally not be entertained against mere issuance of show cause notice. It was held that respondent is entitled to put in its response to show cause notice and entitled to place such material on which it seeks to place reliance, in support of its case.

24. In a Full Bench judgment of this Court, **Sunder Lal and others vs. State of Punjab and others, in Civil Writ No. 1164 of 1964, decided on 22.7.1969,** it was observed that when there is a bona fide mistake by Government in confirmation of an officer and the Government had corrected the mistake resulting in reduction of the officer, such a reduction is not hit by Article 311 not being an order adverse in nature to affect the career of the employee.

25. In another judgment by the Single Bench of this Court, **Raj Kumar Batra vs. State of Haryana, in CWP No. 13991 of 1990, decided on 16.7.1991,** it was observed that when the Government corrected the seniority on a successive representation of any employee, then the decision of the Government which is factually correct cannot be interfered by the court merely on the ground that the decision has been taken after a long delay and further the Government can undo a wrong any time, the delay can be a bar in granting relief by the court but not when a mistake is corrected by the Government itself.

26. In another judgment, **Chandigarh Administration**

vs. Naurang Singh, in Civil Appeal No. 4005 of 1993 decided on 11.3.1997, by the Apex Court, in a case when certain employees had sought equal pay for equal work and it was found that a few were allowed higher pay under a mistake, that was treated as personal pay observing that in said case doctrine of equal pay for equal work cannot be applied and the Administration cannot be compelled to repeat the same mistake.

27. In judgment, G. Srinivas vs. Govt. A.P. and others, in Civil Appeal No. 2447 of 2004, decided on 20.9.2005, the Hon'ble Supreme Court had observed that when the Government had ordered Collector to inquire into question with regard to issuing supplementary sethwar in favour of appellant, the Government recalled the order after coming to know the property being evacuee property, therefore, opportunity of hearing be given before passing the order.

28. The impugned show cause notice is certainly not happily drafted, but keeping in view the totality of the circumstances, it cannot be said that it has been issued with pre-meditated and pre-determined mind. It has to be taken note of that the Haryana Electricity Regulatory Commission is a statutory body, comprising three persons, two of them being members and the third one a Chairman. There are no allegations that either the Chairman or the members, individually or collectively are nursing any grudge against the petitioner. It being so, it is difficult to understand as to why they would proceed against the petitioner

with a pre-determined mind to revert her to the post of Assistant Director (Economics) without any rhyme or reason and then would work on that agenda. The wording of the notice is to be seen in that background and not in isolation. As such no inference can be drawn that it has been issued with pre-meditated or pre-determined mind. It being so, the respondent has got every right to seek explanation from the petitioner, who is its employee. The petitioner is required to reply to the notice with regard to the assertions therein and then give her version and view point. If the respondent finds the reply to be satisfactory and drop the proceedings, then no cause of action would arise to the petitioner in the matter, though of course she may be aggrieved if some order, adversely affecting her career, is passed. But then she has got remedy to challenge that order on administrative side, as well as on judicial side, as per law. Before any such order is passed, the writ petition is to be taken as premature and not maintainable.

29. Though learned counsel representing the petitioner has, by referring to various documents on record, say Appendix 'C' of Haryana Electricity Regulatory Commission (Officer and Employees Condition of Service) Regulations, 2016; appointment letter of the petitioner as Deputy Director (Economics) – Annexure P-10; Minutes of 91st meeting held on 24.12.2018 at 10.35 A.M., in office room of Chairman, HERC, has tried to build up a case that respondent was fully aware of the fact that petitioner was taken in as Assistant Director (Economics), on contract basis and it being

so, there is no necessity of seeking any such explanation from her in that regard by issuance of show cause notice to her.

30. However, learned counsel for the respondent has contended that promoting the petitioner to the post of Deputy Director (Economics) with the fact that she had been appointed as Assistant Director (Economics), on contract basis and could not be promoted as Deputy Director (Economics) and absorbed in the organisation, was not considered either intentionally or inadvertently, but the fact remains that as per Rules, she could not have been promoted as such and that illegality was pointed out by the other eligible candidates, therefore, the matter is being re-examined and for that a show cause notice has been issued to the petitioner.

31. Learned counsel for the respondent has argued that though the respondent has not taken up a specific plea in that regard but certain facts and circumstances show that promotion of the petitioner was result of favouritism by Chairman and the members consisting the Committee, considering the hurry with which the things moved, in as much as, decision was taken in the meeting which was held on 24.12.2018; appointment letter was issued on 24.12.2018 Annexure P-10; the petitioner joined on the very day vide letter Annexure P-11

32. The respondent, being employer of the petitioner having administrative control over her, has got the jurisdiction to issue the show cause notice and show cause notice issued cannot

be said to be without any jurisdiction. The respondent is not trying to revert the petitioner to the post of Assistant Director (Economics), out of some malice or prejudice. A benefit wrongly given to an employee can certainly be withdrawn and passage of long time does not legalize a wrong action. Learned counsel for the respondent has submitted that no case is made out for intervention by this Court, in light of the judgments referred to him and discussed Supra.

33. During the course of arguments, learned counsel for the respondent has contended that the petitioner had indulged in another misconduct, in as much as, she had submitted a pseudonyms complaint against the members of respondent and on probe being conducted, the writing on the said complaint was found to be in the hand of the petitioner, as per opinion of the Handwriting Expert. For that she had been charge sheeted and placed under suspension.

34. Though learned counsel for the petitioner has termed it as an act of vendetta, carried out by the respondent for the reason of petitioner filing the present writ petition and for that reason petitioner is said to have filed an application for initiation of contempt proceedings against the respondent for taking such action despite an interim injunction order issued by this Court on 5.4.2021 that till the next date, no action shall be initiated adverse to the interest of the petitioner.

35. It may be mentioned here that though when this

writ petition came up for hearing on 5.4.2021 and notice of motion was issued, interim relief was granted to the petitioner that till the next date, no action shall be initiated adverse to the interest of the petitioner, which is being continued but that does not mean that if the petitioner commits some misconduct, her employer is debarred from taking any action against her in that regard. The proper interpretation, of such interim order in context of the subject matter of the present writ petition and not beyond that. The petitioner can certainly be not given liberty to commit any misconduct and then seek immunity from action under cover of the interim order passed by this Court. The employer has an absolute right to proceed against the employee against whom there are allegations of misconduct and it is certainly not a case of contempt on part of the respondent.

36. Therefore, I conclude that service of impugned notice by the respondent upon the petitioner, does not provide any cause of action to the petitioner to approach this court by way of filing the present writ petition.

37. The writ petition is found to be not maintainable and is dismissed accordingly.

August 26, 2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No