

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

CWP-27555-2015(O&M)

Reserved on:-22.11.2021

Date of Pronouncement:-25.11.2021

Deepak Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Dr.Surya Parkash, Advocate
for the petitioner.

Mr.Sharad Aggarwal, AAG, Haryana.

Mr.Nirmal Singh, Advocate
for respondent No.3.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Petitioner – Deepak Kumar has brought the instant civil writ petition against respondents i.e. State of Haryana through Principal Secretary, Urban Local Bodies, Government of Haryana, Haryana Staff Selection Commission, Panchkula (hereinafter referred to as HSSC) and

private respondent Ishwar Singh, craving for quashing of appointment letter dated 9.3.2011 (Annexure P3) issued to respondent No.3 by respondent No.1 for the post of Secretary, Municipal Committee, Urban Local Bodies, Haryana, Chandigarh and reappointment letter dated 6.11.2012 on the same post (Annexure P12) for the reason that respondent No.3 Ishwar Singh had not resigned from his previous employment with 'The Bhiwani District Primary Coop. Agri. & Rural Development Bank Ltd.', Bhiwani before joining as Secretary, Municipal Committee, rather he continued on the roll of both the departments by concealing his appointment from both the employers.

2. *Inter alia*, the petitioner has contended that HSSC had advertised 17 posts of Secretary, Municipal Committee, Urban Local Bodies, Haryana, Chandigarh in the year 2008; the category distribution of posts was General – 5, SC – 9, BCA – 2, ESM – General – 1; the test for selection to those posts was conducted, in which the petitioner had participated under SC Category; the test was conducted on 21.11.2010 and the candidates, who had qualified the written test including the petitioner were asked to appear for interview on 12.1.2011 and 13.1.2011; on the basis of interviews conducted on such dates, final result of the examination was declared by respondent No.2 – HSSC, Panchkula on 4.3.2011; the name of the petitioner figured at Serial No.1 of the waiting list under SC Category; the selected candidates were offered appointments and they had joined accordingly; respondent No.3 – Ishwar Singh was issued appointment letter dated 9.3.2011 for the post of Secretary; at that time he was already working as Land Valuation Officer (hereinafter

referred to as LVO) with Haryana State Cooperative Agriculture and Rural Development Bank Ltd. (hereinafter referred to as HSCARD Bank Ltd.) posted at Branch Office at Loharu; in September, 2010, he was transferred from Loharu Branch to Charkhi Dadri, District Bhiwani; respondent No.3 – Ishwar Singh without resigning from the post of LVO with HSCARD Bank Ltd. joined as Secretary, Municipal Committee in the month of March; on 5.7.2011 respondent No.3 – Ishwar Singh had resigned from the post of Secretary, Municipal Committee, which was duly accepted by Financial Commissioner and Principal Secretary to Government of Haryana, Urban Local Bodies Department vide order dated 15.7.2011, clearly mentioning therein that the lien of respondent No.3 was not being retained on the post of Secretary; with such resignation by respondent No.3 – Ishwar Singh, one post of Secretary fell vacant; as the selection list prepared by respondent No.2 had already been exhausted and one post fell vacant within six months, the petitioner, who was at Serial No.1 in the waiting list of SC candidates, was required to be offered appointment but it was not so done; however, when the petitioner came to know about the same, he on 19.8.2011 submitted his representation to official respondents to consider his case and issue him appointment to the post of Secretary, however, his case was rejected in view of the instructions issued by the State Government vide letter No.42/304/2007-5GSI dated 3.8.2009, which had been issued in view of Hon'ble Supreme Court judgment dated 18.11.2008 in Civil Appeal No.6690 of 2008 - Mukul Sauikia & Ors. Reported as (2009) SCC 366 to the effect that currency of select list/waiting list shall deem to be expired

as soon as the number of posts advertised are filled up and once the number of vacancies advertised by HSSC have been filled or validity of select list or waiting list expired, whichever event was earlier in point of time, the waiting list shall be deemed to be inoperative; however such instructions were withdrawn by the State Government vide letter dated 7.5.2010. The petitioner had filed a CWP No.16495 of 2011 praying that his claim for appointment against the post of Secretary, Municipal Committee, Urban Local Bodies, Haryana be considered and allowed; notice of motion was issued in that writ petition and case was fixed for 11.11.2011; the case of the petitioner was considered by the State Government also and on 3.11.2011 Special Secretary opined that all the 17 posts have not been filled up because subsequent to the appointment letters issued on 9.3.2011, one candidate had resigned from service, therefore vacancy arose within 6 months of the issuance of appointment letter during which the waiting list was operative, therefore, even in terms of instructions dated 3.8.2009, the vacancy could be filled up by giving appointment to the petitioner, who was at Sr.No.1 in the waiting list; Special Secretary had further proposed that before giving appointment, advise of Chief Secretary to Government of Haryana be sought, however, the office of Chief Secretary opined that the petitioner could not be given appointment in view of the instructions issued by the State Government vide letter dated 7.10.1988; after pleadings were completed, that writ petition was admitted by the Court on 4.7.2012. Since new facts had come to the notice of the petitioner, he had withdrawn the earlier writ petition. During the pendency of writ petition filed by the petitioner, respondent

No.3 had again submitted a representation on 4.11.2011 to respondent No.1 for his re-appointment as Secretary, Municipal Committee on the ground that on 5.7.2011, he had resigned due to mental tension and family circumstances, thereafter, he became mentally fit, therefore, he may be re-appointed as Secretary, Municipal Committee; that request of respondent No.3 was accepted and he was given re-appointment on 6.11.2012; he again joined his duty as Secretary, Municipal Committee; that resignation of respondent No.3 was accepted by HSCARD Bank Ltd. w.e.f. 24.1.2013.

3. According to the petitioner, the action of respondent No.1 in re-appointing respondent No.3, who had resigned from the post of Secretary on 5.7.2011 was wrong, malafide, illegal and arbitrary, especially when respondent No.3 had played fraud with State Government by working against two posts simultaneously. The petitioner through his father had again submitted a representation to Chief Minister, Haryana with request to get an enquiry conducted against the illegal act of respondent No.3 and to order the cancellation of appointment of respondent No.3 as Secretary, Municipal Committee and for being appointed in his place but to no effect. As such, the petitioner had knocked at the door of this Court by way of filing the present writ petition.

4. On being given notice, all the three respondents appeared. Short reply as filed on behalf of respondent No.1 in which it was contended that the petitioner had moved applications dated 28.7.2011 and 19.8.2011 for appointment against the post, which fell vacant on account

of resignation of respondent No.3; however on consideration the case of the petitioner was not found suitable for appointment, therefore his claim was rejected, whereas respondent No.3 was re-appointed on applications submitted by him, subject to the condition that he would be treated as a fresh entrant and would not claim his previous seniority; respondent No.3 had again resigned from service on 19.3.2014, which was accepted by the competent authority on 24.4.2014; that a candidate in the waiting list has no vested right to be appointed, except when a selected candidate does not join and the waiting list is still operative and it is only when a selected candidate does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so created. In that way, the claim of the petitioner for appointment was opposed.

5. Respondent No.3 had filed a separate written statement in which he took preliminary objections that respondent No.3 after resigning from his previous job as LVO had joined post of Secretary, Municipal Committee in the month of March; as in the present case all the vacancies had filled up and candidates have assumed their charge, the petitioner has no right for appointment on the basis of his name figuring at Serial No.1 in the waiting list. On merits, the material assertions in the petition were controverted stating that respondent No.3 had resigned from the post of LVO, HSCARD Bank Ltd. on 8.11.2012 before noon by depositing his one month salary and joined the post of Secretary, Municipal Committee after noon. He had not played any fraud by working against two posts simultaneously. The answering respondent was appointed and re-appointed by following proper procedure. In the end, he prayed for

dismissal of the writ petition.

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

7. The first and foremost thing to be seen is as to whether the petitioner, whose name figured at Serial No.1 in the waiting list had any vested right for appointment against any vacancy, which occurred while the waiting list was alive. The case of the petitioner is that he did have a right, whereas according to the respondents it was not so.

8. Learned counsel for the petitioner has relied upon a judgment delivered by a Single Bench of this Court in case CWP-15403 of 2011 decided on July 17, 2013 in case titled **Varun Kumar Versus Haryana Staff Selection Commissioner and others** in support of his contention. Whereas learned counsel for the respondents have relied upon judgments **Prem Singh & others Versus Haryana State Electricity Board, 1996(4) SCC 319, Surinder Singh Versus State of Punjab, 1998 AIR (Supreme Court) 18** and **Raj Rishi Mehra and others Versus State of Punjab and another, 2013 AIR (Supreme Court) 3580.**

9. After hearing learned counsel for the parties, going through the record and the case law referred to by them, I find that though the petitioner's name figure at Serial No.1 in the waiting list, he had a right to be considered for appointment against any vacancy, which occurred during the period the waiting list was alive i.e. for a period of one year but he had no right for appointment. As matter of fact, even the selected candidates do not have any vested right for appointment. With regard to name of petitioner being considered for appointment, according to the

petitioner, respondent No.3 had not resigned from his previous employment when he joined as Secretary, Municipal Committee on 9.3.2011, therefore, his such appointment was wrongly made. Whereas this fact is being controverted by respondent No.3. According to the petitioner, when respondent No.3 had resigned from the post of Secretary, Municipal Committee on 5.7.2011, a post had occurred, which should have gone to the petitioner but then respondent No.3 had been re-appointed on 6.11.2012. The case of the petitioner is linked with the issue as to whether the initial appointment of respondent No.3 was validly made when allegedly he simultaneously remained in employment as LVO with HSCARD Bank Ltd.; as to whether he had validly resigned from earlier post before accepting appointment as Secretary, Municipal Committee or his resignation was pending acceptance when he did so? It is further to be seen as to under what circumstances, he had resigned from the post of Secretary, Municipal committee on 5.7.2011 and how he was re-appointed again on that post on 6.11.2012.

10. Respondent No.3 is defending his such acts as legal and valid, which are being challenged as illegal, fraudulent and wrong by the petitioner. If the petitioner succeeds in proving such allegations, only then he has some case for being considered for appointment with regard to vacancy and if he is not successful in doing so, then his plea for consideration is not sustainable.

11. For determining such questions, the response from the earlier employer of respondent No.3 is required to be taken, its record needs to be perused minutely and only then some clear cut finding can be given. This

entire exercise cannot be carried out in the writ petition may be approaching the civil Court would have been a better option. It has to be further taken note of that petitioner had submitted representation to the respondents, which was considered and declined in terms of the instructions prevalent at that time. It needs to be mentioned here that the matter relates to the year 2008, when the post had been advertised, written test was conducted in the year 2010, interviews were conducted in the year 2011 in the month of January and thereafter result had been declared on 4.3.2011, in that way period of more than 10 years has elapsed from declaration of final result. The life span of the waiting list was for one year, which has since elapsed. Respondent No.3 is no longer working against the post of Secretary, Municipal Committee, Urban Local Bodies, Haryana, Chandigarh.

12. Under the circumstances, I do not find it a fit case to exercise power under Article 226 of the Constitution of India, which is to be done in very exceptional cases and not in routine.

13. The instant writ petition is dismissed accordingly.

25.11.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No