

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

**CWP-5345-1999 (O&M)
Date of decision: 18.04.2022**

Sangeeta

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunil Nehra, Advocate for the petitioner.

Ms. Kirti Singh, DAG Haryana.

ARUN MONGA, J.

Petition, *inter alia* is for issuance of a writ in the nature of Certiorari seeking quashing of show cause notice dated 24.12.1998 (Annexure P-9) and the impugned order dated 24.03.1999 (Annexure P-12) whereby services of the petitioner were terminated. Prayer is also for quashing the impugned order dated 21.04.1999 (Annexure P-16) whereby her appeal filed against the termination order was rejected. Further prayer is for quashing appointment of respondent No.6-Avtar Singh, from Scheduled Caste 'B' category, who had been given appointment on a post that belongs to Scheduled Caste 'A' category. Issuance of a writ in the nature of Mandamus has also been sought commanding the respondents to re-instate the petitioner in service with all consequential benefits.

2. Succinctly put, the factual narrative first. Subordinate Services Selection Board, Haryana (now Haryana Staff Selection Commission) issued an advertisement dated 07.09.1995 for recruitment to various cadres

including Steno-Typists (Hindi) from amongst the candidates belonging to the Scheduled Castes/ Ex-Servicemen and Dependents of Ex-Servicemen. It is pertinent to note here that total number of posts were not mentioned in the advertisement. Petitioner also applied pursuant to the said advertisement. She belongs to Scheduled Caste 'A' (*Dhanak* by caste). She was at Sr. No. 27 of the select list dated 25.02.1996 (Annexure P-1). There were total 30 posts of Steno-Typists (Hindi), out of which 17 were meant for Scheduled Castes, and 13 for ESM category. Name of respondent No.6-Avtar Singh was at Sr. No. 22 who along with four others was recommended to the Development and Panchayats Department, but his name was returned on 08.11.1996 as there was no requirement of post in question in said department.

3. Later on, name of the petitioner was recommended to the Department of Development and Panchyats on 17.01.1998. Accordingly, she was appointed on 23.02.1998.

4. In between, prior to petitioner's appointment, new requisition was sent by the Directorate of Food Supplies for six posts of Steno-Typists including two posts for Scheduled Caste category. Name of Avtar Singh was again recommended to the Department of Food and Supplies but again returned. He along with one Ms. Bimla filed CWP-10518-1997 **Bimla Rani and another versus State of Haryana and others**, which was allowed vide judgment dated 16.09.1998 (Annexure P-6). Petitioner was not made party in the said CWP-10518-1997 filed by Bimla Rani and Avtar Singh.

5. In order to accommodate Avtar Singh and Bimla Rani, petitioner was issued show-cause notice dated 24.12.1998 (Annexure P-9). She preferred CWP-296-1999 challenging the show cause notice, which was

dismissed vide judgment dated 12.01.1999 (Annexure P-10) as pre-mature by the Division Bench of this Court.

6. The petitioner filed reply to the show cause notice (Annexure P-11). However, vide impugned order dated 24.03.1999 (Annexure P-12), the petitioner was removed from service. She filed an appeal against the same, which was dismissed vide order dated 21.04.1999 (Annexure P-16). Hence, the present writ petition.

7. In the returns filed on behalf of respondents, it is submitted that name of the petitioner – Ms. Sangeeta and respondent No.6-Avtar Singh were at Sr. No.27 and 22, respectively in the select list prepared by the Commission. Since respondent No.6 was more meritorious candidate in the select list than the petitioner, he has rightly been appointed to the post of Steno-Typist (Hindi) keeping in view the judgment dated 16.09.1998 (Annexure P-6) passed by this Court. It is also submitted that the advertisement in question was published without 'A' or 'B' Block and so was the selection. Therefore, the question of recommending the candidates block-wise does not arise.

8. In a separate reply filed by respondent No.6-Avtar Singh, it is stated that when the Department placed requisition with the Subordinate Services Selection Board, Haryana, in September 1994, there was no Block-A or Block-B of Scheduled Caste category. The letter dated 09.11.1994 was issued after placing the requisition and the same is/ was not applicable to the selection in question. Further, the judgment in **Bimla Rani's case (supra)** has attained finality. If the petitioner were aggrieved against the same, she ought to have filed review by impleading herself as party.

9. The petitioner filed replication to the written statement of respondents No.3 and 5, pointing out that vide administrative instructions dated 09.11.1994 (Annexure P-8), Scheduled Castes category were bifurcated into Block 'A' and 'B'. The advertisement was issued subsequent thereto, in the month of September, 1995. The selection list was prepared on 25.02.1996. Therefore, the instructions dated 09.11.1994 were required to be complied with while making selection as the same were issued prior to the issuance of the advertisement. Reliance is placed on Division Bench judgment of this Court in the case of **Major Phalit Sharma versus State of Haryana and others**, reported as 1997 (4) SCT 411. It is also pleaded that the respondents had applied these very instructions *qua* the other selection made for the posts of Clerks, Panchayat Secretaries and Patwaries, in spite of the fact that these posts were lying vacant prior to 09.11.1994.

10. I have heard the rival contentions of the learned counsel and I shall now proceed to advert to the merits thereof and render my opinion alongwith the discussion as hereinafter.

11. First the termination order dated 24.03.1999 (Annexure P-12) which is worded as below:-

“Consequent upon the order of the Hon’ble High Court dated 16.9.1998, in Civil writ petition No.10518 of 1997, titled Bimla Rani d/o Shyamj Singh and Avtar Singh s/o Sucha Singh Vs. State of Haryana and others, and recommendation of Haryana Staff Selection Commission vide letter No.HSSC-Confed.-98/423 dated 23.11.1998 and letter No.HSC-Confed.98/441, dated 15.12.1998, a show cause notice was issued to Miss Sangeeta Steno-Typist (Hindi) vide memo No.A.1/98/68556 dated 24.12.1998 that her services are required to be terminated. Miss Sangeeta submitted her reply on 15.1.1999.

In compliance of the order of the Hon’ble High Court and in pursuance of the recommendation made by Secretary, Haryana Staff Selection Commission, I, S.K. Monga, Director,

Panchayats, Haryana, Chandigarh hereby terminate the services of Miss Snageeta, Steno-Typist (Hindi) office of the Director Panchayats, Haryana by giving one month's notice as stipulated in the letter of her appointment. The notice of termination will take immediate effect and she will stand relieved on the expiry of this notice i.e. on 23.4.1999 (after noon)."

12. Perusal of the impugned termination order as above would reflect that essentially the services of the petitioner were terminated as a consequence of the judgment rendered by this Court in CWP-10518-1997 wherein she was not a party. The order seems to reflect that compulsion to terminate her services arose to accommodate the candidates who were directed to be taken in service vide the judgment dated 16.09.1998. Though in the termination order it is noted that the petitioner had submitted her reply on 15.01.1999 to the show cause notice dated 24.12.1998 as to why her services be not terminated, but in the impugned order there is not even a whisper or a remote reference *qua* the stand taken by the petitioner in her reply and any reasons thereof as to why the same was being rejected.

13. The appellate order dated 21.04.1999 (Annexure P-16) assailing her termination, is no doubt a speaking one and with the detailed recital of the facts of the case as well as noting the contentions raised by the learned counsel for the petitioner who appeared before the appellate Authority, including the argument that a vacancy was available in the Food and Supplies Department and/or re-distribution of the vacancies between Scheduled Cast category 'A' and 'B'. The relevant part of the appellate order is reproduced herein below:-

"As regards the contention of the appellant that the vacancy is available in the Food & Supplies Department or distribution of vacancies between SC 'A' & SC 'B' category, I am of the opinion that these points can not be adjudicated upon by me because the post in the Food & Supplies Department is not

within my competence. The point regarding distribution of posts of SC 'A' & SC 'B' has already been made clear by the HSSC vide their letter dated 15.12.98 that in the requisition of 9.11.94 posts of SC categories were not further bifurcated in 'A' & 'B' Blocks and thus question of recommending the candidates block wise does not arise.

As regards the right of appellant on the ground that her name was recommended within life span of select list is concerned, she can not take any benefit thereof because she is admittedly found less meritorious than Shri Avtar Singh, who has now been appointed in compliance of directions of Hon'ble High Court as well as the recommendation of HSSC. HSSC has also recommended that since no post under advertisement No.7/95-16 is available, the services of Miss. Sangeeta be terminated and Shri Avtar Singh be appointed in her place.

From the facts enumerated above, it is clear that services of Miss. Sangeeta has been terminated as Shri Avtar Singh was to be appointed in compliance of the direction of the Hon'ble High Court and on the basis of the recommendation made by the HSSC. Shri Avtar Singh was found above in merit to Miss. Sangeeta in the selection made by the HSSC and in response to the requisition dated 21.10.97. HSSC has categorically taken a stand that since no post in Advertisement no.6/95-16 is available, there is no alternative except to terminate the services of junior most candidate i.e., Miss. Sangeeta and in her place offer the appointment to Shri Avtar Singh. As already mentioned Miss. Sangeeta was given a notice of 21 days to show cause and thereafter one month notice as stipulated in her letter of appointment has also been given by the Director Panchayats while terminating her services on 23.3.99.

For the reasons recorded above, while agreeing with the orders of Director Panchayats terminating the services of Miss. Sangeeta from the post of Steno-Typist, I do not find any merit in the appeal and the same is dismissed."

14. Long and short of the termination order followed by the appellate order thus remains to be, that the services of the petitioner had to be terminated without any choice left with the department in order to accommodate the candidates directed to be taken in service vide judgment dated 16.09.1998 rendered in CWP-10518-1997.

15. Perusal of the reply to the show cause notice filed by the petitioner would reveal that she had indeed clearly stated therein that the

Directorate of Food and Supplies had filled only one vacancy as against the

requisition of two reserved vacancies of Steno-Typists in the Scheduled Caste category. The said contention of the petitioner was given a complete short shrift by the Director, Panchayats even the first one was rejected though by the appellate Authority only on the ground that the post in the Food and Supplies Department was beyond his competence to accommodate the petitioner against the unfilled vacancy in the Directorate of Food and Supplies as she was earlier appointed in the Directorate of Panchayats.

16. Let us first test this ground of rejection as to whether the appellate Authority was justified in rejecting the claim of the petitioner *qua* the unfilled vacancy. To be noted here that the appellate Authority as/ was the Financial Commissioner-cum-Secretary to Government, Haryana though of course of Panchayats, but it was well within his domain to recommend the case of the petitioner to his coordinate in the other department since both of them are essentially representing and discharging their responsibilities for the same State. Be that as it may, in the earlier round of litigation instituted by the petitioner vide CWP-296-1999 before the Division Bench, impugning the show cause notice while dismissing her petition as premature, speaking for this Court, my learned Brothers G.S. Singhvi, J. and Iqbal Singh, J. (as they were then) observed as below:-

“In our opinion, the stage has not reached, for this court’s intervention because the petitioner can and is always free to request the departmental authorities that her services may not be terminated and she be adjusted against the post which was available in the Food and Supply Department and we do not find any plausible reason or valid justification to presume that the departmental authorities will take a final decision in pursuance of the notice Annexure P/9, without considering the plea of the petitioner regarding the availability of the post.”

17. A bare reading of the aforesaid and in light thereof, it is clear that it was not beyond the competence of appellate Authority/Financial Commissioner/Secretary of the State to consider request made by the petitioner to adjust her against the available vacancy as per observations of the Division Bench of this Court, especially in view of the candid stand taken by the Haryana Staff Selection Commission as is borne out from the reply filed to the writ petition herein that the Director, Food and Supplies Department had indeed sent requisition for two posts in the Scheduled Caste category vide letter dated 26.03.1996 (Annexure P-2), which was later curtailed to one post.

18. Speaking of the available vacancies, same is borne out from the record itself that the petitioner was not appointed against 30 vacancies, but was in fact appointed pursuant to a later requisition dated 21.10.1997/28.11.1997 as is also duly noticed by Division Bench in judgment (Annexure P-6) in **Bimla Rani and Avtar Singh's case (supra)** in the following terms:-

“xxxxxxxxx against the requisition received on 21.10.97/28.11.1997 and she has been appointed as Steno-Typist in a B-class office. xxxxxxxx”

19. In the premise, it is thus clear that the vacancies were actually available with the Department and the petitioner was appointed pursuant to the requisition as aforesaid. Furthermore, in para No.16 of the writ petition it has been categorically averred that in addition to 30 vacancies, various vacancies were still available. The Joint Secretary Development and Panchayats Department had sent a requisition dated 18.01.1999 for 14 posts of Steno Typists to the Haryana Staff Selection Commission. Petitioner had

also sought information under the RTI Act. She sought a certified copy of letter dated 18.01.1999 sent to the secretary, Haryana Staff Selection Commission regarding requisition for the post of Stenographers and also sought certified copy of details of vacant posts of Stenographers along with the date of vacancy and year as mentioned in the above mentioned demand letter. Information was received by her under RTI Act, which reveals that the posts as mentioned in the requisition letter bearing the department's memo dated 18.01.1999 are vacant since the year 1996. Therefore, the posts were available with the department when the services of the petitioner were terminated.

20. *Qua* her merit, the petitioner has made a specific averment in Para-20 of her writ petition that the selected candidates at Sr. No.30, 31, 32 & 35 in the merit list are below the petitioner. They no doubt belong to Ex-Servicemen/Dependant of Ex-Servicemen category, but despite being lower in merit to the petitioner were appointed on the same post. This contention has not been denied by the State and in fact has been candidly admitted by the Haryana Staff Selection Commission in its reply to the corresponding para of the petition. Justification rendered for the selection of the lower merit candidates, of course, is that they belong to Ex-Servicemen category and therefore, cannot be compared with the petitioner who is from Scheduled Caste category.

21. Intriguingly, the impugned termination order as well as the appellate order both proceed on the premise that the services of the petitioner “so to speak” are required to be terminated, in compliance of the directions of

this Court in CWP-10518-1997. The relevant of the said judgment is extracted below:-

“Let us examine the claim of the petitioners in the light of the above quoted-principle of law. As far as petitioner, Smt. Bimla Rani is concerned, her grievance stands substantially redressed in view of her appointment under the Director, Horticulture, although no plausible explanation has been given by the respondents why her name was not recommended to the same office in 1997 when the name of Shri Raj Kumar, who was placed at No.11 in the merit list, was forwarded to the Director, Agriculture vide memo No. 61 dated 2.4.1997. Avtar Singh’s name was recommended to the Joint Secretary, Development and Panchayats on 27.5.1996 without any requisition. Why this was done by the then Board has not been explained. In the year 1997, his name was recommended to the Director, Food and Supplies but the same was returned on 16.3.1998. The name of Smt. Sangeeta (Merit No.27) was also recommended to the Joint Secretary, Development and Panchayats, without any requisition and the latter returned the recommendation. Subsequently, her name was sent to the Director, Development and Panchayats vide memo No. 14 dated 17.1.1998 against the requisition received on 21.10.97/28.11.1997 and she has been appointed as Steno-Typist in a B-class office. The reason why the Director, Food and Supplies, did not appoint the petitioner, Avtar Singh has been disclosed in the letter dated 16.3.1998 (Annexure R-3/9). In his letter, the Director, Food and Supplies has stated that names of Avtar Singh son of Shri Sucha Singh (merit No.22) Ms. Sunita d/o Shri Suraj Bhan (merit No.49) and Sham Lal S/o Shri Diwan Chand (merit No.50) are returned due to non-availability of vacancies. If this letter is read with the communication dated 26.03.1996, (Annexure R-3/8), it gives an impression that the concerned officer has adopted contradictory stand regarding the number of posts. However, to us it appears that some communication received from the Director, Food and Supplies department after 26.3.1996 has not been placed on record. There is also some apparent unexplained mistake in Annexure R-3/8, inasmuch as the Director, Food and Supplies could not have written letter dated 26.3.1996 with reference to his earlier communication dated 2.2.1996. That apart no explanation has been offered by the respondents as to why name of the petitioner, Avtar Singh, was forwarded vide memo No. HSSC-Counted-97/19 whereas the name of Smt. Sangeeta d/o Shri Munshi Ram was forwarded by dispatch No. HSSC-Counted-97/14. The

respondents have not explained as how less meritorious candidates have been appointed ignoring the claim of the petitioners and their failures to do so leads to an irresistible conclusion that the petitioners fundamental right to equality in the matter of employment which is guaranteed by Articles 14 & 16 of the Constitution has been violated.

As far as the petitioner, Madan Lal, is concerned, we find no merit in his grievance because no candidate less meritorious than him has been offered appointment.

For the reasons mentioned above, CWP No.10518 of 1997 is allowed. The respondents are directed to give national appointment to the petitioner, Avtar Singh, from the date of appointment of less meritorious person, namely Smt. Sangeeta d/o Shri Munshi Ram. However, he shall not be entitled to arrears of salary which he shall get from the date of joining duty. Appropriate order be passed within one month of the submission of certified copy of this order. He shall get costs of Rs. 10,000/- from the respondents because he has been subjected to grave injustice by denial of due appointment. Petitioners Bimla Rani and Avtar Singh shall get seniority from the date of appointment of persons junior to them. The government shall be free to recover the amount of costs from the salary of the person who may be found responsible for denying appointment to him. CWP No. 15567 of 1996 is dismissed.”

22. Perusal of the above said judgment would reveal that there is no such direction *qua* the petitioner's removal from service and as already noted neither she was a party to the writ petition nor was she otherwise heard or given any opportunity of being heard before passing any adverse order, even if there is one by this Court as is the stand of the respondents, though none exists.

23. Even otherwise, I am of the opinion that in the event of certain candidates succeeding for their claim for selection by virtue of directions issued by this Court, it is not really necessary for the department to displace those persons who have already been appointed, for no fault of theirs. More so, when vacancies are available and they have been allowed to continue in service for a considerable length of period.

24. A candidate selected by due process of law, ordinarily should not be summarily discharged from service on discovering an anomaly committed by the recruitment agency at the time of selection.

25. Adverting once more to the position *qua* the vacancy, the Directorate of Panchayats in its reply to the corresponding Para-23 of the petition has stated that one post of Steno-Typist (English) in General category is lying vacant, but the petitioner has no right *qua* the same being from Scheduled Caste category. Thus, availability of vacancies is not in dispute. Not only that the Under Secretary of the State Government, in response to the corresponding Para-16 of the petition, admits that a requisition was sent to the Haryana Staff Selection Commission on 18.01.1999 showing 14 vacancies of Steno-Typists (Hindi) and these posts had in fact been lying vacant since 1996. From the conceded factual position, it thus emerges that a number of posts of Steno-Typist had been lying vacant with the department in 1996.

26. As an upshot of the above discussion, I am inclined to accept the petition. The same is accordingly allowed. Termination order dated 24.03.1999 (Annexure P-12) as well as the appellate order dated 21.04.1999 (Annexure P-16) are both set aside and the petitioner is directed to be forthwith reinstated in service, subject to availability of vacancy as on today, along with all consequential benefits *qua* seniority and notional fixation of pay, but shall not be entitled to any salary for the intervening period during which she remained out of service. She will be put on the bottom of the seniority list in the category she had originally been appointed. In case, there

is no vacancy available on today, petitioner’s claim on post shall be adjusted in the first future vacancy of the post in question.

27. Petition is thus, allowed, in above terms, with no order as to costs.

(ARUN MONGA)
JUDGE

APRIL 18, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No