IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12995-2021 (O&M)
Date of decision: 20.12.2022

ASHWANI KUMAR ...Petitioner

VS

STATE OF HARYANA AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gaurav Tyagi, Advocate,
For the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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ARUN MONGA, J. (ORAL)

Petition herein, *inter alia,* is for issuance of a writ in the nature of *Certiorari* for quashing impugned order dated 05.07.2021 (Annexure P-11) whereby appointment of the petitioner was cancelled by rejecting his representation dated 14.05.2021 (Annexure P-9). Further prayer is made for issuance of a writ in the nature of *Mandamus* for directing the respondents to allow petitioner to join his duties with immediate effect on the post of Taxation Inspector in the Excise and Taxation Department, Haryana, in view of appointment order dated 20.02.2021 (Annexure P-2).

2. I have heard learned counsel for the parties and gone through the case file.

3. The advertisement for the job in question was published some time on or around 01.12.2015. The entire selection process and the interviews were conducted over a period of 2 years culminating on 06.12.2017. After 2 years of selection process, the respondent Commission took as long as 3

years and 2 months to declare the result and finally petitioner was declared successful. As against the delay of more than 3 years in declaring the result, what is being held against the petitioner is a few days of delay in joining on the post in question. For this, Instructions dated 13.09.2019 (Annexure P-12) are being cited by the respondents and on the ostensible ground that since the maximum period of joining can be stretched only up to 3 months, petitioner is being held not entitled to seek benefit of his success in the selection process.

4. In this background, let us first have a look at the relevant provisions of Instructions dated 13.09.2019 (Annexure P-12),which are as below:

> *2. The matter has been reconsidered by Government and in supersession of all the above instructions, the policy on fixation of minimum and maximum joining time on first or subsequent appointment through HSSC or HPSC or any other approved Recruitment Agency shall be as under:*
> *i) in case of fresh appointment of a candidate he may be allowed the maximum period of 30 days to join his new appointment.*
> ***ii) In case a candidate, who being already in service in a Private or Government Organization/Department, is not able to join within 30 days or for bonafide reasons, the competent authority may, where the administrative requirements permit, allow suitable extension of time which should not however exceed three months irrespective of duration of validity of waiting list. (emphasis supplied)***
> *iii) For women candidates who are declared temporarily unfit on account of being pregnant, the joining time may be extended upto such period as is considered necessary provided not beyond six months from the date of confinement.*
> *iv) If a candidate who is covered under (i), (ii) or (iii) above does not join duty within the period specified above, his/her selection made by the HSSC, HPSC or any other approved Recruitment Agency, will be deemed to have been cancelled without any further notice. Necessary provision in this regard should be made by the Appointing Authorities at the time of issuance of appointment letter.*
> *v) Where the joining time is to be extended in public interest due to short supply of candidates e.g. Doctors, Engineers, etc. the*

> *case may be sent to General Administration Department for extension beyond the period specified above."*

5. Perusal of the above Clause (ii) clearly reflects that if a candidate is in Government service, then for *bonafide* reasons competent authority has the discretion to allow extension of time which should not exceed 3 months. *Qua* the *bonafide* reasons, petitioner has been representing to seek extension of time vide his representations dated 06.03.2021, 19.04.2021, 06.05.2021 and 14.05.2021 contained at Annexures P-4, P-7, P-8 and P-9 respectively. The respondents have though disputed receipt of the representations Annexures P-4, P-7 and P-9, however in order to not unnecessarily lose focus on the controversy in hand, let us examine the representation dated 06/11.05.2021 (Annexure P-8), which is being admitted by the respondents and has been discussed in the speaking order as well, the contents thereof are reproduced herein below:

> *"Sub:- Application for extension of Joining time for the post of Taxation Inspector with reference to your letter no. 2921-E 02 dated 19 Mar 2021.*
>
> *I request you that extension for joining may be please considered in view of the following points:*
>
> *i)Presently due to Covid-19 outbreak lockdown has been imposed in the State and situation in Gurugram is not good (Gurugram South is my duty station). Moreover it is also heard that the Taxation office is also closed.*
> *ii)I am presently working as Auditor, in Local Audit Department, Haryana. I have to complete various official formalities before leaving the department.*
> *iii)I am the only son to take care of my parents and presently my mother is not well and is under treatment.*
> *iv) Renovation of my old ancestral house is in progress and as my father is aged they are unable to take care of it.*
>
> *It will be a matter of great opportunity and respect for me to be a part of your esteemed department. I assure you that I will join the office at the earliest. I request you that considering all*

the above points extension for joining may please be granted upto 30 June 2021.

6. In fact, ordinarily on the ground of Covid Outbreak, this Court would have stopped short of any further discussion and would have given the advantage of the same to the petitioner since though lockdown had been lifted in the month of May-2021, but work in Government offices and even otherwise in normal life was being carried out under severe restrictions. Moreover, as already said, the department/Selection Commission took as long as 3 years to carry out the selection process and speaking of equity, a few days of delay on the part of the petitioner, which *prima facie* seems to be *bonafide*, ought not to have been held against him. In this context, reference may be had to a judgment dated 31.01.2019 rendered in CWP No.2559-2019 by a Coordinate Bench, which was presided over by my learned sister Ritu Bahri, J,. stating as below:-

> *"xxxx The impugned order should not have been passed as the petitioner had gone through the selection process from 2015 till 2018 and now just because of the reason that he is unable to join on time, his appointment letter should not have been cancelled. The department itself has given extension of time to the petitioner to join, vide notice dated 22.11.2018. Thereafter, the petitioner sent a letter dated 07.01.2019 after passing of impugned order seeking 5-7 days more time to join as he has not given resignation to his earlier department.*
>
> *Keeping in view the fact that the petitioner has successfully cleared the written examination, scrutiny of documents and interview/viva voce by putting in all the hard work and now just because of one inadvertent mistake of correspondence/ communication, the petitioner should not suffer. xxxx"*

7. Furthermore, I may also hasten to add before parting that it is a conceded position that department was aware of the petitioner being a government employee, as has been stated in representation dated

06/11.05.2021 (Annexure P-8), receipt of which has been duly admitted by the department.

8. Having come to know of his having been a government employee, no reason whatsoever has been given in the speaking order as to why petitioner was not given the benefit of Clause 2 (ii) of the Instructions dated 13.09.2019 *ibid* (Annexure P-12).

9. The entire emphasis of the speaking order is on the delay attributed to the petitioner and in any case same not being stretchable beyond 3 months. Even if the justification of delay is to be reasoned out, the same also seems to be a complete moonshine. Letter of appointment to the petitioner was issued on 19.02.2021 and calculated from the said date, the three months expired on 19.05.2021.

10. I see no reason as to why the department after receipt of representation dated 6/11.05.2021 (Annexure P-8) should not have given the petitioner opportunity to join upto 19.05.2021, instead of simply rejecting his representation. Having not adopted such course which flies in the face of the instructions relied upon by the department the relaxation of a few days, which too was sought within three months' period, is being held against the petitioner as against the colossal delay caused by the department in the entire selection process.

11. As an upshot of the above discussion, instant petition is allowed and impugned order dated 14.05.2021 (Annexure P-9) is set aside. Respondents are directed to appropriately process the case of the petitioner and afford him fresh reasonable opportunity to join duty as Taxation Inspector. Needless to say that since it is the respondents, who are

responsible for keeping the petitioner on tenterhooks all throughout that he was pursuing instant litigation, he will be entitled to the seniority maintained by the Haryana Staff Selection Commission. It is made clear that petitioner shall not be entitled to any monetary benefits since is already in government service.

12. Needful exercise be carried out within a period of 30 days from today.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 20, 2022
Vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No