

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

**CWP-11435-2018 (O&M)**

**Date of decision: September 02, 2022**

Pawan Kumar Kohli

.....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. A.S. Tewatia, Advocate for the petitioner.

Mr. Saurabh Mohunta, 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 order dated 02.04.2018 (Annexure P-10) rejecting claim of the petitioner for appointment to the post of Monitoring and Evaluation Officer, alleging arbitrariness and violation of departmental instructions dated 08.04.2016 (Annexure P-2), dated 08.09.2017 (Annexure P-4) and 27.03.2018 (Annexure P-11).

2. Succinct factual background first. Pleaded case is that petitioner was appointed as an Information Assistant on 10.01.2012 on contract basis under National Health Mission scheme, upto 31.03.2013. Thereafter, he was appointed as Reproductive Maternal Neonatal Child Health Councilor in Civil Hospital, Rewari from 02.04.2013 to 31.03.2014, which was further renewed upto 31.03.2015. On 30.09.2015, services of the petitioner as Councilor were terminated. Petitioner along with others preferred CWP-23965-2015, which was decided on 18.02.2016, *inter alia*, allowing the petitioners to join as RMNCH Counselor on the posts on which they were

working prior to the termination of their services till 31.03.2016 i.e. on the date the scheme was in existence. Thereafter, services of the petitioner dispensed on 31.03.2006. Respondent No.3 issued letter dated 08.04.2016 (Annexure P-2) regarding discontinuation of Manpower in the absence of sanction for financial year 2016-2017 under NHM. It was further clarified that no further advertisement/ recruitment be made until the excess/ retrenched staff is adjusted. Respondent No.4 advertised various posts under NHM on contract basis vide advertisement dated 30.11.2017. Petitioner submitted his application on 22.11.2017 (Annexure P-6) for Monitoring and Evaluation Officer (under DMPH) scheme under NHM in view of aforesaid advertisement. Respondent No.5 was appointed by respondent No.4, who was appointed fresh ignoring the claim of petitioner. Some similarly situated employees working on contract basis in Education Department, preferred CWP-893-2015, which was disposed of vide order dated 13.03.2015 (Annexure P-8), whereby it was held that respondents cannot fill up the posts in future replacing the contractual employees with another set of contractual employees except by resorting to regular appointments. Petitioner also instituted CWP-6051-2018 challenging action of respondent No.4, which was disposed of vide order dated 13.03.2018 (Annexure P-9), with a direction to decide the claim/ grievance within a period of two weeks. Pursuant thereto, respondent No.4 vide impugned order dated 02.04.2018 (Annexure P-10) rejected the claim of the petitioner on the ground that no post is vacant as per his qualification.

3. I have heard rival contentions of learned counsel for the parties and perused the record.

4. What emerges from the perusal of the facts and record appended with the writ petition and from the Department's own letter dated 02.04.2018 (Annexure P-10), impugned herein, is that the services of the petitioner were retrenched in order to adjust respondent No.5 (Rajesh Kumar) on the post in question. But at the same time, it has been stated in the impugned order in no uncertain terms as below:-

*“After adopting all the procedure, Sh. Rajesh Kumar was selected for the post of M&EO and he was joined on Dated 18.12.2017 (Annexure VI) for said post. Now no post is vacant as per your qualification in District Rewari till date.*

*It is also clear that the sanction of the post of M&EO was given by DGHS Haryana and according to the policy/ order given by Hon'ble High Court Punjab & Haryana Chandigarh. The Retrenched staff is adjusted in the policy of NHM against vacant posts for the similar qualification.*

*So, keeping in all the above facts and circumstances you are not adjusted for the post of M&EO at this stage, Now no post is vacant as per your qualification.*

*It is also submitted that if any post lying vacant according to your qualification in future you may be adjusted as per NHM criteria/ Rules.”*

5. It transpires that during pendency of the writ proceedings, respondent No.5 (Rajesh Kumar) has since unfortunately expired and thereafter, despite petitioner having approached the competent authority, in terms of assurance meted out to him in the impugned order, his claim has been given a complete short-shrift, without assigning any reason. In course of arguments, learned State counsel strenuously argues that once the post had been filled up by respondent No.5, the same stands consumed and upon death of the incumbent of the said post it has to be re-advertised and, the petitioner is at liberty to compete, as and when the advertisement is issued and, if found competent, he would be accorded the benefit of the appointment.

6. In ordinary course, I would have been one with the arguments canvassed by the learned State counsel, but the same flies in the face of stand taken in the impugned order while retrenching the petitioner. Bare reading of the same reflects that the petitioner throughout remained sanguine that as and when requirement/vacancy arises, claim will be considered in accordance with law. In ordinary course, obviously, he had no scope of being adjusted, given the age of respondent No.5, but since he died untimely, the post has concededly now become available. I see, therefore, no reason why the petitioner be not given the benefit of the order dated 02.04.2018 (Annexure P-10).

7. In the parting, I may also like to note that in the reply filed to CM-6662-CWP-2019 preferred by the petitioner, it is not disputed that post is now lying vacant and, neither it is the case of the respondents that petitioner is not competent and/ or not entitled to the same.

8. Being so, writ petition is disposed of with the direction to the competent authority of the respondents to consider the candidature of the petitioner and, accord him benefit of the post in question, provided the same is vacant as on today. Needful be done within a period of 2 months upon petitioner's approaching the respondents with the web-print of the instant order.

**(ARUN MONGA)**  
**JUDGE**

**September 02, 2022**

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No