

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

CWP-22497-2016

Date of decision: 27.10.2022

PADAM SINGH AND ORS

...Petitioners

VS

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anupam Singla, Senior Advocate with
Mr. Deepak Sonak, Advocate,
For the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari for setting aside order dated 01.09.2016 (Annexure P-15) and Memo dated 01.03.2016 (Annexure P-14) vide which the Government has decided to cancel/scrap the selection list of 51 Group D posts of Public Health Engineering Circle, Palwal and has withdrawn the earlier advertisement dated 24.01.2013 (Annexure P-1).

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

3. In the return, following stand has been taken:-

“9. That the contents of para No. 9 of the writ petition are wrong and hence denied. The result of selection qua 51 post of Group-D category could not be declared because initially this Hon'ble Court vide order dated. 02.08.2014 in CWP No. 15240 of 2014 had stayed the declaration of results and thereafter the writ petition No. 15240 of 2014 was dismissed by this Hon'ble Court vide order dated 30.10.2014. A copy of the decision is already attached by the petitioners as Annexure P-8. Thereafter

the model code of conduct came into operation on account of State Legislative Assembly Elections in Haryana and accordingly the state authorities were not empowered to declare any result. Additionally a letter from Head Office bearing endst No. 9360-90-PHE GA-V dated 20.11.2014 intimated all the field offices regarding decision taken by the Council of Ministers in its meeting held on 05.11.2014 to review the announcement/ recruitment/ appointment level and vide letter dated 01.03.2016 the Govt. decided to cancel/scrap the selection list of 51 candidates Group-D post of Public Health Engineering Circle Palwal. It was further decided that the advertisement dated 24.01.2013 Annexure P1 was withdrawn. A copy of letter dated 01.03.2016 is already attached by the petitioners as Annexure P-14. Rest of the contents of this para are not commented upon, being matter of record.”

4. No replication has been filed to the aforesaid stand taken in the written statement. The above said stand remains uncontroverted that the advertisement has been withdrawn by the State Government, who was to carry on the recruitment. It is not within the domain of writ Court to issue a mandamus to the State Government as an employer forcing them to make recruitments in case there is no such exigency and/or State Government does not wish to make any recruitment. It is the sole prerogative of the employer. No grounds are made out to interfere.

5. In any case, it transpires that withdrawal of the advertisement was necessitated in view of the report submitted by the special Committee which was constituted to look into the recruitment process carried out and the same has been noted in the order dated 01.09.2016 (Annexure P-15).

Relevant part thereof is reproduced below:

“In compliance of the above said orders of the Hon’ble Punjab and Haryana High Court, Chandigarh the Government decided to formulate a Committee to review the recruitment process of the said posts. The said committee recommended that the selection list should be cancelled/scrapped due to non adoption of transparent and clear procedure for selection.

On the recommendation of the Committee, the Government vide its memo no. 2/10/2015-PH-3 dated 01.03.2016, has decided to cancel/scrap the selection list of 51 candidates for Group-D posts of Public Health Engineering Circle, Palwal and withdraw the Advertisement dated 24.01.2013.

In view of the facts stated above, the representation made by petitioner has been rendered infructuous in view of Govt. decision dated 01.03.2016 and hence the same is hereby rejected.”

6. Learned Senior counsel would strenuously argue that in a country where Westminster model of governance has been adopted, to permit such a course of action, so as to overturn the Government's decision taken by the outgoing political regime, merely because there has been change in the political regime, would be fraught with danger of permitting democratic anarchy. There is no quibble in principle on the proposition, as canvassed by the learned Senior counsel. But despite being in agreement with the same in principle, I am unable to persuade myself to overlook the aforesaid other reasons for passing the administrative order dated 01.09.2016 (Annexure P-15) and to hold that the same has been passed without any basis and/or is lacking any merit. A perusal of the said order clearly reflects that it is based on a report given by a Committee especially constituted to look into the irregularities, if any, committed in the selection process, which after conducting an enquiry, gave an adverse report and it was accepted by the Administrative Secretary. It cannot, therefore be said as suggested, that merely because of change of regime, the decision to scrap the advertisement as well as the consequent selection process was taken. Trite it is to say that institutional integrity and administrative propriety, if shown not observed, this Court would have been the first one to exercise its extraordinary writ jurisdiction.

7. Being not so, the instant case does not warrant any interference.

8. In the parting, I may hasten to add that rather over-emphatic reliance has been placed on para 9 of the return where there is a certain tacit admission that one of the reasons to scrap the advertisement/ selection process was the decision taken in the meeting of Council of Ministers dated 05.11.2014 (Annexure R-4). In fact, a careful reading of the said stand taken by the respondents reflects that it has been so stated in the passing reference as the very opening sentence starts with the words “Additionally”. Thus, the said stand has been taken more as an alternative or in addition to the stand taken on merits of the doubtful selection, which was under a cloud. I am of the opinion that since the said selection was under suspicion, the same along with advertisement was rightly scrapped.

9. Furthermore, there is no gainsaying that powers under extraordinary writ jurisdiction are to be sparingly used to reopen and/or to set aside an enquiry report, unless some glaring illegality is pointed out.

10. In the aforesaid premise, no grounds are made out to interfere.

Dismissed.

(ARUN MONGA)
JUDGE

October 27, 2022

vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No