

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.24278 of 2015 (O&M)

Date of Decision.04.08.2022

Naveen Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for setting aside the appointment of respondents No.4 and 5 on the post of Scientific Assistant (Lie Detection/Psychology).

2. In brief, the facts as stated in the writ petition are that the petitioner was offered appointment to the post of Scientific Assistant (Psychology) on contract basis for a period of one year under Outsourcing Policy against the advertisement dated 09.07.2011 issued by respondent No.3. After the expiry of contractual period of one year from 18.07.2011 to 17.07.2012, respondent No.3 did not renew the contract of the petitioner, rather re-advertised various posts vide advertisement dated 24.11.2012 (Annexure P-2) including two posts of Scientific Assistant (Psychology) on contract basis for a period of six months. The petitioner again applied for the post of Scientific Assistant (Psychology), however, respondent No.3 cancelled the selection process of the above said post with the remarks that '*no suitable candidate was found for the said post*'. Thereafter, again in the month of June, 2014, various posts of

Scientific Assistants in various departments were advertised on contract basis for a period of one year or till filling up the said posts on regular basis, whichever is earlier, which included two posts of Scientific Assistant (Lie Detection/Psychology). The petitioner herein again participated in the selection process and appeared for interview held on 19.07.2014. However, the petitioner had also approached this Court vide CWP No.19308 of 2014 titled as *Naveen Kumar Vs. State of Haryana* seeking quashing of advertisement dated 22.06.2014 and praying for his continuation on the said post till such time as regular appointments are made. The said writ petition was dismissed vide order dated 17.09.2014 as premature as none of the candidates at that time were selected on the posts of Scientific Assistant (Lie Detection/Psychology). Thereafter, the selection committee recommended the name of respondent No.4 and another candidate i.e. Varun Goyal for the aforesaid posts and since, Varun Goyal did not join, respondent No.5 was appointed from waiting list, ignoring the petitioner who had experience of one year on the same very post. Aggrieved by the said action of the respondents, petitioner made a complaint against one Dr. Surender Singh, Assistant Director (Lie Detection) and Smt. Rajni Gandhi, SSO (Lie Detection) alleging that they had cancelled the entire selection process under the 2012 advertisement with *mala fide* intention, although candidates were recommended for appointment by the selection committee. On the complaint of the petitioner, an enquiry was marked by the Chief Secretary against Smt. Rajni Gandhi, SSO (Lie Detection) and her husband Dr. Rajesh Kumar (Assistant Director Ballistic) in which it was found that they had wrongly declared the petitioner unsuitable for selection on the comparatively lower post of Laboratory Assistant in the year 2012 and again in November, 2012 and recommended for issuance of a charge-sheet under Rule 7 of the Haryana Civil Services Rules along with

other committee members. Despite detailed enquiry, no action was taken against the members of the selection committee, who were found guilty and therefore, a complaint was given to the DGP, Haryana and Superintendent of Police, Karnal for taking action against them, but no action has been taken. The petitioner also made a representation dated 31.10.2015 to the DGP, Haryana for reinstatement of the petitioner on the post of Scientific Assistant but no action has been action thereon. Hence, the writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that it is settled position of law that a contractual employee can be replaced only with the regular appointees and therefore, replacement of petitioner with another set of contractual employees is totally wrong and unjust. It is further contended that the petitioner was a victim of *mala fide* act of the members of selection committee, who with an ulterior motive declared him unsuitable for the post of Laboratory Assistant, though he satisfactorily discharged his duties on the post of Scientific Assistant in 2011 for one year and further cancelled the selection process initiated for the post of Scientific Assistant in the year 2012, and again in the year 2014 did not recommend his name for the said post. The *mala fide* intention of members of the selection committee against the petitioner was proved in the inquiry conducted at the instance of the Secretary, Home Department, Haryana but no action had been taken against the erring officers/officials.

4. Learned counsel appearing on behalf of the respondent-State would contend that it is not a case of replacing contractual employee with another set of contractual employees, as the petitioner was appointed for a period of one year from 18.07.2011 to 17.07.2012 in the advertisement made in the year 2011. Thereafter, an advertisement was issued in the year 2012 in response to which the petitioner had applied but no selection could be made to the post of

Scientific Assistant. It was again in the year 2014 that respondents No.4 and 5 were selected on the post of Scientific Assistant, which selection has been challenged by the petitioner in the instant writ petition. It is argued that the petitioner has already approached this Court vide CWP No.19308 of 2014, which was dismissed by this Court while observing that no material was available before the Court to infer that respondent-authorities proceeded with an intention to replace the petitioner with another set of contractual employees. Rather services of the petitioner stood dispensed with in the year 2012 itself and since the petitioner subjected himself to the selection process against the advertisement issued in the year 2014, he cannot be permitted to turn around and question the advertisement itself or the action of the official respondents in not selecting him in the year 2012.

5. I have heard learned counsel for the parties and have perused the paper book. The argument of the counsel for the petitioner with respect to replacement of the petitioner with another set of contractual employees falls flat in view of the finding rendered by this Court in CWP No.19308 of 2014 decided on 17.09.2014, which is reproduced as under:-

“Under such facts and circumstances as noticed herein above, there would be no material for this court to infer that the respondent authorities are proceeding with an intention to replace the petitioner with another contractual employee. Rather the services of the petitioner stood dispensed with in the year 2012 itself. The petitioner having been himself applied in response to the advertisement dated 22.06.2014 at Annexure P-3 and having subjected himself to a process of selection for engagement on the post in question on contractual basis cannot be permitted to turn around and question the advertisement itself.”

6. The second argument of the petitioner qua *mala fide* intention of the members of the selection committee cannot be dealt with in the absence of any prayer made by the petitioner in the instant petition in this regard and further the petitioner did not implead the persons by name against whom *mala fide* is alleged. It is also apt to highlight that the department has already taken appropriate action in charge-sheeting the erring officers/officials. The petitioner participated in the selection process under advertisement issued in 2014 and did not have the necessary merit to be appointed or kept on the waiting list. The question of a mala fide selection would not arise under the 2014 advertisement since Smt. Rajni Gandhi Senior Scientific officer (Lie Detection) had recused from being a part of interview committee.

7. In view of the aforesaid facts and circumstances, the instant writ petition stands dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

August 04, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No