

CWP-9290-2014 (O&M)

Sr. No. 202 (2 cases)

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

CWP-9290-2014

Date of decision: 06.12.2022

Praveen Kumari

...Petitioner

Vs.

State of Haryana and others

...Respondents

CWP-15482-2014

Praveen Kumari

..Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sushil Jain, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Lokesh Narang, Senior Panel Counsel and
Mr. Harneet Singh Oberoi, Advocate for respondents No.
3 and 4 in both cases.

ARUN MONGA, J. (ORAL)

Vide this common order, the above-mentioned two petitions are being disposed of, since not only the facts but the issues raised therein are also similar. For brevity, recitals are being taken from CWP-9290-2014.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari for quashing impugned order dated 08.05.2014 (Annexure P-16), vide which services of the petitioner were terminated on account of violation of condition No.2 of appointment letter.

3. Haryana Staff Selection Commission invited applications for only one post of Nosologist in General Category. Total 8 candidates applied for the same. After scrutinizing the documents, two candidates

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were called for interview. On the date of interview, only the petitioner appeared. Petitioner, being the only eligible candidate got selected.

3.1 In the year 2010, one Subhash Chander sought information from Government of India under RTI, whether there are any rules with the Department for recruitment to the post of Nosologist. In reply, the Government of India had specifically mentioned that there is no such rule. It was specifically mentioned that the complete responsibility for appointment to the post of Nosologist is of respondent No.1-Government of Haryana. When this fact came to the knowledge of Government of India then clarification was sought. In response, respondent No.1 had specifically mentioned that the qualification for the post of Nosologist was prescribed after due consultation with the Haryana Public Service Commission as well as the recommendation sent by HSSC and due process has been adopted in recruitment.

3.2 Respondent No.1 appointed one Inquiry Officer, who did not call the petitioner to join the inquiry and still submitted his report vide report dated 21.12.2012. It has been opined in the inquiry report that at the time of filling the post, the qualification prescribed for the post by the Government of India, has not been considered and the petitioner does not have the requisite qualification. Thereafter, respondent No.1 issued a show-cause-notice which was replied to by petitioner. But without taking the reply into consideration, vide impugned order dated 08.05.2014, services of the petitioner were terminated. Hence, the writ petition.

4. Learned counsel for the petitioner submits that since the petitioner was appointed in the year 2007 through the selection process held by the HSSC and continued in service till 2014, her services cannot be terminated without holding a regular enquiry against her.

5. I have heard the competing arguments. For ready reference, relevant part of the impugned order is reproduced hereinbelow:

“2. However even as per the qualification published by the Haryana Staff Selection Commission (HSSC), the diploma was required to be done from a recognized Institute. The documents submitted by her to HSSC along with the application form, were fraudulently attested which were proved in an enquiry conducted by Dr O.P. Mittal, the then DGS (lab) on dated 16.12.2009. Further the Diploma acquired by her in Family Welfare and Population Education is from a registered institution and not from a recognized institution which itself is contrary to the eligibility condition prescribed by the Haryana Government. Also the eligibility of the diploma is of 10th standard. Smt Parveen Kumari was asked to clarify whether the Institute from where she had done Diploma in Family Welfare and Population Education was recognized or not vide letter No.3/55/2003-HB-III dated 9/10.04.2007. Smt Parveen Kumari submitted an affidavit to this office on dated 11.04.2007 that the Indian Institute of medical Technology (IIMT), Calcutta is genuine institute and diploma is legal. Further more in the affidavit dated 11.04.2007 submitted by her in Para 4 she stated as under:

If anything found wrong at any later stage I will be liable responsible for the same.”

"Therefore she submitted a False Affidavit which amounts to illegality". The same has also been proved in an enquiry conducted by Dr. Arun Sehgal, the then Deputy Director, that the Institution is "NOT RECOGNISED". Diploma is an autonomous institution which conducts correspondence course of six months duration & eligibility is 10th pass. Examination is also conducted through correspondence. "Further the affidavit by her, has been attested by her husband Sh. P.K. Singh as a witness. It also amounts to grave illegality".

Later on it was revealed that her husband Sh. P.K. Singh who was the dealing officer of the branch on this subject, was present as an expert during interview in HSSC, without the knowledge of the department which itself vitiates the appointment process. It was the first and foremost duty of Sh. P.K. Singh, Deputy Director (M&E) to inform the department that his wife is a candidate for the post of Nosologist. Therefore he should not be sent as an "Expert" for that selection process.

3. Moreover, the Diploma in Bio-Statistics and Research Methodology which she claim to have acquired has been done after the joining on the post. The other in-service training courses on classification of diseases and health statistics organized by Central Bureau of Health Intelligence have also been done by her after joining in the Birth & Death Branch (State Bureau of Health Intelligence) of Haryana

Health Department, headed by her husband Sh. P.K. Singh, Deputy Director (M&E). Therefore, these qualification obtained now are not relevant to the case.

4. Government of India vide letter No.5/4/2003-VS(MCCD) dated 2.12.2011 has also directed this office to discontinue her services because central conditions with regard to eligibility have been grossly violated on appointing Smt. Parveen Kumari on the post of Nosologist (Medical Statistician). The relevant portion of the same is reproduced here under:

(a) Central conditions have been violated while drafting the recruitment rules.

(b) The present incumbent does not possess the required qualifications for the Nosologist post.

(c) Take necessary action to discontinue the present incumbent from the post of Nosologist.

Government of India is competent to ask the State Government to remove any employee from service, if the appointment becomes bad in law because it is paying the salary for first five years and it had laid down qualifications/preconditions for appointment on this post which is funded by them. It is pertinent to mention that Govt. of India vide letter No.5/4/2003-VS(MCCD) dated 9.8.2011 addressed to State Government has directed that Registrar General of India (RGI) not to reimburse the salary and allowances of Nosologist in respect of financial year 2008-2009 and 2009-2010 on the ground that there is alleged irregularity in the appointment of Nosologist. After 2008-09, the RGI is not making any reimbursement of salary. The plea being taken by Smt. Parveen Kumari that her services cannot be terminated without regular enquiry is not correct, because all the evidence are been available on file. Three enquiries have been held by three officers namely Dr. Bharat Singh, Director Health Services (Training) reported on dated 21.12.2012, Dr. Arun Sehgal, the then Deputy Director reported on dated 12.05.2011 and Dr. O.P.Mittal, the then Director Health Services (Lab) reported on dated 29.01.2010 at different point of times, wherein, she was associated and gave statements. She has been also given opportunity of hearing on 07.02.2014.”

6. Having perused the contents of the impugned order extracted hereinabove, I am in agreement with the same. In any case, neither is there any irregularity committed in facts nor in law so as to warrant any interference under extraordinary writ jurisdiction. Ordinarily

I would dismiss the writ petition on that short ground alone. However, since I have heard the arguments at length even on other aspects, which have been strenuously pointed out by the petitioner's learned counsel, I shall briefly deal with those, though the same lack any substance.

7. First and foremost, the argument that departmental inquiry could not have been dispensed with and therefore, the impugned order is liable to be set aside on that ground alone. While on the first flush, the said argument may seem attractive, but here is a case where inquiry has been dispensed with and there is no delinquency attributed to the petitioner. Only if it is assumed that there was no misrepresentation or concealment of the kind which led to the passing of the order, the fact remains that violation of mandatory conditions, as has been observed in the impugned order, is writ large while making the petitioner's recruitment. Therefore, I see no reason why the inquiry ought to have been necessarily conducted in light of the fact that termination is not based on any delinquency and in any case, is not stigmatic qua the performance of the petitioner. Even otherwise, neither the petitioner pleads so in the writ petition nor is it the argument of the learned counsel.

7.1 Learned counsel for the petitioner relies on Apex Court's judgment rendered in Civil Appeal No.8662-2015 dated 15.10.2015 titled ***“Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others”*** reported as ***2016 (1) S.C.T.1”***

Having seen the judgment, I am of the view that there is no quibble about the proposition laid down therein. However, I have already given my mind that inquiry is required only if there is any delinquency attributed to the petitioner and/or employer is not satisfied with the work

performance and/ or there is any complaint *qua* either of the two. Being not so, there was no requirement of any inquiry.

7.2 There is another aspect of the matter i.e., terms of appointment of the petitioner entitles the respondents to dispense with the services by giving one month's notice. For ready reference, the relevant of the appointment letter is reproduced hereinbelow:

“On the recommendation of Haryana Staff Selection Commission, the Governor of Haryana, is pleased to offer you an appointment to the post of Nosologist in Health Department in the pay scale of Rs.8000-275-10200-EB-275-13500 and post you in the office of Director General Health Services at Panchkula. You will be entitled to draw such allowances and other benefits as are sanctioned by the Government of Haryana from time to time for the class of service to which you belong.

2. The post is temporary but likely to continue. Your appointment is terminable on one month's notice on either side while you are borne on temporary cadre.

3. You will be on probation for a period of two years from the date of joining which can be extended, if necessary, upto three years. The service rendered on temporary post might be counted towards the probation but the completion of two years temporary service will not itself entitle you for confirmation unless post is substantively vacant. Other conditions laid down in the service rules will be applicable.

4. On appointment, you will have to take an oath of allegiance to the Constitution of India. You will also furnish a certificate to the effect that you have not more than one husband living.

5. Your seniority will be determined according to your position in the merit list sent by the Haryana Staff Selection Commission irrespective of the date of joining duty.

6. You will be governed by the rules and instructions regarding pay, leave, pension and other service conditions issued by the Government from time to time.

7. You are liable to be transferred anywhere within the State of Haryana.

8. This offer of appointment shall be subject to the result in C.W.P. No.623 of 2006, CWP No.7658 of 2006 and CWP No.7659 of 2006 pending in Hon'ble Punjab & Haryana High Court/Supreme Court of India.

9. No. T.A./D.A. will be admissible to you for journey undertaken for joining time.

10. If you are willing to accept this offer of appointment on the above mentioned terms and conditions,

you should report in the office of Director General, Health Services, Haryana, Panchkula for joining duty within 15 days from the date of receipt of this appointment letter. If you fail to report for duty within stipulated period it will be presumed that you are not willing to accept this offer of appointment which will automatically stand withdrawn/cancelled. It is also clarified that no extension in the joining time will be allowed and no correspondence in this behalf will be entertained.”

It is not disputed that post in question is a permanent post and petitioner being temporary, her services could have been dispensed with in any case.

7.3 Further more, public appointments are not to be treated as a largesse, *albeit*, even in the case largesse, there cannot be any arbitrariness, trite it is to say though. At the cost of repetition, once the Central Government had pointed out the glaring mistake on the part of the State Government, the impugned order was rightly passed to undo the mistake as a corrective measure and to issue a writ of certiorari in such situation would amount to perpetuating the mistake.

In the overall premise, no grounds are made out to interfere. Dismissed.

8. As regards the claim of the petitioner *qua* the salary for the period she had worked, since I have already opined hereinabove, violation of the Central Government conditions, if at all, are attributable to the State Government. Since services of the petitioner were dispensed with as a corrective measure to appoint a deserving person based on the qualification as prescribed, I see no reason why the petitioner be not paid the salary. Subject to the verification of her actually having worked, the petitioner be paid salary for the corresponding period. Needful exercise be carried out within a period of 3 months by the competent authority.

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9. Salary will be remitted by the State Government, who will be at liberty to seek remittance of the necessary funds from the Government of India, which is a matter to be sorted out between the respondents.
10. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

December 06, 2022
vandana

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