

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8738-2020

Reserved on 10.08.2023

Decided on 14.11.2023

Vikas Dahiya

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vikas Chatrath, Advocate for the petitioner
Mr. SS Mann, Addl. AG Haryana
Mr. Padamkant Dwivedi, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the impugned show cause notice dated 03.01.2020 (Annexure P5) whereby respondent No.2 had proposed to terminate the service of the petitioner who otherwise was regularly appointed as Mandi Supervisor-cum-Fee Collector on merit by way of proper selection process.

(2). The issue involved is as to whether in the absence of rider clause in appointment letter can be later on invoked resulting into loss of even employment to the petitioner?

(3). In pursuance to advertisement No.7/2015, the petitioner was selected and appointed in the category of BC-A Outstanding Sports Person vide appointment letter issued on 31.10.2019 (Annexure P4) and he joined on 14.11.2019. Since Manju, who was placed at Sr.No.128 of the selection list did not join making space for the petitioner, being placed at Sr.No.1 of the waiting list, for being appointed.

(4). During this interregnum, one Parvesh Roll No.7151764008 filed CWP No.5894 of 2019 in the month of March, 2019 seeking his appointment as Mandi Supervisor-cum-Fee Collector. Since in the said writ petition, the petitioner was found eligible having secured 144 marks under the Outstanding Sports Person BC-A category as against the cut-off marks of 124, the

respondents selected the said Parvesh and reflected him to stand at Sr.No.91-A of the joint merit list. As a result of which Manju, who was earlier selected being last candidate in the order of merit of selection, was shifted from the list of selected candidate from Sr.No.128, to the Sr.No.1 of the waiting list candidates. As such, the petitioner was descended to Sr.No.2 of the waiting list and as such his appointment was sought to be withdrawn vide notice dated 03.01.2020.

(5). Learned counsel for the petitioner contended that there is discrepancy on the part of the Department and as such the impugned action initiated on the basis of change in the merit list is not justified and the petitioner can be adjusted on the said post and that the petitioner cannot be made to suffer for the inaction and default on the part of the department. Reliance has been placed on **Vikas Pratap Singh & Ors. vs. State of Chhattisgarh & Ors, 2013 (4) SCT 1766**, wherein the Supreme Court directed the State to appoint the candidates made in the revised merit list and also protected the other employees who were earlier selected and appointed in pursuance to the selection process.

(6). It is further submitted that there is no justifiable reason for the department to issue show cause notice for termination of petitioner's service as there is no allegation of fraud or that his work and conduct was not good. Moreover, the impugned action is hit by the mandates contained in Articles 14 & 16 of the Constitution of India. He further urged that there are large number of Mandi Supervisor are on the verge of superannuation and that many posts would become available.

(7). Reliance has been placed on **Jitendra Kumar Singh vs. State of UP (2010) 3 SCC 119, Raj Kumar vs. State of Haryana 2007 (4) SCT 429** and **National Insurance Co.Ltd. vs. Gulab Nabi (2008) 11 SCC 349** to contend that

the department has passed a non-speaking and cryptic order and as such the same is liable to be quashed on this ground alone.

(8). Notice of motion was issued on 30.06.2020 and in pursuance thereto, the respondent No.2 has filed their short reply on 19.07.2021 on behalf of Yogesh Kumar, Secretary, Haryana State Agricultural Marketing Board wherein it has been averred that the services of the petitioner have been terminated in view of the recommendations made by respondent No.3-Commission in compliance with the orders passed in CWP No.5894 of 2019 (cited supra).

(9). Short reply dated 10.11.2022 has been filed by Virat HCS, Secretary of respondent-Commission to the effect that the petitioner has applied for the post of Mandi Supervisor under General category. The final result was declared on 15.06.2019 and the petitioner was selected in waiting list under OSP-BCA category. In the result, while referring to various writ petitions filed by different candidates (including CWP-5894-2019), it has been clearly mentioned that the result is subject to final outcome of these writ petitions and any other writ petitions.

(10). It has further been mentioned that the petitioner secured 98 marks and was at Sr.No.144 in the merit list. The petitioner was recommended by respondent-Commission to the indenting Department on 18.06.2019 (Annexure R3/1) wherein also the above condition was inserted. It is further stated that the Manju did not join the indenting department resultantly, Vikas (petitioner) was offered appointment by the indenting department being first in the waiting list. However, meanwhile, CWP-5894-2019 came to be decided and the name of Parvesh was recommended on 25.11.2019 (Annexure R3/2) having been found

eligible on the basis of overall performance under the criteria and as such has been selected and placed at Sr.No.91-A of the joint merit list for the post of Mandi Supervisor. Resultantly, the petitioner was ousted from the final result descending his position from a selected candidate to a waiting list candidate.

(11). Learned counsel for the respondent-Commission also contended that the writ petition deserves to be dismissed on the ground of non-impleadment of necessary parties as the petitioner has no impleaded Parvesh and other selected candidates. He also cautioned that if the writ petition is allowed it is likely to adversely affect the interest of all selected candidates.

(12). Heard learned counsel for the parties and gone through the record.

(13). The prime contention raised on behalf of the petitioner is that while issuing appointment letter, there was no mention that his appointment shall be subject to final decision in CWP-5894-2019 and as such the petitioner cannot be made to suffer on account of the lapse on the part of the respondents moreso, when the petitioner was neither a party to the *lis* initiated by Parvesh nor was there any specific direction by the writ Court in CWP-5894-2019 to displace/terminate the services of the petitioner to accommodate Parvesh. It has been also highlighted that since Parvesh secured higher marks than the candidate selected and appointed under the said category, the said Parvesh had to be selected and appointed under the Outstanding sports persons (General) category.

(14). In **Guneet Pal Singh Sodhi vs. PSPCL & Anr. 2015 (3) SCT 726**, this Court held that :-

“Thus, the act of the respondents in not considering the petitioner for appointment in the open general category on the

basis of his merit position is not justified. It is, accordingly held that the petitioner was entitled to be considered for selection and appointment on the basis of his merit in the general category candidates irrespective of the fact that he had applied in the Freedom Fighters category and as admittedly his merit having secured 51.75 marks as against 51.50 secured by respondent No.2 was higher he was liable to be appointed to the post of Assistant Manager (IT Systems) in preference to respondent No. 2.

The consequence of the above would be that respondent No.2 would have to make way for the petitioner. But taking into consideration the fact that respondent No.2 after his appointment has been working for almost three years, this Court had on 16.12.2014 asked the Learned Counsel for the respondent-Corporation to verify as to whether the parties to the petition could be adjusted against an additional post. The response from the Corporation has not been positive.

In this view of the matter, taking note of the fact that there was no fault or misrepresentation on the part of respondent No.2 in securing appointment and that he has worked for almost three years, I am of the view that it would be unfair and unjust to disturb his appointment. The respondent No.1 is, accordingly, directed to take necessary steps to protect his appointment.”

(15). In **Harinder Pal Singh Vs. State of Punjab and others (CWP No. 18419 of 2013 decided on 3.11.2014)** while allowing the petition and directing the appointment of the petitioner therein, which would have entailed ousting the respondent from the zone of appointment, this Court directed that the appointment of the respondent be not disturbed as there was no fault or misrepresentation on his part in securing appointment and he had worked for about one year.

(16). That being the factual position, it can be culled out that Parvesh was entitled to be considered for selection and appointment on the basis of his merit in the OSP general category irrespective of the fact that he had applied in the OSP BCA category and as admittedly his merit having secured 144 marks as against the cut off marks of 124, was higher, the said Parvesh was liable to be appointed to the post of Mandi Supervisor OSP General category consequently, making way for petitioner's appointment .

(17). The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, a sympathetic view has to be taken in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment Reference can be made to **Vinodan T. and Ors. v. University of Calicut and Ors.,(2002) 4 SCC 726; State of U.P. v. Neeraj Awasthi and Ors. (2006) 1 SCC 667.**

(18). There is merit in the submission of the petition that he was working as Assistant Lineman in UHBVN for the last 7 years and in such circumstances, the petitioner cannot be made to pay for the inaction on the part of the respondents for not having mentioned in the appointment letter that his appointment would be contingent upon the writ petition. Had the said fact been

specifically mentioned in his appointment letter, the petitioner would have become more cautious in denouncing his earlier appointment. Now, if he loses his job as a result of circumstantial changes in view of the stand taken by the UHBVNL while giving appointment to Parvesh. It is on that account that writ petition was disposed of but the substantial question involved therein has not been adjudicated and therefore the order dated 26.11.2019 (Annexure P3) passed in CWP-5894-2019 by Parvesh cannot come in the way of appointment of the petitioner who was given appointment by the respondents. It is also pertinent to mention here that the writ petition filed by Parvesh was pending on the date when appointment was made in favour of the petitioner. It also cannot be lost sight of the fact by this Court that even while granting appointment to Parvesh, may be for whatever reasons, in any case, under the directions of this Court in that writ petition (Annexure P3), there is a blatant abuse of exercise of executive powers at the hands of the respondent-authorities alone as even on that date they knew that against the vacancy which occurred on account of non-joining of services of Parvesh, the petitioner was given appointment on 14.11.2010. In the backdrop of such circumstances, no fault, fraud, misrepresentation or any dishonest intention can be attributed to the petitioner for which it is the respondent-authorities themselves who are solely responsible to create this chaos forcing the petitioner as well as Parvesh to get entangled in unwarranted litigation by way of multiple writ petitions. By no stretch of judicial application, the petitioner could be put to disadvantage for the fault of the respondent-authorities and now it is incumbent upon them to take appropriate decision at least for the appointment of Parvesh justifying its decision qua him but in any case, the appointment made to the petitioner cannot

be allowed to be disturbed and unsettled who has left his prior employment with but for the assurance of job security in UHBVNL and got the job by following due procedure.

(19). In view of the reasons and observations recorded above, this writ petition is allowed and the show cause notice dated 03.01.2020 is hereby quashed and the respondents are directed not to terminate the services of the petitioner from the post of Mandi Supervisor-cum-Fee Collector.

(20). It has also been brought to the notice of this Court that there are vacancies in the department in view of the ensuing promotion/retirement of the Mandi Supervisors. If it is so, the respondent-authorities are at liberty to take appropriate decision in accordance with law by making arrangement to provide employment if they deem it appropriate and fit, to Parvesh as well but within the four corners of law.

(21). Ordered accordingly.

14.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No