

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13236-2021

Reserved on 04.08.2023

Decided on 17.11.2023

Surbhi Jain

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. DS Patwalia, Sr.Advocate with
Mr. Kannan Malik, Advocate for the petitioner

Ms. Dimple Jain, DAG Haryana

Mr. Rajiv Atma Ram, Sr.Advocate with
Mr. Rahat Sekhon, Advocate for respondents No.2&3

Mr. PS Jammu, Advocate for respondent No.4

Sandeep Moudgil, J.

(1). The petitioners have 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 mandamus directing respondents No.2 & 3 to place on record the order/decision taken by the respondent-Commission whereby respondent No.4 had been re-employed as Director (Traffic) w.e.f. 01.12.2020 after his superannuation as well as the order/decision whereby the re-employment of respondent No.4 has been extended w.e.f. 01.06.2021. He further seeks quashing of the order of respondent-Commission having been issued illegally and arbitrarily in violation of Haryana Electricity Regulatory Commission (Officer & Employees Conditions of Service), Regulations 2016 (in short, the Regulations, 2016) notified on 13.12.2018 (Annexure P2) as well as Rule 143 of Haryana Civil Services (General) Rules, 2016 (in short, the Rules, 2016) and instructions/letter dated 20.06.2018 (Annexure P4). A further prayer is made for quashing of the decision dated 09.12.2020 (Annexure P9) vide which

application dated 01.12.2020 (Annexure P3) of the petitioner seeking promotion to the post of Director (Traffic) has been rejected and to consider the candidature of the petitioner for promotion to the post of Director (Traffic) from 01.12.2020, along with all consequential benefits and arrears and not limited to revision of pay as well as pensionary and other service benefits as entitled to Director (Traffic), with interest @ 12% p.a.

(2). Learned counsel for the petitioner submitted that respondent No.4 superannuated from the post of Director (Traffic) on 30.11.2020. The petitioner was senior-most officer eligible office for promotion to which she represented on 01.12.2020 (Annexure P3), however, to the utter dismay of the petitioner, respondent No.4 was re-employed till 31.05.2021 in blatant violation of Rule 143 of the Haryana Civil Services (General) Rules, 2016 read with instructions/letter dated 20.06.2018 (Annexure P4) further dilating the criteria of re-employment of employees after superannuation.

(3). It is further contended that as per Rule 143 of the 2016 Rules, a retiring government employee can be retained after the age of superannuation, in public interest, however, with the prior approval of the Council of Ministers, subject to maximum period of two years. He further averred that as per Regulation 3(i) read with Regulation 19 of the Regulations, 2016, a retired employee can be re-employed through 'short term contract' that too only after advertising the vacant posts.

(4). Notice of motion was issued on 22.07.2021 qua respondents No.1 to 3 only and the officials respondents were directed to file affidavit as to what kind of appointment respondent No.4 is availing.

(5). Reply was filed by the respondents No.1 to 3 on 30.07.2021 and, keeping in view the pleadings and the arguments relating to non-adoption of the procedure envisaged under Regulations, 2016 which appointing respondent No.4, notice was issued to respondent No.4 as well, on 30.07.2021.

(6). In the written statement filed by respondents No.2&3 on 30.07.2021, it has been averred that while re-drafting the Regulations, it was decided to appoint Directors either on direct recruitment or contract basis or on deputation. Pending approval from Addl. Chief Secretary (Power), Haryana and promulgation of the new Regulations, it was decided not to make promotion to the post of Director (Traffic) and as such, respondent No.4 was re-employed for six months which was further extended. It has been further averred in the written statement that there is no vacancy of Director (Traffic) and that mere eligibility does not confer any vested right of the petitioner for promotion.

(7). As regards the averments made by the petitioner that the post can be filled up by short term contract from amongst retired employees of the Commission only after advertising the posts, learned counsel for respondent-Commission averred that the Regulation 19 only applies to the appointments made under Rule 3(i) of the Regulations, 2016 viz. recruitment of officers/officials belonging to the Government/Commission for a limited period and it does not apply to persons recruitment on contract basis after retirement for a specific term.

(8). Learned counsel for the respondent-Commission further affirmed the action of the respondents No.2&3 and contended that as per qualifications/experience for the post of Director (Tariff), it is the discretion of

the Commission to appoint the Director (Traffic) by direct recruitment or by deputation or by promotion or by contract appointment. He also averred that it is open for the Commission not to make appointments by promotion in terms of the proposed new recruitment. Reliance has been placed on **Dr. K. Ramulu & Anr. vs. Dr. S. Suryaprakash Rao & Ors. . 1997 (1) SCT 763.** It is vehemently pleaded that admittedly, Rule 143 of the 2006 Rules is not applicable to the Commission inasmuch as Regulations, 2016 specifically provide for appointment after retirement and as such no approval of the Council of Ministers is required for appointment under the Regulations, 2016. Moreover, he contended, policy decision has been taken not to fill up the posts of Directors by promotion.

(9). Mr. P.S. Jammu, Advocate has filed written statement on behalf of respondent No.4 on 08.02.2022, which is taken on record. He submitted that respondent No.2-HERC is an independent statutory body created under the Haryana Electricity Reforms Act, 1997 and the purpose of its creation as a quasi-judicial body was to distance the State/Central Governments from decision making in the power sector. Respondent No.4 was selected in the organization in September 1999 after following due procedure. He further submitted that since the respondent-Commission is an independent body working within the four corners of Central Act and policies, the provisions of State legislation not in consistent with the Electricity Act, 2003 is also applicable. Moreover, the orders passed by the Commission, is a judicial order and is appealable before the Electricity Tribunal and that the respondent-Commission is not under the administrative control of the State Government.

(10). Learned counsel for the respondent No.4 referred to Annexure P2 – the letter dated 11.07.2011 from the State Government to the Power Department which suggests that the independence and decision of the respondent-Commission is primary factor irrespective of the rules and instructions of the State Government which is relevant for the employees of the State Government and Government owned body corporate.

(11). It is further contended that since the respondent-Commission had various options of filling the post by way of direct recruitment/deputation/promotion/contract, the claim of the petitioner for promotion is untenable. The appointing authority in all such the above-mentioned cases is the respondent-Commissioner alone.

(12). The petitioner has filed replication controverting the stand of respondents as maintained by them in their written statements.

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

(14). In sum and substance, the grievance of the petitioner is that respondent No.4 has been appointed on contract basis by not following the due process and by ignoring the legitimate claim of the petitioner for being appointed as Director (Traffic) and the extensions being granted to her is also alien to the provision of the Regulations. As per record, the employment could have been made either under HERC Regulations 2016 or under HERC Regulations 2022, however, the respondent-Commission is taking the stand that under selective provisions from both the regulations by adopting a pick and choose mode, such recruitment can be made. It is worthwhile to note that when the respondent-Commission passed the orders for re-employment of Respondent No.4, the HERC Regulations 2022 were merely a draft whereas

Regulations, 2016 were in vogue. Evidently, the 2022 regulations were not applicable during the period under consideration i.e., December 2020 and May 2021.

(15). Further, as per stand taken by Respondents No.2 & 3 in their affidavit that 27.07.2021, it has been averred that the appointment of Respondent No. 4 was made in terms of HERC Regulations of 2016 whereas in written statement dated 30.07.2021, which was filed just three days after the filing of the said affidavit, a completely contrary stand has been taken inasmuch it has been stated that the appointment of Respondent No. 4 was made under the proposed Regulations of 2020. So much so, these regulations were not in existence during 2020 or 2021 since these were notified only after a period of two years on 25.02.2022 (Annexure P-11). It become equally noteworthy to point out that the proposed regulations, harped upon by the respondent-Commission, were only sent to the Addl. Chief Secretary (Power) Haryana on 17.01.2020 for approval and there is nothing on record to show that the said Regulations have been approved/returned etc. by the State Government, till date.

(16). Regulation 8 of Regulations, 2016 provides that appointment against the sanctioned post in the Commission can be made either through direct recruitment or on short term contract basis as defined in Regulation 3(1), or on Deputation on Foreign Service or on promotion basis. However, as regards compliance of Regulation 19 of Chapter III of the said Regulations 2016, the respondent-Commission did not advertise the vacancies nor invite applications for appointment in the Commission. Moreover, there is no approval for re-employment of respondent No. 4 by the Commission of the

Regulations under which such appointment has been made, at any point of time. The way the extensions have been granted to respondent No.4 smacks of mala fide on the part of the respondent-Commission as the extension were granted hurriedly and not in accordance with the prevailing regulations. Moreover, there is nothing on record to establish whether there was any application or request having been received from Respondent No.4 or any requirement having been cited in the documents/records much less to cite any exigency of engaging only respondent No.4 despite the fact that the petitioner also made a request for promotion to the post.

(17). The stand of the respondent-Commission it decided not to fill up the post of Director (Tariff) by promotion under Regulations 2022 pending approval and promulgation of new Regulations is also a blatant lie since the said Regulations 2022 continue to provide for promotion to the said Post. Whereas, as per affidavit dated 27.07.2021 filed by respondents No.2 & 3, it has been averred that the appointment of Respondent No. 4 was made in terms of Regulations of 2016 notified on 13.12.2018. The stand taken by the respondent-Commission itself is self-contradictory as the recruitment either has to be made under the Regulations of 2022 or under the Regulations, 2016. The respondent-Commission cannot be allowed to make recruitment, by any mode prescribed, by picking provisions from different regulations as per its whims.

(18). After going through the regulations of 2016, it is evident that there is no provision for re-employment therein but a provision do exist in Haryana Civil Services (General) Rules 2016 coupled with Haryana Government instructions dated 20th June 2018. The respondent No.4 has been

re-employed under Haryana Government instructions read with Regulation 32 Chapter VI of Regulations 2016 which enables such action but without complying with the provisions of Regulation No. 3(b) which provides that the appointing authority for Group A posts, including the post in question, will be the authority specified in Clause (b) of Regulation 3 i.e. the Commission. However, the decision to overlook the request of petitioner has been taken by the Chairman and not by the Commission, as a whole.

(19). For the reasons aforesated, this writ petition is allowed and the decision dated 09.12.2020 (Annexure P9) rejecting the application dated 01.12.2020 (Annexure P3) submitted by petitioner seeking promotion to the post of Director (Tariff), is hereby quashed. The Respondents No.2 & 3 are directed to consider the petitioner's candidature for promotion to the post of Director (Tariff) from the due date i.e. 01.12.2020, especially in light of the facts that the petitioner is the senior-most Additional Director (Accounts) in the Respondent-Commission, as per the provisions of Haryana Electricity Regulatory Commission (Officer and Employees Conditions of Service) Regulations, 2016, along with all consequential benefits, including but not limited to revision of pay as well as pensionary and other service benefits including arrears, if any, as per law with interest @ 6% p.a. within a period of two months from the date of receipt of certified copy of this order.

(20). Ordered accordingly.

17.11.2023

V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No