

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

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CWP-14779-2017 (O&M)

Date of Decision :-25.09.2023

Vinod Kumar Dua

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. N.C. Kinra, Advocate with
Mr. Apoorva Kinra, Advocate for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to order dated 06/10.04.2017 (Annexure P/17) by which, the respondent-department decided to repatriate the petitioner to his parent department as well as order dated 04.07.2017 (Annexure P/19) by which, in pursuance to the order dated 06/10.04.2017 (Annexure P/17), the petitioner was relieved from service to join his parent department i.e. Health Department, Haryana.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner joined as Ophthalmic Assistant at Community Health Centre (CHC) Julana, District Jind in the department of Health Government of Haryana on 22.05.1987. While the petitioner was working with the Government of Haryana, respondent No.4-BPS Government Medical College for Women Khanpur Kalan, District Sonapat issued an advertisement for appointment of medical/administrative staff in the newly

opened medical college. An advertisement was issued for appointment on various posts by way of transfer. The petitioner also applied in pursuance to the advertisement (Annexure P/1) for the post of Refractionist. The petitioner's claim was considered by the respondents and after he cleared the selection process and was selected being at rank-1 in the merit list.

4. Upon being selected, petitioner was appointed on the post of refractionist on 20.08.2011. Thereafter, petitioner kept on working with the respondent-Institute till a show cause notice was issued to him on 08.05.2017 that his selection to the post of refractionist was not correct as while appointing the petitioner on the said post on the basis of transfer, a person should have working on the post of refractionist only whereas, the petitioner was working as Ophthalmic Assistant hence, he was not eligible to be appointed on the post of refractionist on transfer basis. The petitioner gave a detailed reply to the show cause notice that he mentioned all his qualifications while submitting the application form for the post in question and was duly selected and once, the petitioner has already been selected being at rank-1 by the selection committee, which consisted of experts in the field, now describing the said selection of the petitioner on the post in question as incorrect is not justifiable.

5. Keeping in view the reply filed by the petitioner to the show cause notice, the Director Medical Education and Research, Haryana gave a direction to the Director of the Institute-respondent No.4 vide order dated 06/10.04.2017 (Annexure P/17) to repatriate the petitioner to his parent department by treating him being on deputation. On the basis of the said direction, order dated 12.04.2017 (Annexure P/18) relieving the petitioner from respondent No.4-Institute was passed, which orders are under

challenge in the present petition.

6. While issuing notice of motion, operation of the impugned order was stayed and the petitioner is continuing working with the respondent No.4-Institute even as of now.

7. In the reply filed by the respondents, same stand has been taken that in order to be appointed as refractionist by way of transfer, petitioner should have working on the post of refractionist so as to become eligible to be appointed with the respondent No.4-Institute whereas, the petitioner was working on the post of Ophthalmic Assistant hence, the claim of the petitioner was rightly rejected so as to allow him to continue with the BPS Government Medical College for Women, Khanpur Kalan, Sonapat.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The petitioner had applied in pursuance to the advertisement Annexure P/1 for appointment to the post of refractionist. It may be noticed that only one post of refractionist was available in the cadre and it was not mentioned in the advertisement that only the person, who was working on the post of refractionist in any other department is eligible to be appointed rather the applications were invited from all the eligible persons and along with the application, bio-data was also submitted by the applicants for consideration of the respondents. It is a conceded position that no information was withheld by the petitioner from the department at any given point of time. The selection committee, which consisted of experts found the petitioner eligible and selected him to be appointed on the post of refractionist .

10. A bare perusal of Annexure P/6 would show that the petitioner

was appointed on the basis of recommendation of the selection committee and he was appointed on transfer basis and was kept on probation for a period of two years, which probation period was extended by another year.

11. That being factual position, it is clear that action of the respondents in treating the petitioner as on deputation is not correct. As per appointment order, petitioner was appointed on the post of refractionist by way of transfer and the impugned order which has been passed repatriating the petitioner to his parent cadre/department is not correct keeping in view the nature of appointment given by the respondents themselves. Hence, impugned order passed by the respondents repatriating the petitioner to his parent department by treating the petitioner on deputation, in the facts and circumstances of the present case, is not correct and cannot be sustained.

12. Further, respondents have mentioned that petitioner never worked on the post of refractionist hence, he could not have competed for the post in question in the year 2011 so as to be treated as eligible. It may be noticed that nothing has come on record that petitioner does not fulfill the required parameters for appointment to the post of refractionist by way of transfer. Further, the only objection taken by the respondents was that the petitioner was not working on the post of refractionist in any other department while applying for the said post. The said objection is wrong interpretation of the advertisement. Once, the selection committee has considered the claim of the petitioner and found him eligible to be appointed on the post of refractionist, now treating the petitioner as ineligible for selection so as to treat him on deputation and repatriating him to his parent department cannot be allowed.

13. Not only this, the respondents have cleared the probation period

of the petitioner successfully. Once, the petitioner has completed the probation period successfully, he holds the lien on the post of refractionist on which he was selected hence, treating the petitioner on deputation and repatriating him to his parent department is contrary to the facts on record.

14. Keeping in view the facts and circumstances noticed hereinbefore, orders dated 06/10.04.2017 (Annexure P/17) and dated 04.07.2017 (Annexure P/19) are set aside. Respondents are directed to treat the petitioner as their own employee for all intent and purposes.

15. Civil miscellaneous application pending, if any, also stands disposed of.

September 25, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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