

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

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CWP No.18913 of 2023 (O & M)

Date of Decision : 21.11.2023

*Vikas Kumar**..... Petitioner**versus**State of Haryana and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Jasbir Mor, Advocate, for the petitioner

Mr. Parveen Mehta, DAG, Haryana

Ms. Nikita Goel, Advocate, for respondent no.2

TRIBHUVAN DAHIYA J. (ORAL):

At the outset, learned counsel for the petitioner has restricted prayer in the petition to issuing a writ of *mandamus* directing the Haryana State Agriculture Marketing Board (hereinafter referred to as 'the Marketing Board') to allow the petitioner to join duty on the post of Clerk based upon the selection and recommendation by the fifth respondent/Haryana Staff Selection Commission (hereinafter referred to as 'the Commission'), and grant all consequential benefits from the date of his relieving from duty vide order dated 29.9.2022, Annexure P-19.

2. Facts of the case in brief are, the petitioner is a disabled person, suffering from visual impairment. His permanent disability has been assessed as hundred per cent, vide certificate dated 8.3.2017, Annexure P-3.

2.1. The Commission advertised posts of Clerks vide advertisement

no. 5 of 2019. The petitioner was duly selected and recommended for appointment. Pursuant thereto he was allotted the Irrigation and Water Resources Department (hereinafter referred to as 'the Irrigation Department'), and joined there as Clerk in response to appointment letter dated 9.9.2020, Annexure P-5, subject to final outcome of pending writ petitions before this Court challenging the selection.

2.2. Later, the Commission was directed to revise the selection list vide order dated 25.4.2022 passed by this Court in CWP No.15672 of 2021 titled *Amit Kumar and others v. State of Haryana and others*. In terms thereof, after re-evaluation of OMR answer sheets, the revised final result of selection was notified on 23.6.2022, Annexure P-7. The petitioner was again selected, and recommended for appointment for the post of Clerk.

2.3. At that time, pursuant to the earlier selection, he was working as Clerk in the Irrigation Department w.e.f. 9.9.2020. Keeping in view his hundred per cent visual impairment, he requested the competent authorities to allow him to continue working in the same Department, vide representation dated 29.6.2022, Annexure P-9. The fourth respondent/ Superintending Engineer also recommended his case.

2.4. However, without considering the request, the petitioner was relieved from the office of fourth respondent vide order dated 1.7.2022, Annexure P-13, in compliance of orders issued by the Commission vide memo dated 30.6.2022, Annexure P-12.

2.5. The petitioner challenged the order/letter dated 30.6.2022/1.7.2022 issued by the Commission/Superintending Engineer, and his consequential relieving from service, by filing a writ petition,

CWP No.17069 of 2022. Since the petitioner could not have been relieved from duty before issuing of appointment letter pursuant to revision of the selection result, the petition was disposed of vide order dated 4.8.2022, Annexure P-14, by staying the relieving order and directing the competent authority to consider and decide his representation, dated 29.6.2022, before relieving him from service.

2.6. On the day of passing of the aforesaid order, dated 4.8.2022, the Marketing Board issued a provisional appointment letter to the candidates, including the petitioner, for appointment to the post of Clerk. The petitioner was required to join duty within thirty days from the date of receiving the appointment letter.

2.7. The order, dated 4.8.2022, passed by this Court staying the relieving of the petitioner from service and directing the competent authority to decide his representation, was brought to the notice of the second respondent/Chief Administrator of the Marketing Board vide letter dated 9.8.2022, Annexure P-16. It was also conveyed that the petitioner had not received any letter of appointment from the Board. Again, vide letter dated 19.9.2022, Annexure P-18, the petitioner informed the second respondent that pursuant to stay of his relieving, he again joined the Irrigation Department and, therefore, could not submit joining report to the Marketing Board. However, no response was received.

2.8. Thereafter, vide impugned order dated 29.9.2022, the fourth respondent considered and rejected the petitioner's representation, dated 29.6.2022, by opining that the petitioner will have to join his new allotted department/Marketing Board, and relieved him from duty with effect from the date of passing of the order.

2.9. The third respondent/Engineer-in-Chief vide letter dated 23.11.2022, Annexure P-21, informed the Commission that the petitioner's representation dated 29.6.2022 has been decided by passing a reasoned order dated 29.9.2022, and the fact was brought to notice of the Marketing Board for taking necessary action in the matter. Hence, it was requested to issue necessary direction to the Board for issuing appointment to the petitioner on the post of Clerk, and of filing a review application against the order, dated 4.8.2022, based on the legal advice.

2.10. Despite that, the Marketing Board did not issue any appointment letter to the petitioner. He even represented to the second respondent vide representations dated 17.3.2023 and 6.4.2023, Annexures P-22 and P-23 respectively, seeking permission to join the post and grant him continuity of service, but no action in the matter was taken.

2.11. Instead, a letter dated 11.4.2023, Annexure P-24, was sent by the second respondent to Secretary of the Commission as well as to the third respondent intimating that the petitioner has requested for permission to join the Marketing Board, but the competent authority has raised objections and sought information whether any review application has been filed by the Irrigation Department against the said order dated 4.8.2022.

2.12. In these circumstances, the instant petition has been filed.

3. Learned counsel for the petitioner has contended that for no fault of the petitioner, he has been prevented from joining the post of Clerk in the Marketing Board. He could not join the post pursuant to appointment letter, dated 4.8.2022, Annexure P-15, on account of stay granted by this Court on his relieving from the Irrigation Department.

Later, he was relieved from the Department on 29.9.2022, but no appointment letter has been issued subsequent thereto, nor has he been permitted to join. This is sheer arbitrariness on the part of the respondents, and amounts to undue harassment of the petitioner.

4. Learned counsel for the respondent-Marketing Board, on the contrary, contends that the petitioner has not joined duties despite the appointment letter dated 4.8.2022, and he cannot be allowed to do that now. He was given thirty days' time to join, which he failed to avail without any justification. Instead, he submitted a representation, dated 19.9.2022, that he was already working in the Irrigation Department and could not join in response to the appointment letter issued to him. On account of this conduct also, his claim cannot be entertained.

5. Heard.

6. The petitioner was duly selected by the Commission pursuant to the advertisement in question, and appointed as Clerk in the Irrigation Department on 9.9.2020. As directed by this Court, the Commission revised the selection result, and the petitioner still found a place in the select list. He was again recommended for appointment. Before he could be allotted a department pursuant to the revised selection list, he made a representation dated 29.6.2022, requesting that on account of being hundred per cent visually impaired he might be given appointment in the Irrigation Department itself, where he had working for the last about two years. Without considering his request and before issuing any letter of appointment, the petitioner was relieved from duty by the Department vide relieving order dated 1.7.2022. The said order was stayed by this Court directing the competent authority to take decision on the

petitioner's representation seeking appointment in the Department, before relieving him.

6.1. Before decision on the representation could be taken, a fresh appointment letter, dated 4.8.2022, was issued directing him to join as Clerk in the Marketing Board within thirty days therefrom. This he could not do, since his relieving order from the Irrigation Department was stayed by this Court till decision of the representation; resultantly, he continued working there. Finally, he was relieved from there on the date his request was rejected by passing a speaking order on his representation, on 29.9.2022.

6.2. By that time thirty days period permitting him to join in the Marketing Board, pursuant to the appointment letter dated 4.8.2022, was already over. This made it incumbent upon the Board to issue a fresh letter of appointment to him and/or permit him join the post on the basis of earlier letter of appointment dated 4.8.2022. This was not done despite the third respondent requesting the Commission to direct the Marketing Board to issue appointment letter to the petitioner, since he stood relieved from service w.e.f. 29.9.2022. The petitioner's request to join the post was also not considered, apparently on the pretext of some objection having been raised by the competent authority regarding filing of review application, if any, against the order dated 4.8.2022 passed by this Court directing decision on the pending representation. There was, in fact, no occasion for the Department to file any application to review the said order, since it had already been implemented and the petitioner's representation in terms thereof had also been decided by passing the order dated 29.09.2022.

6.3. It is therefore apparent that the petitioner could not join as Clerk in the Marketing Board only on account of fault of the respondents; firstly, by relieving from the Irrigation Department, on 01.07.2022, before issuing any appointment letter pursuant to revision of selection result and, secondly, by not allowing him to join the Marketing Board in terms of the letter of appointment, dated 04.08.2022, on unfounded grounds taking illogical pleas. The respondents cannot be permitted to do deny him join the post, as it would amount to permitting them to take advantage of their own wrongs. Therefore, the petitioner is held entitled to join as Clerk in the Marketing Board pursuant to appointment letter, dated 04.08.2022, with all consequential benefits.

6.4 It needs to be mentioned that as per instructions issued by the government dated 21.4.2023, Annexure P-26, it has already been decided that past service of Clerks, who were recommended for appointment against the advertisement in question in both merit lists, shall be counted for the purpose of seniority and pay protection, irrespective of the fact that they have been allotted same or different departments.

7. Accordingly, the second respondent is directed to allow the petitioner to join on the post of Clerk in the Marketing Board pursuant to letter of appointment, dated 4.8.2022, within two weeks from receiving a certified copy of this order. The period from 29.9.2022, the date he was relieved from duty in the Irrigation Department, to the date of joining the post in the Board, shall be treated as duty period for all intents and purposes. The petitioner shall be entitled to all consequential benefits for the same including salary since he has been prevented from joining the post for no fault of his. The respondents are directed to release all these

benefits to him within four weeks of joining the post.

- 8. The petition stands allowed in the aforesaid terms.
- 9. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

21.11.2023
Ashwani

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