

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25658-2023 (O&M)

Decided on 15.11.2023

Rinku Sharma

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldeep Sheoran, Advocate for the petitioner

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of *certiorari* for quashing the impugned order dated 30.09.2023 (Annexure P15) vide which services of the petitioner was terminated by respondent No.3 with a further direction the respondent No.3 to consider the PHC certificate dated 19.09.2023 (Annexure P17) issued by the Civil Hospital, Kaithal and allow the petitioner to continue in service as Beldar.

Learned counsel for the petitioner submitted that the petitioner is Visually handicapped to the extent of 30% and being eligible and duly qualified, he submitted application form for the post of Group D under General visually handicapped category (Annexure P3). However in as the said application, the name of the petitioner was shown as Rinki Sharma instead of Rinku Sharma and there was no method to make correction/ addition once the application has been submitted, therefore, the petitioner has no alternative except to submit a fresh application form for the post of Group D against the abovesaid advertisement, however, in the second application also, his category was shown as H.H. (hearing impaired) by the Computer

Operator and the petitioner was selected under H.H. category instead of his original V.H. (visually impaired) category.

It is urged on behalf of the petitioner that the abovesaid mistake is bona fide as there was no intention of the petitioner to give the wrong information and as such, the petitioner may be allowed to continue in service as he did not give the wrong information or submitted any forged document with the authority. He submits that the petitioner has rendered more than four years of service with the respondent-Department and his work and conduct has been satisfactory all throughout and moreover, having gained the sufficient experience on the said post, the petitioner is an asset to the respondent department.

Reliance has been placed on *Vinodan T. and Ors. v. University of Calicut and Ors.,(2002) 4 SCC 726* to urge that 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, sympathetic view has to be taken in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment.

Heard learned counsel for the parties and gone through the record.

A perusal of the impugned order dated 30.09.2023 issued by the Commissioner, Municipal Corporation, Yamuna Nagar would show that the an enquiry officer was appointed on 24.08.2023 and as per the enquiry report, it came to light that as per the terms and conditions of the Haryana Govt., person/candidate having less than 40 per cent visual disability was not

allowed to fill the appointment form. The petitioner has been issued a certificate of visual disability of 30 per cent by the Civil Surgeon, Kaithal and as such, it is very much clear that the petitioner was rightly held not eligible for appointment as the extent of disability of the petitioner has been assessed to be 30 per cent as compared to the required disability of 40 per cent, thereby disentiitling the petitioner to claim appointment or retention in service.

At this stage, learned counsel for the petitioner drew attention of this Court to Disability Certificate dated 15.11.2017 to highlight the fact that the Civil Surgeon, Kaithal has certified the petitioner to of “low vision” and has “*forty percent permanent disability in relation to both eye*” of the petitioner. Learned counsel would submit that the case of the petitioner requires sympathetic consideration by this Court, since the appointment of petitioner cannot be said to have been affected by any malpractice or any other extraneous consideration or misrepresentation on his part. The ouster of the petitioner from service after having served the respondents for more than 4 years now would cause undue hardship to him and ruin his family’s life particularly in view of the admitted position of fact that the petitioner is a visually impaired person leave aside the issue of the percentage of his disability. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to the petitioner who has now become over aged and has also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in **Rajesh Kumar and Ors. v. State of Bihar and Ors., 2013(3) SCALE 393** wherein this Court has directed the respondent-State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically

considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the respondent-State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

No interference is called for with the impugned order and the writ petition is accordingly dismissed.

However, in view of the peculiar facts and circumstances of the case, the respondents No.1&2, in exercise of powers given in Rule 17 of the Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998, as applicable to the employees of the Municipal Corporation in the State of Haryana, are directed to sympathetically consider the claim of the petitioner for his retention in service, within a period of two weeks from the date of receipt of certified copy of this order, particularly in view of the fact that as per the certificate (Annexure P2) relied upon by the petitioner, the Civil Surgeon, Kaithal has declared the petitioner to be 40 per cent permanently disable in relation to both eyes.

Ordered accordingly.

15.11.2023
V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No