

CWP-767-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-767-2024
Date of Decision: 12.01.2024

Dr. Nidhi Bhardwaj

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Akshay Bhan, Senior Advocate assisted by
Mr. A.S. Talwar, Advocate,
for the petitioner.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of *certiorari* for quashing the office order dated 27.12.2023 (Annexure P-22) whereby look-after charge which the petitioner was having of 'Executive Engineer (Horticulture)' has been illegally withdrawn and the petitioner being repatriated to a post dehors of her promotional entitlement and is also contrary to the status quo ordered to be maintained by this Hon'ble Court vide order dated 16.12.2023 (Annexure P-20) with a further prayer to direct the respondents to grant regular promotion to the petitioner to the post of 'Executive Engineer (Horticulture)' w.e.f. 07.02.2023 (i.e. the date of coming into effect of amended Service Regulations) and also to quash the order dated 04.12.2023 (Annexure P-19) whereby the regular promotion to the petitioner which had been made on 23.10.2023 vide office order (Annexure P-17) has been withdrawn.

2. Learned Senior Counsel for the petitioner submitted that since the petitioner was promoted vide order dated 23.10.2023 (Annexure P-17) and the same has been withdrawn vide impugned order dated 04.12.2023 (Annexure P-19), he is limiting his prayer at this stage only to the extent of impugning the aforesaid order whereby his promotion order has been illegally withdrawn. He further submitted that the Rules pertaining to the service conditions of the petitioner were amended vide Annexure P-16 vide Notification dated 07.02.2023 vide which a fresh promotional avenues qua the Mananger Cactus Garden was created and the aforesaid Notification came into force and was made operative. In pursuance of the aforesaid Notification, the petitioner was fully eligible for being promoted to the post of XEN (Horticulture) and the respondents promoted the petitioner to the post of XEN (Horticulture) vide order dated 23.10.2023 (Annexure P-17). However, since there was a writ petition pending before this Court bearing CWP-19961-2021 wherein an interim order was passed on 29.09.2021 which has been reproduced in the present writ petition whereby it was directed that in the meantime, no person, who is not a graduate in Engineering, would be promoted to the post of Executive Engineer (Horticulture) and the aforesaid writ petition was pending at the time when the petitioner was promoted. He further submitted that however the petitioner was promoted on the basis of fresh Notification which was issued by which the Service Rules were amended and therefore, there was no impediment for the petitioner to have been promoted in pursuance of the amendment of the Rules. He also submitted that when after the promotion of the petitioner, the aforesaid writ petition came up for hearing before the Co-

ordinate Bench of this Court on 16.12.2023, the writ petition was dismissed as withdrawn but it was further directed that *status quo* order shall remain in force subject to filing of fresh writ petition challenging the amended Rules within a period of four weeks from the date of passing of the order. He submitted that the aforesaid order (Annexure P-20) was passed on 16.12.2023 and the *status quo* was only for a period of four weeks which would be ending on 15.01.2024. He further submitted that prior to the aforesaid order, the respondents had withdrawn the promotional order of the petitioner on 04.12.2023 vide Annexure P-19 and the petitioner has challenged the aforesaid order of withdrawal of promotion by another writ petition i.e. CWP-28310-2023 and the same was also withdrawn by the petitioner vide Annexure P-21 in view of the withdrawal of the aforesaid writ petition i.e. CWP-19961-2021 on the same date. He also submitted that the aforesaid writ petition filed by the petitioner bearing CWP-28310-2023 was withdrawn by the petitioner at that stage only in view of the fact that the *status quo* order which was so passed by a Co-ordinate Bench of this Court vide Annexure P-20 was to remain operative for a period of four weeks and now a fresh writ petition has been filed by the petitioner challenging the same order i.e. Annexure P-19 by which the promotion order of the petitioner was withdrawn. He also submitted that the petitioner was promoted in accordance with the statutory rules but before withdrawing the order of promotion neither any opportunity of hearing nor any notice was given to her and even otherwise also it was violative of *principles of natural justice*. He also submitted that even if the respondents wanted to withdraw the order for any reason whatsoever at least *principles of natural justice* were

to be adhered to since the promotion confers substantive rights upon an officer.

3. Notice of motion to respondent Nos.1 to 3 only.
4. Mr. Gaurav Jindal, Additional Advocate General, Haryana accepts notice on behalf of respondent No.1/State.
5. Mr. Arvind Seth, Advocate has caused appearance on behalf of respondent Nos.2 & 3 and submitted that since the order dated 16.12.2023 passed in CWP-19961-2021 (Annexure P-20) wherein it was so directed that *status quo* would remain in force for a period of four weeks which would end on 15.01.2024, the respondent Nos.2 & 3 will thereafter re-visit the order (Annexure P-19) by which the promotion order of petitioner was withdrawn and by way of fresh application of mind will pass a fresh order after re-visiting the same and strictly in accordance with law.
6. Learned Senior Counsel for the petitioner stated that in view of the statement made by learned counsel for the respondent Nos.2 & 3, the present petition may be disposed of.
7. Disposed of accordingly.

12.01.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No