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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4728-2024

Date of Decision:01.05.2024

ANURADHA

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sagar Saxena, Advocate and
Mr. Divij Datt, Advocate
for the petitioner.

Mr. Narender Kumar Vashisht, Sr. Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of notification dated 01.02.2024 (Annexure P-1) whereby respondent has revised strength of different cadres including Pharmacist.
2. The petitioner, at present is posted with BSF as Assistant Sub-Inspector. She joined the force in 2014. The strength of Pharmacist cadre prior to February’ 2024 was as below:

Pharmacist Cadre		
(i)	Subedar Major	0
(ii)	Inspector	11
(iii)	Sub Inspector	55
(iv)	Asstt. Sub Inspector	302
Total		368

3. The respondent by impugned notification dated 01.02.2024

(Annexure P-1) has changed number of posts of aforesaid cadre. The revised strength as per aforesaid notification is as below:

Pharmacist Cadre		
(i)	Subedar Major	11
(ii)	Inspector	25
(iii)	Sub Inspector	51
(iv)	Asstt. Sub Inspector	230
Total		317

4. From the perusal of revised cadre strength, it comes out that respondent has reduced 72 posts of ASI and 4 posts of Sub-Inspector whereas 4 posts of Inspector and 11 posts of Subedar Major have been increased.
5. Mr. Sagar Saxena, Advocate submits that respondent has wrongly revised cadre strength. The abolition of 4 posts of Sub Inspector is going to adversely affect her promotional avenues. The right to be considered for promotion is a fundamental right and abolition of 4 posts is going to violate her fundamental rights guaranteed by Articles 14 and 16 of the Constitution of India. There are possibilities that persons who have joined as Sub-Inspector or Assistant Sub-Inspector alongwith petitioner, however, in other cadres may be promoted prior to her. It would be stigmatic and cause dis-repute to her.
6. Per contra, Mr. Narender Kumar Vashisht, Sr. Panel Counsel submits that it is a settled proposition of law that question of creation and abolition of posts falls within domain of employer/State. The Courts can neither create nor abolish posts or ask the authorities to create or abolish posts.
7. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

8. The petitioner is assailing notification issued by a Competent Authority. The notification cannot be set aside or modified by Court unless and until, it is found that there is violation of fundamental rights or it is contrary to statutory provisions or there is patent/manifest illegality.

A three Judge Bench of Supreme Court in '**Official Liquidator Vs. Dayanand and others**', 2008 (10) SCC 1, has categorically held that creation and abolition of posts, formation and structuring/re-structuring of cadres falls within domain of employer. The relevant extracts of the judgment are reproduced as below:

“59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

60. In State of Haryana v. Navneet Verma (2008) 2 SCC 65:a Division Bench of two Judges referred to M. Ramanatha Pillai v. State of Kerala (1973) 2 SCC 650, Kedar Nath Bahl v. State of Punjab(1974) 3 SCC 21, State of Haryana v. Des Raj Sangar(1976) 2 SCC 844, N.C. Singhal (Dr.) v. Union of India(1980) 3 SCC 29 and Avas Vikas

Sanghathan v. Engineers Assn. (2006) 4 SCC 132 and culled out the following principles: (Navneet Verma case (2008) 2 SCC 65, SCC p. 70, para 14)

“(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of government policy and every sovereign Government has this power in the interest and necessity of internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.”

61. *In State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.*

62. *In Aravali Golf Club v. Chander Hass [(2008) 1 SCC*

683 : (2008) 1 SCC (L&S) 289] also, a two-Judge Bench considered the issue relating to creation of posts and held: (SCC p. 688, para 15)

“15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside.”

9. From the perusal of impugned notification, I find that respondent as per its wisdom has abolished few posts of the rank of Assistant Sub-Inspector and Sub-Inspector whereas increased of the rank of Inspector and Subedar Major. The petitioner, at present is working as Assistant Sub-Inspector. The respondent has primarily reduced posts of Assistant Sub-Inspector and increased posts of Inspector and Subedar Major. The increase in posts of Subedar Major and Inspector would ultimately be in her benefit because she will get more opportunities to get promotion. The mere fact that there is reduction in 4 posts of Sub-Inspector is not going to substantially affect her rights. In any case, if two persons are not granted equal opportunity to participate for the purpose of promotion, there can be violation of fundamental right. A person has right to be considered for promotion against a post. If the Competent Authority has created or abolished a promotional post, the

Court cannot hold that there is violation of fundamental right of the candidate to be considered for the said post. The argument of petitioner could be accepted had there been *mala fide* intention or patent illegality. The petitioner is a part of cadre having 230 posts of Assistant Sub-Inspectors, thus, it cannot be concluded that respondent with intent to deprive her from promotion has reduced posts of Sub-Inspector.

10. This Court does not find any manifest illegality or arbitrariness in the impugned notification warranting interference. The present petition deserves to be dismissed and accordingly, dismissed.

(JAGMOHAN BANSAL)

JUDGE

01.05.2024

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>