

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(109) LPA-789-2024 (O&M)

Decided on : 22.03.2024

Rakesh Kumar

.....Petitioner

Versus

State of Punjab & others

.....Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Amit Sharma (Kanav), Advocate for the appellant.

Mr.Saurav Khurana, Addl.A.G., Punjab.

Mr.Vikas Chatrath, Advocate

Mr.Rajbir Singh, Advocate

Mr.BPS Thakur, Advocate, for respondents No.5 to 13.

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeal is to the interim order dated 26.02.2024 whereby the Learned Single Judge has vacated the restraint order dated 15.12.2023, wherein out of the 37 posts of Assistant Transport Officers, 10 had been filled up by way of deputation in pursuance of Annexure P-1.

2. Learned Single Judge while vacating the stay, noticed that out of the 37 posts, 27 candidates had been selected and 10 had joined prior to the issuance of the interim order. However, in the wake of it, they were also relieved and the work of the Department had been affected. There being still 10 posts available and thus the right of the writ petitioner would not be prejudiced and therefore, CM-21626-2023 in CWP-28240-2023 was allowed.

3. Counsel for the appellant has vehemently submitted that the said order seriously prejudices the appellant since he was also aspirant for the said post being a handicapped person having locomotive disability and working as Senior Auditor in the Food & Supplies Department and posted at District Bathinda and there was no provision for reservation made.

4. We have perused the paperbook. Apparently 37 posts were sought

had applied against the said advertisement (Annexure P-1) and allegedly the application (Annexure P-2) was forwarded through proper channel. Stand of the State, on the other hand, is that the Secretary of the Food & Supplies Department never forwarded the said application. In such circumstances, we are of the considered opinion that if his application was not forwarded and he himself was an aspirant, his locus standi is seriously doubted as to how he can raise a challenge on the ground that it was not permissible by way of deputation which was noted by the Learned Single Judge firstly on 15.12.2023 that the filling up the post was de-hors the rules. A person who was himself aspiring in pursuance of Annexure P-1 itself could not have then challenged it on the ground that the post could only be filled up by way of promotion or by way of direct recruitment.

5. The stand of the State is very clear that they are having difficulties in filling up the posts due to which the said procedure has been resorted to. Rather, the specific plea has been taken that filling up the posts by way of deputation would amount to filling the posts by way of transfer. Reference is made to Rule 10.21 of Chapter 10 of the Punjab Civil Services Rules, Part 1 (Vol-I) that the term 'deputation' covers only appointment made by transfer on temporary basis. Rule 5 of the Punjab, Department of Transport (Non-Commercial Wing) (Class III), Service Rules, 2000 provides that if any suitable candidate is available for appointment to the service by promotion or by direct appointment, the appointment to the service may be made by transfer of a person holding an analogous post under the State Government or the Government of India.

6. Reliance has also been placed to the order dated 08.12.2023 (Annexure P-3) whereby the 27 persons were selected as Assistant Transport

Officer wherein the term ‘period of deputation’ had been specified that the Government reserves the right to reduce or extend the time of deputation at the time of absorbing them or if work of the said official is not found satisfactory or unsatisfactory in the department. Thus, it is clear that it is for the exigency of the services and in the administration of justice, the process had to be resorted to. It has also been averred that the restructuring of the Transport Department is being done and Rules are pending consideration before the Personnel/Finance Department and it is in such circumstances, resort has been taken to fill up the said posts by way of deputation.

7. The appellant himself is an applicant and for reasons best known to his department, his application apparently has not been forwarded. In such circumstances, we are of the considered opinion that the appellant can have no grouse against the vacation of the order of stay as 10 posts are still vacant. It is thus open to him also to press for his application to be forwarded for necessary action, if he so desires which was not the case before the Learned Single Judge. Even otherwise, we are of the considered opinion that the appeal itself is not maintainable in view of the judgment of the Apex Court in **Midnapore Peoples Co-op Bank Ltd. and others Vs. Chunilal Nanda and others, (2006) 5 SCC 399** since his interests have not been affected in any manner.

8. Resultantly, in view of the above discussion, the present appeal is dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

22.03.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No