

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:083610-DB



LPA-1187-2024

Deepak MakkarAppellant(s)

Versus

State of Haryana and othersRespondent(s)

(2) **LPA-1200-2024**

Industrial Training Officers Welfare Association HaryanaAppellant(s)

Versus

State of Haryana and othersRespondent(s)

Reserved on: 13.05.2024
Pronounced on: 05.07.2024

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

Present:- Mr. Amandeep Singh Talwar, Advocate for the appellants.

Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice

1. Present two letters patent appeals are directed the judgment of learned Single Judge whereby he dismissed two civil writ petitions i.e. **CWP No.5883 of 2016 and CWP No.29922 of 2017.**

2. Challenge in the first writ petition i.e. CWP No.5883 of 2016 out of which LPA No.1200 of 2024 arises was to the order dated 14.05.2007 whereby the private respondent namely Sanjeev Sharma had been appointed on transfer basis as Assistant Director(Technical)/Principal, ITI, Group-A, who had been earlier working as Assistant Project Officer in the Renewable Energy Department, Haryana. The writ petition was in the form of quo warranto filed by the Association at a belated stage after the said respondent had come into the zone of promotion for the post of Deputy Director, which he was granted on 04.10.2016 and which order has been placed on record by the respondents.

3. Similarly CWP No.29922 of 2017, from which LPA-1187 arises, was filed by the appellant Deepak Kakkar challenging the said order of appointment of the year 2007 and his further promotion to the post of Deputy Director and seeking reversion of the private respondent to his parent department and for directing the respondents to appoint the writ petitioner on the post of Assistant Director (Technical)/Principal, Industrial Training Institute from the date the private respondent had been appointed alongwith all consequential benefits.

4. The learned Single Judge has rightly repelled the arguments as such at the belated stage pertaining to the appointment and promotions as such. The reasoning which weighed with the learned Single Judge was that Rule 9 (c) of the Haryana Industrial Training and Vocational Education Department (Group A) Service Rules, 1989 (for short '1989 Rules') provided promotion by way of transfer or deputation of an officer/official already in the service of any State Government or the Government of India. The argument

that the said respondent did not have the qualifications as such was repelled and it was accordingly held that he had been further promoted as Deputy Director on 04/05.10.2016 and additional Director on 29.03.2022 and there was no basis to contend that he has usurped the office or that the appointment was in violation of the 1989 Rules. The argument that approval of the Haryana Public Service Commission had not been taken was repelled on account of the fact that the requirement was of consultation and not approval and by placing reliance upon the judgment of the Apex Court in the case of **State of U.P. Vs. Manbodhan Lal Srivastava, 1955 SCR 533**. The challenge as such raised on account of the lack of consultation was, accordingly, repelled.

5. Similarly, while dealing with the writ petition filed by the appellant Deepak Makkar, it was noticed that while considering the claim of the said writ petitioner who had been recommended by the Minister concerned, the Chief Minister was not agreed with the name of the writ petitioner and approved the name of the private respondent. The writ petition being filed 10 years later for setting aside the appointment as well as promotion of the private respondent and as noticed the said respondent having earned another two promotions, to the post of Deputy Director on 04.10.2016 and Additional Director on 29.03.2022, were the factors which weighed with the learned Single Judge to dismiss the writ petition on the ground that the writ petitioner was aware of the appointment and had not challenged the same and chosen to live with it and now could not after 10 years take up the plea in the writ petition of quo warranto. Reliance was placed upon the judgment of the Apex Court passed in **State of Jammu & Kashmir Vs. R.K. Zalpuri and others, (2015) 15 SCC 602** that a person cannot be permitted to wake up from

slumber to approach the Writ Court, which was a cause of dismissal as such and whereas the case in hand is worse to the extent that the writ petitioner was also an aspirant to the said post as pleaded in his own writ petition.

6. It is settled principle of law that the issue of seniority and service disputes are to be adjudicated at the earliest. Reliance can be placed upon the **P.S.Sadasivaswamy Vs. State of Tamil Nadu 1976(1) SLR 53** wherein the Apex Court considered the question of limitation in service matters and held that entertaining such petitions which are patently stale, impede the working of the Courts. In **P. Chitharanja Menon & others Vs. A. Balakrishnan and others 1977 (2) SLR 289**, a three Judges Bench of the Hon'ble Apex Court held that once the legality of the promotion made in 1962 had not been challenged then the validity of the Government order in 1969 could not be challenged by filing a writ petition in the year 1972. The present case is also somewhat similar. The Apex Court in **Shiba Shankar Mohapatra Vs. State of Orissa 2011 (1) RSJ 624** has held that in seniority matters, delay should not be beyond a period of 3 years and the reasons for not approaching the Court should be explained. The relevant observation reads as under:

“29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

7. In such circumstances, the reasoning as such which weighed with respondent-State to consider the case of the private respondent on merits does not suffer from any infirmity.

8. It is not disputed that the post of the Assistant Director was to be filled up by vide Public Notice dated 08.10.2006 (Annexure P-1) which was repeated two times and by extending the last date as per the written statement filed. Only 11 applications had been received and 7 candidates had been found eligible. The writ petitioner/appellant Deepak Kakkar was also considered an eligible candidate. A High Level Selection Committee was constituted by the Government in the chairmanship of the Financial Commissioner and Principal Secretary, Government of Haryana, Industrial Training and Vocational Education, Haryana alongwith the Director, Industrial Training and Vocational Education, Haryana and Joint Director Technical, Technical Education, Haryana and Joint Director Administration, Industrial Training & Vocational Education, Haryana. Only two candidates were found suitable for selection/appointment and the writ petitioner/appellant was also interviewed by the said Committee but was not recommended as a suitable candidate. In the written statement it has further been averred that the Minister concerned had recommended the name of the writ petitioner in place of one recommended candidate namely Smt. Anshuka Bansal. An objection has been raised by filing writ petition after a period of 10 years. The fact that the Chief Secretary had also been asked as to whether the approval of the Public Service Commission was to be taken, who had replied in the negative on 25.01.2016 (Annexure R-7/10) when the dispute of seniority had arisen of the private respondent at a subsequent stage.

9. The challenge by taking the plea of *quo warranto* also does not cut much ice as admittedly it is a clearly discretionary jurisdiction and the *bonafides* of the litigant has to be examined, as held in ***A.N. Sashtri vs. State of Punjab and others, (1988) Supp SCC 127***. Admittedly, the aggrieved person, the non-selected candidate is the writ petitioner and, therefore, we have to keep this aspect in mind as per the principle laid down in ***R.K. Jain vs. Union of India, (1993) 4 SCC 119*** as the matter pertains to a service dispute while exercising our jurisdiction under the writ of *quo warranto*. In ***Dr. B. Singh vs. Union of India and others, (2004) 3 SCC 363***, it was held that meddlesome interlopers, wayfarers have no public interest except for personal gain or private profits and the Court has to satisfy about the credentials of such applicants. In ***B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and others, (2006) 11 SCC 731***, the appointment of the Chief Engineer as a Managing Director was subject matter of challenge by the Association. The challenge as such had been repelled by the Apex Court, who had examined the issue and set aside the order of the High Court by holding that the writ petition is not maintainable. The said principles would be directly applicable in the present case.

10. It is settled principle of law that having unsuccessfully sought consideration for the selection and thereafter to seek consideration at a belated stage would also be applicable against the private writ petitioner and, therefore, the dismissal of the writ petition cannot be said to be suffering from any infirmity. Challenge at the hands of the Association has also been made by referring to the Rules in question, which itself provide that recruitment to the post of an Assistant Director/Principal (Technical), ITI, Group A

Junior/Assistant Apprenticeship Advisor (Technical) Group A Junior was to be made by way of promotion 50% from amongst Assistant Director (Technical) Group B/Principal (Technical), ITI Group B and 50% by direct recruitment or by transfer or deputation of an officer/official already in the service of any State Government or the Government of India. The relevant Rule 9 (c) of the 1989 Rules reads as under:-

“9.(1) Recruitment to the Service shall be made-

(c) In case of Assistant Director/Principal (Tech.), I.T.I.Group A Junior/Assistant Apprenticeship Advisor (Technical)Group A Junior-

(i) 50% promotion from amongst Assistant Director(Technical) Group B/Principal (Technical), I.T.I. Group B; and

(ii) 50% by direct recruitment, or

(iii) By transfer or deputation of an officer/official already in the service of any State Government or the Government of India.”

11. It is not disputed that there were four vacant posts which were sought to be filled up and, therefore, as per the above said rule once there was an approval to fill up the said post way of appointment of the private respondent way-back on 09.05.2007 on transfer basis, it cannot be said to be suffering from any infirmity as noticed by the learned Single Judge. Appendix B as reproduced by the learned Single Judge also provide 5 years experience as Assistant Director in the case of promotion whereas for transfer and deputation, with which we are concerned, requisite degree in Bachelor of Engineering or its equivalent was the requirement alongwith 5 years experience in supervisory capacity in a workshop or in an organization of repute. Appendix B reads thus:-

Appendix ‘B’

Serial No.	Designation of posts	Academic qualification and experience, if any,	Academic qualification and
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		for direct recruitment	experience, if any, for appointment other than by direct recruitment
1 to 3	xxx	xxx	xxx
4	Assistant Director (Technical)/Principal Industrial Training Institute Group-A	(i) Degree in Bachelor of Engineering or its equivalent from a recognized university or institution; (ii) Five years experience in supervisory capacity in a workshop or in an organization of repute; (iii)Teaching experience in Government Technical Institutions shall be considered as an additional qualification; and (iv)Adequate knowledge of Hindi	Five years experience as Assistant Director/Principal (Technical) I.T.I. Group-B

12. It is not the case of the appellants that the private respondent did not have the requisite qualification, since he was working as Assistant Project Officer in the Renewable Energy Department.

13. A perusal of the proceedings of the High Powered Committee would go on to show that there was no issue regarding the case of the private respondent, but there was an issue regarding Smt. Anshuka Bansal since she was working with the Sant Longowal Institute of Engineering & Technology at Sangrur in the State of Punjab. The recommendation made by the Minister that he did not agree with the recommendation of the Committee of giving relaxation of Rule 17 in her case was taken to the Chief Minister who had only approved the appointment of private respondent Sanjeev Sharma and not of the writ petitioner Deepak Makkar. The matter had also been brought to the notice of the Chief Minister for filling up the post of Assistant Director at the earliest and the provisions had been duly complied with and notified and there was no such violation while filling up the said posts by way of transfer.

14. The argument, thus, which has now been raised that the private respondent does not have 5 years' experience as Assistant Director/ Group B post is not acceptable, since it would be in the case of 50% reserved for promotion, as from Appendix B it is crystal clear that the academic qualification is for other than by direct recruitment to follow the said path. The rule as such provides 50% posts to be filled up by way of direct recruitment by resorting to transfer or deputation for which academic qualification have been duly mentioned. The private respondent, thus, had been called for interview being found duly eligible and thereafter was selected for appointment and at no stage the writ petitioner-Deepak Kakkar and the Association had raised any

dispute regarding the said proposal. Now at the belated stage after a decade when the private respondent was on the verge of earning a promotion, the issue has been sought to be raked up.

15. In such circumstances, the view which has been taken by the learned Single Judge is not liable to be interfered with at the hands of the Association or the writ petitioner/appellant Deepak Kakkar, who himself was an aspirant for the post in question. Resultantly, the present appeals are dismissed in *limine*.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

05.07.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No