

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)

CWP-15414-2018 (O&M)

Date of Decision : January 24, 2024

Virender Prasad Juyal

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mandeep Sindhu, Advocate for
Mr. Sanjiv Gupta, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. Kanwal Goyal, Advocate, for respondent-HPSC.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the petitioner competed for the post of Assistant District Attorney (ADA) and was selected in the category of ex-serviceman and given appointment.

2. Subsequently, a discrepancy was found in the selection of the petitioner as another candidate namely Pawan Kumar was found more meritorious in the category of ex-serviceman and the recommendations were revised by the Haryana Public Service Commission so as to oust the petitioner from the zone of selection and to give appointment to said Pawan Kumar.

3. In order to give the appointment to the said Pawan Kumar, the services of the petitioner were terminated by passing the impugned order, a

copy of which has been appended as Annexure P-5.

4. The petitioner raised a claim that there is another post in the category of ex-serviceman which is lying vacant and by presuming that there is another post against which the petitioner can be accommodated, while issuing notice of motion, the petitioner was allowed to continue.

5. On the last date of hearing, the respondents were directed to find out as to whether, any of the advertised post was vacant so as to accommodate the petitioner.

6. Learned counsel for the respondent-State submits that though no affidavit has been filed but as per the vetted affidavit of Mr. Pawan Kumar Atri, Administrative Officer, Office of Director of Prosecution (General Haryana), out of seven posts in the reserved category of ex-serviceman, one candidate namely Mr. Sunil Kumar did not come for verification of the documents and the said post remained vacant on account of non-joining but The HPSC has not issued any waiting list so as to accommodate the petitioner being the next in merit.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The only factor which is to be seen whether, the petitioner comes within the zone of selected candidates or not. It is a conceded position that there were seven posts advertised in the ex-serviceman category vide Advertisement No. 6(1) dated 10.11.2015 and the petitioner, as per the initial merit in selection, was found meritorious enough to be selected against one of the seven advertised posts. Further, out of those recommendations only, one candidate namely Mr. Sunil Kumar, did not come for verification of the documents and could not be given appointment meaning thereby that one post remained vacant even after appointing the

petitioner against one of the seven advertised post.

9. The factum that one Pawan Kumar was brought above in the merit over the petitioner to be given appointment means that the petitioner will go one step below than his initial merit and as Mr. Sunil Kumar has not joined, the petitioner remain within the zone of the selected candidates and to be selected against the seven advertised post. That being so, merely that no waiting list was issued by Haryana Public Service Commission will not be of any consequences especially, when in the initial list of the selected candidate, the name of the petitioner duly appeared and he was given appointment.

10. Keeping in view the above, on the non-joining of the candidate namely Pawan Kumar, the services of the petitioner could not have been terminated and he was entitled to be adjusted against the post on which Sunil Kumar was selected but not joined and the respondents were under an obligation to allow the petitioner to continue against the post vacated by Mr. Sunil Kumar.

11. In view of the above, the writ petition is allowed. The petitioner who is already continuing in service under the interim order of the Court, be allowed to continue in the service.

CM-1935-CWP-2022

As the main writ petition has been allowed, present application also stands disposed of.

January 24, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No