

CWP-2571 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-2571 of 2014

Reserved on: 30.04.2024

Pronounced on: 09.05.2024

Swarn Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. K.L. Arora, Advocate, for the petitioners.
Ms. Saguna Arora, AAG, Punjab.

NAMIT KUMAR, J.

1. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of *certiorari* for quashing the advertisement dated 19.01.2014 (Annexure P-10) to the extent that three posts of Chief Sanitary Inspectors (CSIs) have been advertised to be filled in by way of direct recruitment, being in violation of notification dated 10.06.2009 (Annexure P-3), which provides for filling up of the post of Chief Sanitary Inspector and Superintending Engineer by way of 100% promotion and invariably acted upon in promotion orders dated 28.11.2011 and 24.12.2011 whereby total of nine Sanitary Inspectors were promoted to the post of Chief Sanitary Inspectors. Further, writ of *mandamus* has been sought for directing the respondents to consider and promote the petitioners to the post of Chief Sanitary Inspector. Thereafter, CM-4915 of 2017 was filed under Order 6 Rule 17 read with Section 151 CPC for addition of two more prayers, which read as under: -



- “(x) *Issue final notification consequent upon the issuance of draft notification dated 10.06.2009 (Annexure P-3) against which no objections were received from anyone.*
- (xi) *grant an other relief/pass any other order as deemed fit and proper in the facts and circumstances of the case.”*

In nutshell, the grievance of the petitioners in the present writ petition is that the ex-cadre posts of Chief Sanitary Inspectors in various Municipal Corporations/Municipal Councils be filled up 100% by promotion from amongst the petitioners’ category i.e. Sanitary Inspectors.

2. The brief facts, as have been pleaded in the petition, are that the petitioners are working as Sanitary/Chief Sanitary Inspectors. The services of the petitioners are governed by the Rules known as “The Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975 (hereinafter referred to as ‘the 1975 Rules’). Rule 5(1) of the 1975 Rules deals with the method of recruitment which provides that recruitment to various categories of posts in a service at the time of its initial consideration shall be made by the appointing authority by absorption of persons already in the service of a municipal committee in a corresponding post in appropriate category at the time of constitution of service. Sub-rule (2) of Rule 5 provides that after filling the vacancies under Sub-rule (1), the remaining vacancies and the vacancies which may occur thereafter shall be filled up 50% by direct recruitment and 50% by promotion on seniority-cum-merit basis.

The method of recruitment in the 1975 Rules and qualifications for the



post of Chief Sanitary Inspector as provided in Appendix-B read as under: -

“5. Method of recruitment. - (1) *Recruitment to various categories of posts in a Service at the time of its initial consideration [shall be] made by the appointment authority by absorption of persons already in the service of a Municipal Committee in a corresponding post in appropriate category at the time of the constitution of the Service : provided that they are found fit by an Authority appointed by the Government in this behalf for becoming member of the Service after taking into consideration their qualifications and service record.*

2 (2) *After filling in the vacancies under sub-rule (1), the remaining vacancies and the vacancies which may occur thereafter shall be filled up in the following manner:- (i) fifty per cent by direct recruitment; and (ii) fifty per cent by promotion on seniority-cum-merit basis : Provided that if no suitable candidate is available for appointment by direct recruitment or by promotion the vacancy may be filled up by transfer or on deputation :*

Provided further that if no qualifications have been specified in the Appendix ‘B’ for the purposes of filling up the same by promotion, that post shall be filled up by the direct recruitment.

x x x x x

APPENDIX ‘B’

Sr. No.	Name of Post	Qualification for direct recruitment	Qualification for promotion
x	x	x	x
23.	Sanitary Inspectors	Sanitary Inspectors Certificate	Should be a municipal employee possessing Sanitary Inspector’s Certificate.
24.	Chief Sanitary	Sanitary	Should be a

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	<i>Inspectors</i>	<i>Inspectors Certificate with an experience for minimum period of two years in a Municipal Committee or a Department of the Government.</i>	<i>Sanitary Inspector in a Municipal Committee with an experience of working as such for a minimum period of three years.</i>
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3. The State Government issued notification dated 10.06.2009 (Annexure P-3) whereby draft rules to amend the 1975 Rules were issued wherein it was proposed to fill up the post of Superintending Engineer (Civil) and Chief Sanitary Inspector 100% by promotion from amongst the Sanitary Inspectors who have minimum period of five years of experience and possessing the Sanitary Inspector certificate from a Government recognised institution and should be a municipal council cadre Class-III employee and objections/suggestions were invited within a period of 30 days. The said notification reads as under: -

“[Extract from the Punjab Govt. Gaz., dated the 24th July, 2009]

*GOVERNMENT OF PUNJAB
DEPARTMENT OF LOCAL GOVERNMENT
(MUNICIPAL SERVICE CELL)*

NOTIFICATON

The 10th June, 2009

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No.3DLG-MS-09/20423 The following draft of rules further to amend the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975, which the Governor of Punjab proposes to make in exercise of the powers conferred by sub-section (2) of Section 38 read with Section 240 of the Punjab Municipal Act, 1911 (Punjab Act No.3 of 1911), and all other powers enabling him in this behalf, is published, as required by sub-section (5) of Section 240 of the said Act for the information of the persons likely to be affected thereby.

Notice is hereby given that the draft will be taken into consideration by the Government on or after the expiry of a period of thirty days from the date of publication of this notification in the Official Gazette, together with any objection or suggestion, which may be received by the Secretary to Government of Punjab, Department of Local Government, Chandigarh from any person before the expiry of the period so specified with respect to the said draft, namely:-

- 1. These rules may be called the Punjab Municipal Services (Recruitment and Condition of Service) Rules, 2009.*
- 2. In the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975 (hereinafter referred to as the said rules), in rule 5, for sub-rule (2-A) the following sub-rule shall be substituted namely:-*

*"(2-A) Notwithstanding anything contained in sub-rule(2), the post of the Punjab Municipal Service of **Superintending Engineer (Civil) and Chief Sanitary Inspector**, shall be filled up 100% by promotion."*

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3. In the said rules, in Appendix 'A', for serial No.25 and 26 and the entries relating thereto, the following shall be substituted, namely:-

25.	<i>Punjab Municipal Service of Chief Sanitary Inspectors</i>	<i>All Classes</i>	<i>Rs.6400-200-7000-220-8100-275-10300-340-10640</i>
26.	<i>Punjab Municipal Service of Sanitary Inspector</i>	<i>All Classes</i>	<i>5800-200-7000-220-8100-275-9200</i>

4. In the said Rules in Appendix 'B' for serial No.23 and 24 and the entries relating thereto, the following shall be substituted namely:-

<i>Sr.No.</i>	<i>Post</i>	<i>Qualification for Direct</i>	<i>Qualification for Promotion</i>
23.	<i>Chief Sanitary Inspector</i>	<i>--</i>	<i>Should be a Sanitary Inspector in Municipal Council Service having an experience of working as such for a period of five years</i>
24.	<i>Sanitary Inspector</i>	<i>Graduate with Sanitary Inspector Certificate from a Government recognized institution</i>	<i>Should be Municipal Council Cadre Class-III employee with an experience of working as such for a minimum period of five years and possessing Sanitary Inspector Certificate from a Government recognized institution.</i>

D.S. Bains
Principal Secretary to Government of Punjab
Department of Local Government”

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4. It has further been averred that vide orders dated 28.11.2011 (Annexure P-8), seven Sanitary Inspectors were promoted as Chief Sanitary Inspectors and similarly vide another order dated 24.12.2011 (Annexure P-9), two Sanitary Inspectors were promoted as Chief Sanitary Inspectors. It has further been averred that vide advertisement dated 19.01.2014 (Annexure P-10), various posts have been advertised to be filled in by way of direct recruitment and three posts of Chief Sanitary Inspectors have been advertised for filling up the same by direct recruitment. The said advertisement has been impugned in the present writ petition on the ground that as per draft amendment rules dated 10.06.2009, all the posts of Chief Sanitary Inspectors can only be filled up by promotion.

5. On issuance of notice of motion, short reply to the amended writ petition has been filed wherein it has been stated as under: -

“3. That in the reply already filed on the behalf of respondents, it is clearly stated therein that in the year 2011, there were 9 posts of Chief Sanitary Inspectors which were to be filled up on the basis of 50:50 quota i.e. five posts by promotion, four posts by direct recruitment. However, all the nine posts of Chief Sanitary Inspectors were manned by promotion from amongst Sanitary inspectors so that the Office work does not hamper and subject to the condition that when direct recruits join, the junior most employees who are promoted against direct quota, are ordered to vacate those posts. More so, out of 9 posts of Chief Sanitary Inspectors, 3 posts have gone to Municipal Corporation Cadre on 08.05.2012, leaving only



06 posts of Chief Sanitary Inspectors in Municipal Council Cadre. That as per the present position there are total 12 posts of Chief Sanitary Inspectors (one recently created on 04.07.2018) and as per rules 06 posts to be filled by promotion and 06 posts by direct recruitment and the candidates selected against three posts of Chief Sanitary inspectors may be given appointment and thus the present writ petition is devoid of any merit and hence be dismissed. The detailed reply of the respondents is already on the record and the contents of the same may be read as part of this additional reply also.”

6. The stand taken by respondent-State is that in the year 2011, there were nine posts of Chief Sanitary Inspectors, which were to be filled up on the basis of 50:50 quota i.e. five posts by promotion and four posts by direct recruitment. However, all the nine posts of Chief Sanitary Inspectors were manned by promotion from amongst Sanitary Inspectors so that the office work does not hamper and subject to the condition that when direct recruits join, the junior-most employees who are promoted against direct quota, are ordered to vacate those posts. The case was heard by a Co-ordinate Bench of this Court on 20.01.2023 and the following order was passed: -

“Counsel for the petitioners refers to Annexure P-3 to submit that the Draft Rules though not notified being followed in practice in letter and spirit and, thus, now the respondents cannot be allowed to turn back and say that the Rules being Draft Rules only would not be binding.

State Counsel to file affidavit of the concerned Secretary as to whether recruitment to the post of Chief Sanitary Inspector was being made as per the Draft Rules or not as alleged by the petitioner.

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Adjourned to 13.09.2023.”

7. In pursuance thereto, affidavit of Sh. Ajoy Sharma, Secretary to Government of Punjab, Department of the Local Government, Punjab, Chandigarh, dated 20.09.2023 has been filed wherein it has been stated as under: -

“4) That, in regard to statement given by the petitioner, it is respectfully submitted that the statement given by the petitioner is against the actual facts. The answering department has never applied that draft rules and no person has been promoted or appointed on the basis of the said draft rules. It is further submitted that until and unless the draft rules are finalized they have no application and the previous rules shall remain in force until the final notification of the draft rules is made.”

8. It is the categoric stand of the respondents that the State Government has never applied the draft rules and no person has been promoted or appointed on the basis of the said draft rules and until and unless the draft rules are finalized, they have no application and the previous rules shall remain in force until the final notification of the draft rules is made.

9. Learned counsel for the petitioners contended that as per draft rules dated 10.06.2009 (Annexure P-3), all the posts of Chief Sanitary Inspectors are required to be filled up 100% by promotion and, therefore, advertisement dated 19.01.2014 (Annexure P-10) whereby three posts of Chief Sanitary Inspectors to be filled in by way of direct recruitment have been advertised, is in clear violation of the draft rules and since the said draft rules have already been acted upon by making promotions of nine Sanitary Inspectors to the post of Chief Sanitary

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Inspectors vide orders dated 26.11.2011 and 24.12.2011 (Annexures P-8 and P-9), therefore, the said advertisement is liable to be set aside qua the posts of Chief Sanitary Inspectors in the municipal councils/nagar panchayats. Learned counsel for the petitioners has placed relied upon the judgment of this Court in ***Manorma Devi v. State of Punjab and others, 2006(1) S.C.T. 21.***

10. On the other hand, learned State counsel submitted that the draft amendment rules dated 10.06.2009 have not been finalized and all the promotions/appointments are being made in the municipal councils in terms of 1975 Rules. Therefore, the claim of the petitioners as raised in the present petition is liable to be rejected.

11. I have heard learned counsel for the parties and perused the record.

12. Admittedly, the services of the petitioners are governed by 1975 Rules, which provide that 50% of the posts of Chief Sanitary Inspectors are to be filled up by way of direct recruitment and 50% by way of promotion. An attempt has been made by the State Government for amending the 1975 Rules by issuing draft rules dated 10.06.2009 known as 'Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 2009' for filling up the posts of Superintending Engineer (Civil) and Chief Sanitary Inspector 100% by way of promotion. Objections/suggestions were invited to the said notification within a period of one month, however, the said draft rules have neither been finalized nor have been notified. Once the notified Rules of 1975 are already in operation, in the given situation all the

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appointment/promotions have rightly been made by the respondents in terms of the said Rules. It is well-settled proposition of law that in the absence of notified rules, draft rules can also be acted upon for making appointment/promotions by treating the same as executive instructions issued under Article 162 of the Constitution of India. However, the draft rules cannot be given precedence over the notified rules made under Article 309 of the Constitution of India. Therefore, the contention of the learned counsel for the petitioners cannot be accepted. In the additional affidavit, of Secretary to Government of Punjab, Department of Local Government, Punjab, Chandigarh, dated 20.09.2023, it has been stated that State Government has never applied the draft rules and no person has been promoted or appointed on the basis of the said rules and the draft rules have not been finalized and till the same are finalized by issuing a final notification, previous rules shall remain in force. A Division Bench of this Court in ***Gulshan Nanda v. State of Haryana, 1997(4) SCT 459*** relied upon the earlier judgment of a Division Bench in ***LPA-509 of 1968 decided on 16.04.1970*** wherein it was held that draft rules have no force of law though these can be considered to be executive instructions, if a conscious decision is taken by the concerned authorities that till the draft rules are published and enforced, the draft rules would be considered as executive instructions.

13. The judgment in the case of ***Manorma Devi*** (supra) cited by learned counsel for the petitioners is not applicable to the facts of the present case as in the said case there were no notified rules

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prevalent which were finalized under Article 309 of the Constitution of India and the issue was as to whether the qualification prescribed under the draft rules is enforceable or not.

14. In view of the above, there is no merit in the present petition. The same is hereby dismissed with no order as to costs. Interim order dated 18.02.2014 stands vacated.

09.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No