

212 (2 cases)
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29254-2017
Date of Decision: 12.02.2024

PARDEEP KUMAR AND OTHERS
Vs.
STATE OF HARYANA AND OTHERS
...Petitioners
...Respondents

2. CWP-4661-2018

PAWAN KUMAR
Vs.
STATE OF HARYANA AND OTHERS
...Petitioner
...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek K. Thakur, Advocate and
Mr. Akshit Pathania, Advocate
for the petitioners in CWP-29254-2017.

Mr. Som Nath Saini, Advocate for
Mr. Rajiv Kumar Saini, Advocate
for the petitioner in CWP-4661-2018.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petitions, the grievance of the petitioners is that the advertisement issued, copy of which has been appended as Annexure P-3, be taken to the logical end qua the filling up of the post advertised.
2. Affidavit of Additional Director, State Transport, Haryana, Chandigarh on behalf of respondents filed in Court is taken on record. Copy of the same has been supplied to the counsel opposite.

3. Learned counsel for the respondents submits that keeping in view the affidavit which has come from the Department wherein it has mentioned that as sufficient time has lapsed since the issuance of advertisement, the Department is not pursuing the said advertisement any further to fill up the post in question.

4. Learned counsel for the petitioners submits that the petitioners were competing for the post advertised and now in view of the decision of the respondents that they are not pursuing the advertisement any further, petitioners have been left in lurch/limbo and, hence, the respondents are under obligation to take the advertisement (Annexure P-3) to its logical end.

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

6. The question of law which has been raised in the present petition is whether, a candidate who has applied in pursuance to the advertisement has a right to direct the employer to take the said advertisement to the logical end and make appointment. The said question of law had already been decided by the Supreme Court of India in **Civil Appeal No. 4150 of 2022 titled as Employees State Insurance Corporation and another Vs. Dr. Vinay Kumar and others decided on 18.05.2022** wherein it has been held that the candidate competing in pursuance of the advertisement has no right to direct the Department to continue with the advertisement and to take the said advertisement to its logical end and to make appointment. The relevant paragraph of the

judgment is reproduced hereunder:

6. *The cardinal principle we must bear in mind is that this is a case of direct recruitment. A candidate who has applied does not have a legal right to insist that the recruitment process set in motion be carried to its logical end. Even inclusion of a candidate in the select list may not clothe the candidate with such a right. This is, however, different, no doubt, from holding that the employer is free to act in an arbitrary manner. But, at the same time, in the first place, direction which is given by the High Court to conclude the recruitment within 45 days is clearly untenable. This is for the reason that, as noticed, the advertisement dated 01.03.2018 was put on hold on 21.03.2018 before the last date indicated for filing the application by advertisement dated 01.03.2018. As the very advertisement was put on hold, it is quite likely that any candidate who may have being desirous of applying, may not have applied being discouraged by the fact that the advertisement has been put on hold. Therefore, the direction to conclude the proceedings within 45 days is unsupportable*

7. In the present case, the prayer of the petitioners is contrary to the settled principled of law settled by Hon'ble Supreme Court of India and hence, the same cannot be accepted.

8. At this stage, learned counsel for the petitioners submits that in case, these posts are advertised again, the petitioners be considered eligible for the same. The said situation has not arisen so far. In case, the posts which were advertised vide Annexure P-3 are re-advertised by the respondents and the petitioners are being declared ineligible, the petitioners will be at liberty to raise appropriate claim at that stage and avail the appropriate remedy.

9. Keeping in view the above, no further orders are required to

be passed by this Court in the present petitions keeping in view the decision taken by the respondents not to pursue the advertisement in question. Present petitions are dismissed accordingly.

10. A photocopy of the order be placed on the file of other connected case.

(HARSIMRAN SINGH SETHI)
(JUDGE)

12.02.2024
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*