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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21993-2023

Date of decision: 01.08.2024

SATISH KHURANA

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

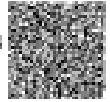
Present:- Mr. Anil Kumar Sharma, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Ms. Nikita Goel, Advocate
for respondents No.3.

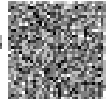
JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 10.05.2023 (Annexure P-19) and order dated 11.11.2022 (Annexure P-7), whereby the request of the petitioner for joining on the post of Steno-Typist (Both Languages) pursuant to his selection and appointment on the post of Steno-Typist (Both Languages) vide appointment letter dated 06.04.2022 (Annexure P-3) has been rejected in an illegal, arbitrary manner and in contravention of the instructions dated 26.10.2021 (Annexure P-20) as well as the provisions contained in Haryana Civil Services (General) Rules, 2016 with a further prayer to direct the



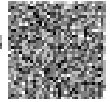
respondents to allow the petitioner to join on the post of Steno-Typist (Both Languages) along with all consequential benefits with interest thereon.

2. The brief facts of the present case are that the petitioner was selected to the post of Steno-Typist (Both Languages) on the basis of examination conducted by the respondent No.4-Haryana Staff Selection Commission (HSSC) and consequent thereupon, he was issued appointment letter vide Annexure P-3 dated 06.04.2022. In the aforesaid appointment letter, there was a specific provision that in case the terms and conditions are acceptable to the petitioner then he should report to the Deputy Superintendent (Admn.), HSAMB, C-6, Sector-6, Panchkula within 30 days from the date of receipt of the appointment letter and he should bring all his documents etc. The petitioner was already working as Stenographer Grade-III in the office of learned District and Sessions Judge, Hoshiarpur. Thereafter, the petitioner vide letter dated 05.05.2022 (Annexure P-4) made a request to the Chief Administrator, HSAMB, Panchkula for grant of more time to join his duty as Steno-Typist (Both Languages) and in the said letter he stated that because of unavoidable personal reason, he will not be able to join his duty within the stipulated period of 30 days and therefore, one month more time may be granted to him to join his duty in pursuance of the appointment letter dated 06.04.2022. The aforesaid letter dated 05.05.2022 (Annexure P-4) was written by the petitioner to the Chief Administrator, HSAMB, Panchkula prior to the expiry of 30 days, which was so granted to him at the time he was issued aforesaid appointment letter Annexure P-3. Thereafter, vide Annexure P-5 dated 07.07.2022, the office of the respondent No.3-HSAMB wrote a letter to the



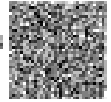
petitioner by stating that vide appointment letter dated 06.04.2022, you were to report for duty within 30 days and that you made a request to grant one month more time to join but still you have not joined so far and therefore, 15 days are granted to you to join the duty otherwise it will be presumed that you are not interested in joining the Organization.

3. The petitioner in the meantime was promoted as Stenographer Grade-II on 08.06.2022 and he was transferred to Sessions Division, Hoshiarpur from Sub-Division, Mukerian and the aforesaid letter Annexure P-5 was not received by him personally but was received by his wife. On receipt of the information, the petitioner again wrote a letter to the Chief Administrator, HSAMB, Panchkula dated 12.09.2022 (Annexure P-6) explaining him the circumstances that when he requested for grant of one month more time to join, neither any reply was given by the respondent-HSAMB nor was any reply ever received by him and since in the meantime he was promoted and transferred, the letter dated 07.07.2022 (Annexure P-5) was not received by him but was received by his wife and was not given to the petitioner within a reasonable time and therefore, the delay may be condoned in view of the aforesaid facts and circumstances. However, vide impugned order dated 11.11.2022 (Annexure P-7), the respondent-HSAMB rejected the claim of the petitioner on the ground that only maximum of three months extension can be granted for joining in view of the Instructions dated 13.09.2019 issued by the Chief Secretary to the Government of Haryana. Thereafter, the petitioner filed a writ petition before this Court bearing *CWP-5827-2023* and a Coordinate Bench of this Court disposed of the same by directing the Additional Chief Secretary to Government



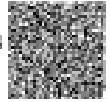
of Haryana, Agriculture and Farmers Welfare Department to decide the appeal of the petitioner, which was pending before him, within a period of one month. Thereafter, vide impugned order dated 10.05.2023 (Annexure P-19), the Additional Chief Secretary to Government of Haryana, Agriculture and Farmers Welfare Department considered the appeal of the petitioner and rejected on the same ground upon which his plea was rejected by the respondent-Board itself vide Annexure P-7.

4. Learned counsel for the petitioner submitted that the petitioner was already working as Stenographer Grade-III at Sub-Division, Mukerian in District Hoshiarpur and when his scrutiny of documents was being conducted before the Haryana Staff Selection Commission, he was diligent enough even at that point of time and submitted his technical resignation to the office of the learned District and Sessions Judge, Hoshiarpur vide Annexure P-13 but the same was thereafter withdrawn vide Annexure P-14 because at that point of time the process of selection and appointment was not completed and it was premature. He further submitted that in fact when the petitioner was to join at a new place of posting where he had applied through proper channel then it was incumbent upon the petitioner to have served 30 days technical notice at the place where he was already working and failing to comply with the same would have jeopardized and foreclosed his rights vested with the department in which he was working. He further submitted that the aforesaid was the primary reason as to why the petitioner sought 30 days extension vide Annexure P-4 since he is already employed somewhere and if 30 days more time is granted to him then he can immediately give 30 days technical resignation notice to the office where



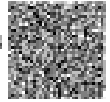
he is working so that he can thereafter join at a fresh place of posting but when he wrote the aforesaid letter to the Chief Administrator, HSAMB, Panchkula before the expiry of 30 days i.e. on 05.05.2022 vide Annexure P-4, the respondent-HSAMB neither bothered to reply to the aforesaid request which the petitioner had made in accordance with the Rules and instructions nor any order was passed for grant of extension. He further submitted that there is nothing on the record also to suggest that any such extension was ever granted by the respondent-HSAMB to the petitioner by passing any order and in this way, the petitioner was left in a state of dilemma as to whether he should give his technical resignation of 30 days to the office of the learned District and Sessions Judge, Hoshiarpur or not because it was not known to him as to whether they have accepted his prayer for extension of time or not. He further submitted that had the respondent-HSAMB accepted the prayer of the petitioner for extension of time then within 30 days he would have immediately given his technical resignation to the office of the learned District and Sessions Judge, Hoshiarpur and he would have joined the respondent-HSAMB but because of the negligence on the part of the respondent-HSAMB, which has not even been conveyed nor passed any order pertaining to the aforesaid request made by the petitioner in accordance with the instructions itself that he was not able to join the respondent-HSAMB.

5. Learned counsel for the petitioner also submitted that thereafter, vide Annexure P-5 dated 07.07.2022, a letter was written to the petitioner by the Secretary of the respondent-HSAMB in which he gave only 15 days' time to join and without even referring to whether earlier any extension was granted or



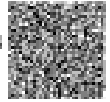
not. He further submitted that giving of 15 days' time to the petitioner to join was a futile exercise on the part of the respondent-HSAMB as it would have not served the purpose of the petitioner because he had to atleast get 30 days' time to give technical resignation which was in accordance with the instructions and there was no justification as to why only 15 days' time was given even without earlier passing of any order for extension of time which the respondent-HSAMB was under a duty to have passed. He further submitted that in this way, the petitioner could not join the respondent-HSAMB and thereafter, the impugned order dated 11.11.2022 (Annexure P-7) was passed, whereby it has been so stated that maximum extension of time that can be granted is only three months and now six months have elapsed and therefore, prayer of the petitioner for joining to the post of Steno-Typist (Both Languages) is rejected. He further submitted that the same reason has been given by the appellate authority also, who is the Additional Chief Secretary to Government of Haryana, Agriculture and Farmers Welfare Department that under the Instructions of the Government, time has elapsed and it has been so specifically stated by the Additional Chief Secretary to Government of Haryana, Agriculture and Farmers Welfare Department that he is bound by the Instructions issued by the Government and therefore, he cannot grant extension of time to the petitioner.

6. Learned counsel for the petitioner referred to the Statutory Rules in this regard where there is a provision for grant of extension of time, which are annexed along with the present writ petition as Annexure P-21 dated 19.07.2016. While referring to Rule 82, he submitted that there is a provision for the grant of extension of time beyond 30 days but there is no upper limit



fixed under the Statutory Rules and therefore, once there is no upper limit fixed under the Statutory Rules itself then the same could not have become the sole ground for non-suiting the petitioner and not permitting him to join. He further submitted that the aforesaid Instructions dated 13.09.2019 issued by the Chief Secretary to the Government of Haryana were only instructions in the nature of administrative instructions and they are contrary to the Statutory Rules and therefore, they are liable to be ignored. He also submitted that the respondent-HSAMB may be directed to now permit the petitioner to join on the post of Steno-Typist (Both Languages) as per the appointment letter dated 06.04.2022 (Annexure P-3).

7. On the other hand, learned State counsel as well as learned counsel for respondent No.3-HSAMB have jointly submitted that not only the State of Haryana but also the respondent-HSAMB are bound by the aforesaid Instructions Annexure P-8 issued by the Chief Secretary to the Government of Haryana in this regard, wherein the upper limit is three months and there is no power with the respondent-HSAMB or the Additional Chief Secretary to Government of Haryana, Agriculture and Farmers Welfare Department to have extended the period of three months. They further submitted that there is nothing on the record to show that when the petitioner initially made a request for grant of extension of time vide Annexure P-4 any specific order was passed or conveyed to the petitioner in this regard. They further submitted that it has been so stated in the aforesaid letter Annexure P-5 that the petitioner was granted one month additional time but there is no specific order in this regard as to whether the aforesaid extension was granted to him or not. They also



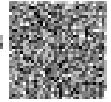
submitted that in the absence of any power to extend the period of three months, no such appointment could have been given to the petitioner.

8. I have heard the learned counsels for the parties.

9. A perusal of the annexures which have been attached along with the present writ petition which are the communications would show that when the petitioner was granted appointment letter vide Annexure P-3 dated 06.04.2022 then there was a stipulation in the appointment letter that the petitioner had to join the duty within a period of 30 days. As per the Instructions dated 13.09.2019 (Annexure P-8) issued by the Chief Secretary to the Government of Haryana, the aforesaid 30 days period can be extended for *bona fide* reasons by allowing suitable extension of time and the maximum period upto which the extension can be given is only 3 months. However, as per the Statutory Rules i.e. Haryana Civil Services (General) Rules, 2016, which have been attached as Annexure P-21, under Rule 82 there is no upper limit fixed for the Administrative Department. The relevant portion of Instructions dated 13.09.2019 (Annexure P-8) and Rule 82 of Statutory Rules, 2016 (Annexure P-21), is reproduced as under:-

Instructions dated 13.09.2019 (Annexure P-8)

“2(ii) In case a candidate, who being already in service in a Private or Government Organization/Department, is not able to join within 30 days or for bona-fide reasons, the competent authority may, where the administrative requirements permit, allow suitable extension of time which should not however exceed three months irrespective of duration of validity of waiting list.”



Rule 82 of Haryana Civil Services (General) Rules, 2016

82. (1) A competent authority may in any case extend the joining time admissible under these rules; provided the general spirit of rule is observed.

(2) Subject to maximum of thirty days, the Heads of Departments may, in the case of Government employees under their control (other than the members of All India Services), extend the joining time admissible under the rules to the extent necessary in the following circumstances:

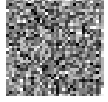
(a) When a Government employee has been unable to use the ordinary mode of travelling or, notwithstanding due diligence on his part, has spent more time on the journey than is allowed by the rules; or

(b) when such extension is considered necessary for the public convenience or for the saving of such public expenditure as is caused by unnecessary or purely formal transfer;

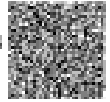
(c) when the rules have, in any particular case, operated harshly, as for example, when a Government employee has though no fault on his part i.e. missed a steamer, fallen sick on the journey, delayed on account of blockade of roads/railway track/ landslide.

Note.— The Head of Department is competent to extend joining time upto thirty days and Administrative Department has full power to extend the same beyond thirty days.

10. A perusal of the aforesaid would show that as per the aforesaid Instructions Annexure P-8, the maximum period for joining is three months irrespective of duration of validity of the waiting list and a perusal of aforesaid



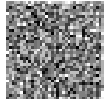
Rule 82 would show that thirty days can be extended by the Head of Department but there is no maximum limit shown and discretion is vested with the Administrative Department to extend the period of joining beyond thirty days by virtue of Note attached with the aforesaid Rule-82. An argument was raised by both the learned counsels for respondents that no extension could have been granted beyond the period of three months in view of the aforesaid Instructions dated 13.09.2019 (Annexure P-8). A perusal of both the aforesaid annexures i.e. Annexure P-8 and Annexure P-21 would show that although there was no provision which had fixed the ceiling of three months under the Statutory Rules but by way of Administrative Instructions Annexure P-8, ceiling was fixed. It is a settled law that the Administrative Instructions cannot be issued contrary to the Statutory Rules. However, at the same time it is also a settled law that Administrative Instructions can always supplement and not supplant the relevant Rules. In regard to the aforesaid two propositions of law, this Court will have to consider as to what was the rationale and objective behind grant of extension of time. The purpose of inclusion of grant of extension under Rule 82 was as a beneficial measure in the interest of the candidates, who were to join and therefore, the extension itself is beneficial in nature, which has been so conferred upon the candidates or the appointees by virtue of Statutory Rules framed under proviso to Article 309 of the Constitution of India. In case by way of any Administrative Instructions anything was required to be supplemented then the same had to be in the spirit, rationale and objective of the Rules itself being beneficial in nature pertaining to Rule 82 but the scope has been restricted while issuance of Instructions



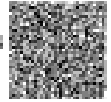
Annexure P-8, which curtailed the nature of benefit, which was conferred by way of Statutory Rules. The Administrative Instructions can be issued to supplement the letter and spirit of the Statutory Rules but they cannot curtail the rights which has been conferred under the Rules. The Note attached to Rule 82 as reproduced clearly shows that the Head of Department can extend the time by 30 days and Administrative Department can extend the same without any limit and rather has full power in this regard. Therefore, this Court is of the considered view that the aforesaid Administrative Instructions, whereby the period has been restricted would be contrary to the Statutory Rules and therefore, it has to be ignored for this purpose. Reference in this regard on the proposition of law may be laid to a Division Bench judgment of this Court passed in **Raj Kumari versus Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2008 (4) S.C.T. 411** and also the judgment of Hon'ble Supreme Court passed in **Ashok Ram Parhad and others versus State of Maharashtra and others, 2023 SCC Online SC 265** in this regard.

11. A Division Bench of this Court in **Raj Kumari's case (supra)** observed as under:-

8. "The action of the respondents in withdrawing order dated 13.03.2007 on account of subsequent amendment, on that basis the amendment made by the State of Haryana on 9.8.2007 (R-1) is absolutely unwarranted and, therefore unsustainable in the eyes of law because the 2006 Rules have been framed under Article 309 of the Constitution and the letter dated 9.8.2007 (R1) has been issued by the Financial Commissioner and Principal Secretary to Government of Haryana. It is well settled that an order passed by the Financial Commissioner cannot have the



*effect of wiping the rules framed under Article 309 of the Constitution, which in the present case were framed on 1.8.2006 (P-9). A perusal of the notification dated 1.8.2006 shows that the 2006 Rules have been framed under Article 309 of the Constitution. It is trite to observe that the rules framed under Article 309 of the Constitution cannot be varied, substituted or amended even by issuing executive instructions under Article 162 of the Constitution. In that regard reliance may be placed on a Constitution Bench judgment of Hon'ble the Supreme Court in the case of **Sant Ram Sharma v. State of Rajasthan, AIR 1967 Supreme Court 1910**, which has been repeatedly followed, relied and applied in a number of cases including **Dhananjay Malik v. State of Uttranchal, 2008(2) SCT 659; 2008(3) RAJ 249; (2008) 4 SCC 171** and **A. Manoharan v. Union of India, (2008) 3 SCC 641**, wherein it has been held that in any case such executive instructions cannot be given retrospective effect. In the present case, a letter issued by the Financial Commissioner, which can not even regarded as executive instructions under Article 162 of the Constitution, has been relied upon by the respondents to argue that the 2006 Rules framed under Article 309 of the Constitution (P-9) stand abrogated to adversely affect the rights of the petitioner. Such an argument apparently would not be acceptable. Therefore, issuance of impugned letters dated 21.09.2007 and 14.1.2008 (P6 & P-7) respectively, asking the petitioner to change her option once again by opting for one time lump-sum ex-gratia payment on the basis of the letter of the Financial Commissioner, dated 9.8.2007 as adopted by respondent No.1 on 6.9.2007, would be unsustainable and the same are, thus, liable to be set aside.*



For the reasons aforementioned, this petition succeeds. The impugned letter dated 21.9.2007 (p-6) and the reminder dated 14.1.2008 (P-7) are hereby set aside. A direction is issued to the respondents to release all the benefits to the petitioner as envisaged by order dated 13.3.2007 (P-5). The needful shall be done within a period of two months from the date of receipt of a certified copy of the order.

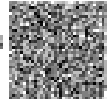
The petition stands disposed of in the above terms.

Petition allowed.”

12. The aforesaid judgment in **Raj Kumari's case (supra)** was reiterated by another Division Bench of this Court in the case of **The General Manager/Administrator, Dakshin Haryana Bijli Vitran Nigam Limited and others versus Pehladi** in **LPA No.935-2012**. Relevant portion of the same is reproduced as under:-

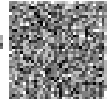
*6. As pointed out above, the option is given under the Rules. These Rules were framed under proviso to Article 309 of the Constitution of India and, thus, have statutory force. The effect thereof cannot be nullified and these Rules cannot be supplanted by the administrative instructions in the manner it is to be sought vide circular dated 08.06.2007. Not only it is a trite proposition of law in respect of these very Rules, this particular proposition has been laid down by a Division Bench of this Court in **Raj Kumari v. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2008 (4) S.C.T. 411: 2008 (4) RSJ 765.**”*

13. Hon'ble Supreme Court in **Ashok Ram Parhad's case (supra)** held as under:-

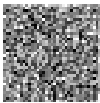


“25. In service jurisprudence, the service rules are liable to prevail. There can be Government resolutions being in consonance with or expounding the rules, but not in conflict with the same. On having set forth this general proposition, we now examine the scenario of the Rules as prevalent. If we turn to the statutory Rules framed under Article 309 of the Constitution, i.e., the 1984 Rules, Rule 2 refers to the appointment to the post of the DFO and the same to be made by promotion from amongst officers of the Maharashtra Forest Service and also by appointment directly. The Proviso to Rule 2 of the 1984 Rules is unambiguous and quite clear, i.e., the period spent on training at Government Forest Colleges and other period of probation including extended period of probation, if any, “shall not be counted towards the requisite period of service.” Thus, what is envisaged is that the appointment is different from the recruitment process, which starts with the commencement of training. There can be possibilities of a candidate not completing the training satisfactorily, thereby resulting in the candidate’s removal on probation. Such probation period can also be extended to see whether a candidate improves in performance. (Hence, even if the Government Resolution dated 25.01.1990 upgraded the post.” of ACF from Class II to Class I, the Proviso to Rule 2 of the 1984 Rules will continue to hold valid in determining the period of service.)

14. As per the facts of the present case, even otherwise also it suggests that when the petitioner was granted appointment vide Annexure P-3 and he was granted 30 days’ time for joining then before the expiry of 30 days, he wrote a letter to the respondent-HSAMB vide Annexure P-4 i.e. on 05.05.2022 by stating that he will not be able to join because of unavoidable personal



reason and extension may be granted to him for one month. However, admittedly there was no order passed on the basis of request made by the petitioner for the grant of extension nor any such order has been placed on record. In this way, it is *ex facie* clear that the respondent-HSAMB has failed to discharge its duty to have not passed an order on extension. The aforesaid would gain more significance because of the reason that why the petitioner was wanting extension of time. He was already working in the Sub-Division, Mukerian in District Hoshiarpur and he had applied for the post of Steno-Typist (Both Languages) in the respondent-HSAMB through proper channel and for that purpose he had to tender technical resignation by giving 30 days' notice and to attain the aforesaid objective at least to save his service benefits, he wanted 30 days' time but the respondent-HSAMB negligently did not pass any order on the request of the petitioner, which it was bound to do so. However, surprisingly when Annexure P-5 was passed on 07.07.2022, then it has been so noted by the Secretary of the respondent-HSAMB that the petitioner had requested for one month time to join. In other words, the respondent-HSAMB itself has acknowledged that the petitioner had made a request for grant of extension and therefore, there is no denial of the same at all which is so reflected in the aforesaid order Annexure P-5. On the top of it, the respondent-HSAMB gave only 15 days' time to the petitioner instead of giving 30 days' time as requested by him. There was no rationale or objective behind giving only 15 days' time because the petitioner had wanted an extension of 30 days and there was no justification to have granted only 15 days' time. The net consequence of the same was that the petitioner was left in a state of dilemma



because he could not have tendered his technical resignation before the office of learned District and Sessions Judge, Hoshiarpur because he was not sure as to whether the HSAMB will grant him employment or not. This Court is of the considered view that the rights of the petitioner have been jeopardized because of the negligence on the part of the respondent-HSAMB to have not considered and replied to the petitioner before deciding the initial request of the petitioner, which he made vide Annexure P-4 dated 05.05.2022 for grant of extension of time.

15. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed. The impugned orders dated 11.11.2022 (Annexure P-7) and dated 10.05.2023 (Annexure P-19) are hereby set aside. The respondent-HSAMB is hereby directed to issue a letter to the petitioner permitting him to join the services after giving him clear cut 30 days' time from receipt of such letter in order to enable him to tender his technical resignation to the office of the learned District and Sessions Judge, Hoshiarpur, if he so desires, and thereafter, proceed in accordance with law. The aforesaid exercise be completed within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

01.08.2024
Chetan Thakur

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