



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204/2

CWP-28194-2022 (O&M)
Date of Decision:01.08.2024

Rahul

....Petitioner

Versus

State of Haryana and others

.....Respondents

Balvinder Kumar

CWP-28024-2023(O&M)

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON’BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Raj Kapoor Malik, Advocate
for the petitioner in CWP-28194 of 2022.

Mr. Sanjay Verma, Advocate
for the petitioner in CWP-28024 of 2023.

Ms. Vibha Tewari, AAG, Haryana

AMAN CHAUDHARY, J. (Oral)

1. These cases involve similar issues and therefore, are being disposed of together by this common judgment.
2. The grievance of the petitioners is the issuance of show cause notices, vide which they have been shifted to the waiting list, despite having worked with the Department for more than 3 years.
3. The petitioners had applied for the post of Multipurpose Health



Worker (Male) under BC-B category pursuant to the advertisement dated 19.06.2015, whereupon, having scored more than the last selected candidate, were selected, consequently issued appointment letters on 28.06.2019 and successfully completed their probation period, an admitted fact.

4. Meanwhile, Preet Pal and Hemant Kumar filed CWP-15413-2020 and CWP-15469-2022, respectively, which were disposed of as having become infructuous, as during pendency whereof, the Commission had recommended their names for appointment, having secured 100 marks each. Pertinently the petitioners, who were not arrayed as a party respondents in the former petition, though petitioner-Rahul was in the latter, were issued impugned notices dated 16.11.2022 and 24.11.2023, as per which, he was moved to the second waiting list in BC-B category, while petitioner-Balwinder Singh to first. The same having been made a subject matter of challenge in the present petitions, this Court vide orders dated 09.12.2022 and 13.12.2023 stayed the operation thereof, in the wake of which, the petitioners are still continuing in service.

5. In a case similar to the present, Hon'ble the Supreme Court, in **Vikas Pratap Singh and others vs. State of Chattisgarh**¹, noticing that the appointment of the appellants, who had been selected as per the un-revised merit list, remained in service for more than three years under interim orders, was canceled to make way for certain deserving candidates who were unfortunately left out, observed that, “Therefore the only question which survives for consideration and decision is whether after having undergone training and assumed charge at their place of posting the 26 appellants be ousted from service



on the basis of cancellation of their appointment qua the revised merit list.” It held that, “Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.” The relevant paras further read thus:

“21. Shri Rao would submit that the case of these appellants requires sympathetic consideration by this Court, since the appointment of appellants on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 appellants from service after having successfully undergone training and serving the respondent-State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to eight appellants amongst them who have now become over aged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in **Rajesh Kumar and Ors. v. State of Bihar and Ors., 2013(3)**



S.C.T. 449 : 2013(3) SCALE 393 wherein this Court has directed the respondent-State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re- evaluation and directed the respondent-State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

22. The pristine maxim of *fraus et jus nunquam cohabit* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] , *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] and *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94].) It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (see *Vinodan T. v. University of Calicut* [(2002) 4 SCC 726 : 2002 SCC (L&S) 606] ; *State of U.P. v. Neeraj Awasthi* [(2006) 1 SCC 667 : 2006 SCC (L&S) 190]).

23. In **Girjesh Shrivastava v. State of M.P** [(2010) 10 SCC 707 : (2011) 1 SCC (L&S) 192] , the High Court had invalidated the rule prescribing selection procedure which awarded grace marks of 25 per cent and age relaxation to the candidates with three years' long non-formal teaching experiences as a consequence of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a considerable length of time an order for cancellation of appointment would severely affect economic security of a number of candidates... xx xx

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25. This Court in **Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat** [1994 Supp (2) SCC 591 : 1994

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SCC (L&S) 1159 : (1994) 28 ATC 78] although recorded a finding that appointments given under the “wait list” were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In **Buddhi Nath Chaudhary v. Abahi Kumar** [(2001) 3 SCC 328 : 2001 SCC (L&S) 589 : (2001) 2 SCR 18] even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed: (SCC p. 331, para 6)

“6. ... We have extended equitable considerations to such selected candidates who have worked in the post for a long period....”

(See *M.S. Mudhol v. S.D. Halegkar* [(1993) 3 SCC 591 : 1993 SCC (L&S) 986 : (1993) 25 ATC 91 : (1993) 2 LLJ 1159] and *Tridip Kumar Dingal v. State of W.B.* [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])

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29. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

30. We clarify that their appointment shall for all intents and purpose be fresh appointment which would not entitle the appellants to any back wages, seniority or any other benefit based on their earlier appointment. ”

6. In response to the direction issued by this Court in CWP-28194-2022, an affidavit dated 21.05.2024 has been filed by the Deputy Director, Health Services (Malaria), Sector 6, Panchkula stating therein that there are approximately 700 fresh posts, including those reserved for BC-B category, of Multipurpose Health Worker (male) that are still lying vacant.

7. Indubitably, the petitioners have been diligently working continuously for more than 5 years, since 2019, thus to oust them, only due to revision of result, would undermine the principles of justice and fairness. It is not a case of concealment, fraud or misrepresentation on their part, in order to secure an appointment, rather they invested significant time and effort in their roles,



therefore it would disrupt their lives and would be unjust and inequitable.

8. Having considered the peculiar facts and circumstances of the cases, in light of the afore-referred legal pronouncement, the impugned show cause notices dated 16.11.2022 and 01.12.2023, are hereby set aside. The respondents are directed to restore the services of the petitioners alongwith consequential notional benefits in accordance with law. Needful be done within a period of two months, from the date a certified copy of the judgment is received by them.

9. The present petitions are disposed of accordingly.

10. A copy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

August 01, 2024
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Whether speaking : Yes/No

Whether reportable : Yes/No