



**CM-4168-CWP-2024 in/and
CWP-30180-2022**

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

(110+255)

**CM-4168-CWP-2024 in/and
CWP-30180-2022**

Date of Decision : May 20, 2024

Suman Chaudhary

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate, for the applicant-petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

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As prayed for, the application is allowed.

Annexures P-9 to P-11 are taken on record.

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1. In the present writ petition, the grievance being raised by the petitioner is that certain posts which are part of the rules governing the service, cannot be filled up till the Rules governing the service i.e. Haryana Vidhan Sabha Secretariat Service Rules, 1981, are amended suitably.

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2. Learned counsel for the petitioner submits that vide Advertisement No.1 of 2022 dated 05.12.2022 (Annexure P-5), certain posts which have not been mentioned in Appendix A, are being filled up by adopting the selection process, which is contrary to 1981 Rules.

3. Learned counsel for the petitioner further submits that for all the posts, which have been advertised, first preference should be given to the employees, who are already working in the Department by way of promotion and it is only in case no eligible employee is available, the posts should be filled by way of direct recruitment.

4. Learned State counsel, on the other hand submits that the claim of the petitioner that only the employees who are working with the Department are to be considered for promotion against the posts which have been advertised, cannot be accepted as the posts in question are not part of 1981 Rules and once the posts are not part of 1981 Rules, the competent authority i.e. the Speaker, is very much competent to decide as to how the said posts are to be filled up by prescribing due criteria as well as essential qualification and hence, the claim of the petitioner as raised in the present writ petition qua the post of Web-cum-Database Administrator or the Senior Technical Professional, may kindly be rejected.

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

6. It is a settled principle of law that the Rules governing the service will only be applicable on the posts which are part of the rules. As per Rule 3 of 1981 Rules, 1981 Rules will apply, only on those posts



which have been mentioned in Appendix A. It is a conceded fact that the posts which have been advertised are not part of Appendix A but have been created by the Department and Rules qua the said advertised posts are yet to be framed. Once, the posts in question, qua which the advertisement has been issued, which action of the respondents is being opposed by the petitioner are not mentioned in the 1981 Rules, 1981 Rules cannot be made applicable in any manner.

7. Further, as per the settled principle of law, in case any post is not governed by any Rules, the authority competent to make appointment, is within its jurisdiction to prescribe the method/procedure as well as the essential qualification for the post in question. In the present case, the Speaker, who is the competent authority i.e. the appointing authority has prescribed the procedure to be adopted i.e. direct recruitment, which cannot be objected to by the petitioner. The reliance being placed upon 1981 Rules will not be applicable.

8. Even otherwise, as per 1981 Rules, Rule 9 describes that the method of recruitment to any post in the service other than the post of Secretary, shall be determined by the Speaker. The reliance is being placed upon the Note (iii) given in those Rules according to which, in case of non-availability of qualified/experienced person from the Office, the post in different categories shall be filled up by way of direct recruitment. There is a conflict between Rule 9 and Note (iii). Note (iii) is only a guideline and will not override a Rule which give a specific authority to the Speaker to decide the method of recruitment. In case of conflict, the Rule will prevail



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over the note given as the note is only a guideline.

9. Keeping in view the above, no ground is made out for any interference by this Court in the present case.

10. Dismissed.

May 20, 2024 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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