



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

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CWP-30524-2024
Date of Decision: 12.11.2024

TEJ SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Hari Om Sharma, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Instant writ petition, in the nature of Quo Warranto, has been instituted by the petitioner, who is a 72 years old man, challenging the order dated 08.12.2023 (Annexure P-2), whereby 27 persons have been appointed as Assistant Transport Officers on Deputation basis in the Department of Transport, Punjab, against 37 posts on the ground that reservation has not been followed.

Learned counsel for the petitioner contends that his limited challenge to the said appointment is that the provisions of the Punjab Scheduled Castes and Backward Classes (Reservation of Services) Act, 2006 (hereinafter referred to as Act of 2006), mandating reservation in Group C and Group D posts, has not been followed. The relevant Clauses No.4(4) and 4(8) are extracted as under: -

“4(4). The percentage of reservation for filling up the vacancies by promotion by Scheduled Castes in Group ‘C’ and Group ‘D’ services shall be twenty per cent.



XXX

XXX

XXX

XXX

4(8). *Reservation shall also be applicable to proforma promotion and appointment by transfer.*”

This Court posed a primary question to the counsel for the petitioner as to whether the private respondents were otherwise eligible to hold the post and fulfilled the qualification, he did not dispute the same. A question was thus posed as to whether the appointing Authority lacked competence, which was also not disputed.

The writ petitioner claims to be a President of some “Reservation Bachaw” organization and emphasizes that since the mandatory reservation requirement has not been followed, hence, the instant petition has been filed.

The petitioner has also not made any reference in the writ petition as to whether any member of the scheduled caste had applied for the post or not. So much so, there is no averment even to the effect that none of the 27 persons taken on deputation belong to the reserved category. A general and vague pleading that reservation has not been followed has been levelled. The said challenge is based solely on the ground of the memo dated 14.09.2023 sent to all the Heads of the Departments. The order of deputation dated 08.12.2023 also does not mention about any caste of the officials. The writ petition is thus severely lacking in basic pleadings and considering that the order of deputation itself was nearly 11 months old, there is no reason as to why the rules of basic pleadings and establishing a *prima facie* case ought not to have been followed. The petitioner not being a person prejudiced or having any interest, the burden to make out a *prima facie* case was in any case more.



It seems that the present petition has been filed more for extraneous considerations or political motives rather than pursuing any actual cause, in an over-driven zeal to be a champion of the cause. Ordinarily such a petition would be dismissed solely for the above reasons alone, however, yet the statutory provision has been examined for an academic clarity of the petitioner.

A specific question was also put to the counsel for the petitioner as to whether a 'deputation' is actually an 'appointment' as intended under the Act of 2006. He has also been confronted with Section 2(a) of the Act of 2006 which defines appointments and the same reads as under:

“2. In this Act, unless the context otherwise requires,-

(a) “appointment” means an appointment made by direct recruitment, by promotion or by transfer of a person already in service of the Government of India or a State Government;

(b)-(h) XXX XXX XXX”

It is thus evident that even the definition of “appointment” under the statute that has been invoked by the petitioner, a “deputation” is not considered as an “appointment”. Hence, the primary requirement of there being an “appointment” in the manner prescribed, not being fulfilled, invocation of a writ jurisdiction would be misplaced and would be severely deprived in merit.

Once the terms “appointment” has been defined exhaustively by use of the word “means” under Section 2(a) of the Act of 2006, any generic understanding of the expression cannot be read into the statute. In doing so, a litigant as well as the Court infuses into a law, what is not provided therein. A Court does not legislate and rather interprets what the legislature enacts.



Surprisingly and conveniently, the petitioner has given definition of “deputation” but chose to omit “appointment” and the carefully crafted legislative provision. Relevant provisions relied upon by the petitioner have already been extracted above.

Section 4 of the Act of 2006 provides for percentage of reservation while making appointment (which has to be read or defined and does not include “deputation”).

Section 4(4) of the Act of 2006 provides 20% reservation for filling up posts by promotion, in Group ‘C’ and ‘D’ services and Section 4(8) of the Act of 2006 extends the same also to the ‘proforma promotion’ and ‘appointment by transfer’. Neither of the said clauses is applicable since it is neither an appointment by way of promotion nor by way of transfer.

Counsel for the petitioner also could not assist the Court on the basis of any law that could support his argument or suggestion.

The distinction between “appointment” and “deputation” is real and substantive in service jurisprudence. While “an appointment” relates to the process of selecting a person in a specific position or post by way of recruitment as prescribed, it necessarily integrates the individual to become a part of the said organization but a “deputation” denotes a temporary attachment to a department/post or position, for any specific period, while retaining lien on the earlier post. Thus, while a person appointed in the organization is subject to Cadre Controls, service conditions and rules as well as punishment and appeal rules of the said organization, the same are not applicable to the person

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temporarily brought by way of a deputation. He thus continues to be governed by the rules and confines applicable to his parent organization.

The concept of appointment by Direct Recruitment or by way of promotion need no elucidation. Even in a case of appointment by way of transfer, there has to be an element of permanent shifting of an employee from one statutory governing service rules, cadre and service conditions to the other. Such an individual thereafter ceases to belong to his original cadre or have any lien on the same.

The institution of present petition is thus based on complete lack of understanding of the nature of the nature of engagement and applicability of the statute involved, on the engagement under challenge.

Surely such aspects being legal concepts are deemed to be known (being the law) but in any case, it enjoins a greater responsibility on the Advocate to give proper advice, being an integral part of Administration of Justice. A responsibility also falls on the advocates to take steps to avoid institution of cases which fail on primary legal aspects.

Being an utter abuse of process of law and having been filed for malicious and mischievous purposes, the present petition is hereby dismissed in *limine*.

NOVEMBER 12, 2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No