

(2014) 05 P&H CK 0454
In the Punjab And Haryana At Chandigarh
Case No : CWP Nos. 3019 and 3271 of 2012

Krishan Kumar

APPELLANT

Vs

State of Haryana etc.
 Phull Kumar Gaur Vs State of
Haryana and Others

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(II)

Citation : (2014) 05 P&H CK 0454

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : R. Kartikeya, Advocate in CWP No. 3019 of 2012 and Mr. N.C. Kinra, Advocate in CWP Nos. 3271 and 3275 of 2012, Advocate for the Appellant; Shivendra Swaroop, D.A.G., Haryana for Respondent-State, Mr. Arun Walia, Advocate for Respondent No. 2 and Mr. H.N. Mehtani, Advocate for Respondent No. 3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—By this judgment, three petitions bearing CWP Nos. 3019 of 2012, 3271 of 2012 and 3275 of 2012 shall be disposed of as common question of law and facts are involved in all these petitions. However, for the sake of convenience, the facts are being extracted from CWP No. 3019 of 2012.

2. The Haryana Public Service Commission i.e. respondent No. 3 (here-in-after referred to as "the Commission") issued an advertisement inviting applications for direct recruitment of four posts of Environmental Engineer in response to the requisition sent by Haryana State Pollution Control Board i.e. respondent No. 2 (here-in-after referred to as "the Board"). The upper age limited for applying the said post was 40 years. Thereafter, a corrigendum was issued by providing five years" relaxation in upper age limited for the candidates who were in government service. The petitioner was approximately 44 years of age and was not eligible as per conditions of age prescribed in the advertisement but he

became eligible in view of the corrigendum. Subsequently, a relaxation of five years" was given to the candidates who were already in government job. The petitioner applied through proper channel. He was selected on the said post and joined the department on 13.12.2004 on the basis of appointment letter issued to him. Subsequently, various FIRs were registered against Members and Chairman of the Commission, where the allegations of irregularities and illegalities were there in selection of the candidates of various posts. An FIR No. 12 dated 05.09.2007 was registered under Sections 420, 120-B IPC, 467, 468, 471 and 13(1)(d) and 13(II) of the Prevention of Corruption Act against the petitioner and others, alleging that the corrigendum issued by the Commission by giving relaxation in upper age limit up to 45 years was illegal and just to give benefit to the petitioner and two others, who were selected along with the petitioner. It was also the allegation that the Members and Chairman of the Commission had wrongly selected the petitioner, whereas, he was not eligible. Petitioner was suspended vide order dated 19.03.2008 by the Chairman of the Board. The other two Environmental Engineers, who were selected and appointed along with the petitioner, were also suspended. Thereafter, the charge sheet was issued under Rule 7 of HCS (P&A) Rules 1987 and enquiry proceedings were accordingly initiated against them. In the enquiry conducted by Vigilance Department, the allegations were proved. The charges were framed against the petitioner which were also challenged by way of filing Crl. Misc. No. M-1513 of 2010. The enquiry report was sent to the respondent-Board. After giving opportunity of personal hearing by the Punishing Authority, the petitioner was removed from the post of Environmental Engineer vide order dated 10.02.2012, which is a subject matter of challenge in the present petition.

3. The order of removal has been challenged by the petitioner by raising various arguments like he was eligible after issuance of corrigendum and has no role to play in issuance of same and as such, he cannot be held liable for the same. There was no concealment about the age and only when he became eligible in view of corrigendum, he applied through proper channel and was selected on the post.

4. Learned counsel for the petitioner submits that the petitioner was having no role in any manner either in issuing the corrigendum or in the selection. As per letter sent by the respondent-Board, the relaxation of upper age was also given to other Government employees and not only this time but earlier also, the relaxation was given. Neither the selection nor appointment of the petitioner has been challenged. The petitioner was fully eligible as per educational qualification and was given age relaxation in view of corrigendum. Learned counsel also submits that the age relaxation was also given in case of other similar situated officers. The enquiry conducted against the petitioner was accepted by the respondent-Board, wherein, the petitioner was found innocent and the allegations levelled in the charge-sheet were not proved.

5. Mr. Kinra, Advocate appearing for the petitioner in CWP No. 3271 of 2012 and

CWP No. 3275 of 2012 submits that there was no concealment on the part of the petitioners and in case of appointment even without having the requisite qualifications, their services cannot be terminated as has been held in the judgment of this Court in case Sarabjeet Kaur Dhaliwal vs. Punjab Agricultural, Ludhiana 2003(4) SCT 132.

6. Learned counsel for the Commission submits that the corrigendum was issued on the basis of letter sent by the respondent-Board. Learned counsel for respondent No. 3 submits that the age as per advertisement was 20-40 years. The corrigendum was issued on 26.10.2004 for giving relaxation in upper age for the employees of Government/Board/Corporation at their own level without any approval of the Board or the Government. The enquiry was conducted by the Vigilance, wherein, it was found that the petitioner and other two candidates were not fulfilling the criteria of age prescribed as per the Board (Group A, B, C and D) Services Regulations, 2004. There were serious allegations of corruption against the petitioner and other candidates. Even an FIR was registered against the Members and Chairman of the Commission as well as the selected candidates and the charges were also framed by the trial Court against the petitioner and others.

7. Learned counsel for the Board also submits that the appointment of the petitioner was in violation of Services Regulations Rules, 2004 and the impugned order of removal has been passed after completing all formalities including affording of opportunity of hearing and show cause notice as well.

8. Heard the arguments of learned counsel for the parties and gone through the impugned order as well as other documents on the file.

9. The impugned order has been challenged mainly on the ground that the petitioner became eligible on the basis of corrigendum issued subsequently and there was no concealment on the part of the petitioner and he has no role to play in any manner. It is also the argument of learned counsel for the petitioner that as per provision of Sections 3.6 and 3.7 of the Civil Service Rules Vol. 1 Part-I, the petitioner was entitled for relaxation of upper age of five years.

10. The provisions of Civil Service Rules are not applicable in case of appointment of the petitioner but the respondent-Board has its own rules where there is no provision of relaxation of upper age. Even it has come on record that no requisition was sent by the respondent-Board to the Commission for issuing corrigendum and the same has been issued on its own as has been admitted in the written statement filed by the respondent-Board. A specific averment has been made in the affidavit filed during pendency of the petition by Under Secretary to Government of Haryana, Environment Department, Haryana, Chandigarh on behalf of respondent No. 1, wherein, it has been stated that the Board has framed its own Rules with the approval of the Government called as Haryana State Pollution Control Board (Group A, B, C and D) Service Regulations, 2004 and there is no provision for granting relaxation in upper age limit. It has

also been mentioned in the affidavit that the office of Chief Secretary to Government Haryana, on the request of respondent No. 1, has clarified vide letter dated 25.07.2013 that there are no instructions regarding relaxation in the upper age limit for the candidates in services of Government/Board/Corporations belonging to General Category for appointments from one department to another department. A specific stand has also been taken by respondents No. 1 and 2 in the written statement, which is on record, that the Commission issued the corrigendum on 26.10.2004, whereby, five years" relaxation in upper age for the employees of Government/Board/Corporation was granted at their own level without the approval of the Board or the Government.

11. During inquiry, it was found that the petitioner was over age and was ineligible for the post of Environmental Engineer at the time of his appointment and his appointment was contrary to the provisions of Haryana State Pollution Control Board Service Regulations, 2004. The report of the Inquiry Officer was accepted by the competent authority and the action was taken thereupon accordingly. The order of removal was passed in accordance with Services Regulations Rules, 2004. Neither any malafide has been alleged against the competent authority, who has passed the impugned order, nor any violation of rules/regulations is there in any manner. Although, the allegation of giving bribe to the members of the Commission or the members of the Selection Committee were there but were not proved in the inquiry. The issue of over age and ineligibility has been established. It is not only a case of illegal appointment but of granting benefit of upper age relaxation as well as benefit of age relaxation has been granted by the Commission contrary to the provisions of Rules even without any requisition of age relaxation sent by the Board whereas the Commission was not competent to issue corrigendum on its own level without having any requisite requisition. Due to said corrigendum, the petitioners were made eligible.

12. Hence, I do not find any reason to interfere with the impugned order and the present petition, being devoid of any merit, is hereby, dismissed.