

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/829/2020**

ORDER RESERVED ON 09.12.2020

DATE OF ORDER: 23.12.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Anusuya Yadav

Age about 38 years

Daughter of Sh.Ashok Kumar

Resident of House No.25

Type-III, M.D.University Campus

Rohtak-124001, Haryana.

....Applicant

(By Advocate Shri Nitin Rathee – through video conference)

Vs.

1. State of Haryana

Through Chief Secretary

to Government of Haryana

Haryana Civil Secretariat

Chandigarh.

2. Additional Chief Secretary to

Govt. of Haryana

Department of Higher Education

Civil Secretariat, Chandigarh.

3. Director General

Higher Education Haryana

Shiksha Sadan

Sector-5, Panchkula.

4. Haryana Public Service Commission

Bays No.1-10

Block-B, Sector-4, Panchkula

Haryana through its Secretary.

5. Maharishi Dayanand University
Rohtak through its Registrar.Respondents

(By Advocates Shri D.S.Nalwa, Additional Advocate General, Haryana, for R1,
R2 & R3 & Shri Arjun Partap Atma Ram for R4 – through video conference)

O R D E R

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant had filed a Civil Writ Petition No: 11863 of 2020 before the Honourable High Court of Punjab and Haryana on 8th of August, 2020, praying therein, for the following relief:

- i. Issuance of writ in the nature of certiorari/mandamus, for setting aside the order dated 6 August 2020 qua the petitioner issued by respondent number 4, vide which the petitioner was declared ineligible to appear in the examination to be conducted by the respondent number 4 for recruitment for 5 IAS officers of Haryana Cadre from amongst the Non-State Civil Services Officers, for the select list of the year 2019.
- ii. Direct respondent number 4 to issue a roll number to the petitioner to appear in the written examination for the post of the IAS of Haryana cadre from Non-State Civil Services Officers, and to issue direction to conduct examination of the petitioner, considering her fully eligible and qualified for the same as per their advertisement No: 1 of 2020 dated 20th June 2020.

2. The High Court, had ruled that the petition relates to the candidature of the petitioner for appointment to the Indian Administrative Service. Hence it would fall within the jurisdiction of the Central Administrative Tribunal in the light of section 14 of the Administrative Tribunals Act, 1985. It was directed that the case be put up before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh on 2nd November 2020.

3. Accordingly, on receipt of the case from the Honourable High Court, the case was renumbered as OA/60/829/2020 and was listed for hearing on 4th of November 2020 before the CAT Chandigarh Bench.

4. The pleadings made by the petitioner before the Honourable High Court along with the reply filed by the respondents were transferred to this Tribunal. The matter was subsequently heard by the bench.

5. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri Nitin Rathee, are as follows:

- a) The applicant passed her Bachelor of Laws from Maharishi Dayanand University, Rohtak in the year 2004 and passed Degree in Master of Laws from Maharishi Dayanand University, Rohtak. She was selected and appointed as Assistant Professor in the Department of Law, Maharishi Dayanand University, Rohtak on 30.12.2008 and confirmed as such on 30.06.2011. The applicant, during her service, has also obtained her Ph.D from Maharishi Dayanand University, Rohtak in the year 2015.
- b) Pursuant to the advertisement No.1/2020 dated 20.06.2020 issued by respondent No.4, the applicant had applied for the post through online and also submitted her application through her department i.e. Director General, Higher Education, Haryana.
- c) The applicant is fully eligible and qualified as per regulations No.IV of the Indian Administrative Service (appointment by selection) regulation 1997 as well as the Government of Haryana order dated 09.06.2020.

d) The post of the applicant which she is holding is declared as a Group-A post (earlier known as Class-I post) under order dated 09.04.2002 and 11.03.2011 issued by government of Haryana in pursuant to the order dated 31.12.1997.

e) Although, as already explained by the applicant, she is fully eligible and qualified as per the regulations issued by Government of India of 1997 as well as the order dated 09.06.2020 issued by Government of Haryana and advertisement No.1/2020 dated 20.06.2020 issued by respondent No.4, the respondent No.4 without giving any notice or hearing to the applicant, declared her ineligible to appear in the examination notified by respondent No.4. The respondent No.4 put up a list of ineligible candidates on the website of Haryana Public Service Commission on 06.08.2020 along with a separate list of eligible candidates. The applicant was declared ineligible and her name figures at Sl.No.59 in the list of ineligible candidates. No reason whatsoever was given for declaring her ineligible, nor was any notice or hearing given to the applicant, before putting her in the list of ineligible candidates.

f) As per the regulations of 1997 issued by Government of India, the State Government is required to send a proposal for consideration, of persons not belonging to the State Civil Service but serving in connection with the affairs of the State who,

- i. Are of outstanding merit and ability; and
- ii. Hold a Gazetted post in a substantive capacity; and
- iii. Have completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his

case is being considered, on any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service.

The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year;

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier Select List, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations.

g) In pursuance to the aforesaid regulations of 1997, the Government of Haryana further issued a notification dated 11.03.2011 vide order No.66/6/2001-6S(1), vide which the State Government declared all Group-A Posts(previously Class-I posts) in all departments under the Government of Haryana equivalent to the post of Deputy Collector in the State Civil Services for the limited purpose as specified in the regulations of 1997. However, these excluded officers from:

1. State Police Service
2. State Forest Service
3. Haryana Civil Service (Judicial branch), and all Boards, Corporations and other autonomous bodies which are not covered in definition of State Government.

h) The applicant has further submitted that she is working in the Department of Law of Maharishi Dayanand University, Rohtak which is in complete control of the State of Haryana. It is incorporated under Maharishi

Dayanand University Act, 1975. The Governor of Haryana is the Chancellor of the university and Vice Chancellor is appointed by the Chancellor and it comes under the Department of Higher Education, Haryana. Since the petitioner being an Assistant Professor working in the Department of Law, Maharishi Dayanand University, Rohtak, holding a gazetted post against substantive capacity since December 2008, and is below the age of 56 as on 1.1.2019, is fully eligible and qualified for the post and as such order dated 6.8.2020 passed by respondent No.4 declaring the applicant ineligible is liable to be set aside.

- i) The applicant has claimed that many persons similarly situated like her were declared eligible to appear in the examination. She has cited candidates amongst the list of eligible candidates from Sl.No.173 to 268 who are working in the Department of Higher Education like the applicant and have been declared eligible. She has also cited the name of Dr.Antariksh Deep figuring at Sl.No.279 in the list of eligible candidates who is working as Controller of Examination in Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak which is declared as an autonomous body by the State of Haryana.
- j) Since the respondents had declared the applicant ineligible without giving any reason and without following the law of natural justice, hence, the action of the respondents is arbitrary as well as illegal.

6. The respondent No.1 in his reply statement has averred the following:

a) The applicant is working as Assistant Professor in the Department of Law, Maharishi Dayanand University, Rohtak, Haryana. The applicant is not a Government employee and, therefore, is not eligible for the said selection in terms of order dated 11.03.2011 issued by the State Government. According to the said order, employees of all Boards/Corporations and other autonomous bodies are not eligible as they are not covered in the definition of Government Departments.

b) The words/terms ‘Government employee’, ‘Government’ and ‘Service’ has been defined in the Haryana Civil Services (General) Rules, 2016 as follows:-

(36) “Government Employee” except as otherwise provided in these rules of any other rules means a member of State Services Group A, B, C or D whose-

- i. conditions of service are regulated by rules made by the Governor of Haryana under the proviso to article 309 of the Constitution of India;*
- ii. appointment is made on regular basis in connection with the affairs of Government of Haryana; and*
- iii. pay is debited to Consolidated Fund of the State of Haryana except when serving on foreign service or deputation;*

But it shall not include persons-

- 1. In casual or daily-rated or part-time employment;*
- 2. Paid from contingencies/contingent charges;*
- 3. Of work-charged establishment; and*
- 4. Appointed on contract basis;*

(37) “Government” means the Government of the State of Haryana in the Administrative Department.

(78) “Services” means the civil services under the administrative control of the Haryana Government classified as under:-

- 1. the State Civil Services, Group A;*

- 2. the State Civil Services, Group B;*
- 3. the State Civil Services, Group C;*
- 4. the State Civil Services, Group D;*

c) The combined reading of Regulation-4(1) and Regulation-4(1) (iii) of “The Indian Administrative Service (Appointment by Selection) Regulations, 1997, reveals that the State Government shall consider the case of a person not belonging to the State Civil Services, who has completed not less than 8 years of continuous service under the State Government in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the persons for consideration of the Committee.

d) Taking into consideration the definition of ‘Government employee’, ‘Government’ and ‘Service’ as reproduced above, the service rendered in Boards/Corporations/Universities cannot be termed as Government Service.

e) The employees of Universities cannot be said to be Government employees. There is an intelligible differentia to distinguish the employees of the State Government vis-a-vis employees of Universities. Further, there is no master and servant relationship between the applicant and the State Government. The applicant is the employee of a separate entity governed by the different set of rules. In fact, the employees of separate entity do not get their salary from the State Government and therefore cannot be considered as member of service of the State Government. The services of employees of statutory authorities cannot be

treated as equivalent to services rendered by the Government employee in the various departments of the Government of Haryana.

f) The order passed by the Government dated 11.03.2011 vide which employees of Board/corporations etc. are being held ineligible came up for consideration before the a Division Bench of the Hon'ble Punjab & Haryana High Court, Chandigarh in CWP No.9127 of 2020 titled as "Ashish Dhull and another versus State of Haryana and others". Hon'ble High Court had upheld the order of the Government dated 11.03.2011(Annexure-R/1/2). Therefore, the present Original Application being devoid of merit is liable to be dismissed.

7. After going through the pleadings made by both the parties and after hearing the arguments submitted by the learned counsels for the applicant as well as the respondents, it needs to be adjudicated whether the applicant working on the post of Assistant Professor in the Law Department of Maharishi Dayanand University, Rohtak can be considered as having the status of a Government servant and be consequently eligible to apply against the advertisement issued by respondent No.4 for selection against 5 posts of IAS of Haryana cadre from Non-SCS quota.

8. A careful reading of the IAS (Appointment by Selection) Regulations, 1997 indicate the following qualifications for a person to be considered for selection as IAS officer under Non-SCS quota;

- a. He/She should be of outstanding merit and ability
- b. He/She should hold a Gazetted post in a substantive capacity and

- c. He/She should not be belonging to the State Civil Service but serving in connection with the affairs of the State
- d. He/She should have completed not less than 8 years of continuous service under the State Government on a post which has been declared equivalent to the post of Deputy Collector in the State Civil Service.

9. The State Government vide its order dated 11.03.2011 had declared the following posts under the State of Haryana to be equivalent to the post of Deputy Collector in the State Civil Service for the limited purpose as specified in the IAS Regulations 1997:

“All Group-A posts (previously Class-I posts) in the Departments under the Government of Haryana excluding the following officers from (i) State Police Service (ii) State Forests Service (iii) Haryana Civil Service (Judicial Branch); and All Boards/Corporation and other autonomous bodies which are not covered in the definition of Government Departments”.

10. The Hon'ble High Court of Punjab and Haryana in the case titled as *Deepak Kumar & Others vs. State of Haryana & Others* on 29.07.2019 had dealt with the similar issue relating to the employees serving in Haryana Shehri Vikas Pradhikaran and Haryana State Agriculture Marketing Board, Panchkula. It had ruled that these institutions have been treated by a separate statute and cannot be termed as Government Departments. Employees working in the Corporations, Co-operative Societies who have been controlled by the State cannot be termed as employees of the Government.

11. The Hon'ble Supreme Court in *Dr. Gurjeewan Garewal (Mrs.) vs. Dr. Sumitra Dash (Mrs.) and others*, (2004) 5 Supreme Court Cases 263, have explained the

term 'Civil Post' and have held that Civil Post comprehends persons employed in civil capacities under Union of India or a State. Mere payment of salary from the State fund or certain control by the State over the post is not determinative. The Court, accordingly, held that the employees of Post Graduate Institute of Medical Education & Research, Chandigarh are not holding Civil Posts under the State.

12. The applicant is an employee of Maharishi Dayanand University which is a separate legal entity established under the Haryana Act No.25 of 1975. The University is a fully autonomous institution and does not come under the State Government. She also cannot be considered to be serving in connection with the affairs of the State since she is currently functioning as an Assistant Professor in the University in the Department of Law.

13. It can, therefore, be concluded that since the applicant is not a Government Servant serving in connection with affairs of the State, she is ineligible to be considered for selection to the post of IAS under the Non SCS quota. She has rightly been not considered as eligible, by respondent No.4, to appear in the examination for selection of candidates for the State Government, for selection of IAS from Non-State Civil Services quota.

14. Since, she is ipso facto, not eligible under the existing rules to be considered for such a selection process, hence, there is no question of her having any rights, on ground of parity, for consideration, with any other candidate who may have been declared as eligible.

15. The Original Application, therefore, being devoid of any merits is liable to be dismissed. Accordingly, the OA is dismissed.

16. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

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