

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 14997/2006**

% **Date of decision : 07.04.2008**

Baboo Khan Petitioner
Through: Mr. Prem Prakash, Advocate.

Versus

State of J & K Respondent
Through: Mr. Tanveer A. Mir, Advocate.

CORAM :-
HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

The petitioner seeks a writ of Mandamus or any other writ or direction for payment of the salary of the petitioner from 1st June, 2004 till date. Pursuant to an interim order passed by this court dated 21st May, 2007, the respondents were directed to release 50% of the salaries due and payable to the petitioner from 1st June, 2004.

The respondents have opposed the payment of salary from 1st June, 2004 on the ground that the petitioner was appointed as a driver by order No.164-KRC/04 dated 24th September, 2004 in compliance of

the order dated 28th May, 2004 passed by this court in CCP No. 174/2001 arising from CWP No. 5590/1993. According to the respondent, petitioner joined his duties w.e.f. from 27th September, 2004 and therefore, the petitioner cannot claim arrears of salaries from 1st June, 2004.

While passing the order dated 28th May, 2004, this court had noticed that an offer was made by respondents as recorded in the order dated 26th October, 1998 stipulating that the respondents shall offer an alternative job to the petitioner which will carry same pay-scale and same qualifications.

By order dated 10th September, 2004, the petitioner was admitted to the pay-scale of the driver of Rs.3050-4500 from 7th August, 1997 till 28th May, 2004.

The learned counsel for the respondents contend that the petitioner is entitled for the pay-scale of a driver up till 28th May, 2004 and not till 27th September, 2004 when he is was regularized to the post of driver from the date of his joining.

Perusal of the order dated 10th September, 2004 does not reveal that the petitioner had not worked after 29th May, 2004. The order was

passed regularizing the services of the petitioner pursuant to an order passed by this court in a petition filed by the petitioner against the respondents for committing contempt of Court. This had never been the plea of the respondents that before his regularization, the services of the petitioner as daily wager was discontinued.

In the circumstances, plea of the respondents that the petitioner had not worked from 29th May, 2004 till he joined as a regular driver is not sustainable and the petitioner shall be entitled for salary from 1st June, 2004 up till, 27th September, 2004 of the regular driver.

The petitioner has continued as a regular driver after his regularization and he was suspended for the alleged offence committed by him on 29th May, 2007.

The respondents have also relied on Article 35AA of the J & K Civil Service Regulations and sub rule (i) of Rule (b) to contend that the petitioner is not entitled for his salaries.

The said Rule only contemplates certain formalities to be completed by the respondents for the service record of an employee. The petitioner was regularized pursuant to an order passed in an application for taking contempt proceedings against the respondents.

The respondents were directed to pass an appropriate order regularizing the service of the petitioner pursuant to an opportunity granted to the respondents to purge themselves from the contempt which was held to have been made prima facie committed by the respondents. Consequently, pursuant to the alleged rules for completion of the service record of the petitioner, the respondent cannot deny the salary to him as has been claimed by the respondents now. It was for the respondent to complete the service record of the petitioner. This is not the case of the respondent that for completion of service record, the petitioner was directed to furnish the copies of the documents or original certificates and the same were not given or furnished by the petitioner despite demands by the respondents. In case the service record of the respondents is not complete, they are to be blamed and not the petitioner.

Counsel for the petitioner states that after the suspension of the petitioner on 29th May, 2007 the petitioner is being paid the suspension allowance which fact is however not admitted by the counsel for the petitioner.

Be that as it may, the fact that the regular salary has not been paid to the petitioner from 1st June, 2004 till 29th May, 2007 when the petitioner was suspended cannot be denied in the facts of the

circumstance. In the facts and circumstances, there are no grounds to withheld the salary of the petitioner from 1st June, 2004 till he was suspended. As far as non payment of suspension allowance is concerned, the same is not the subject matter of present petition.

Consequently, the writ petition is allowed. The respondents are directed to pay the full salary to the petitioner from 1st June, 2004 till 29th May, 2007. This is, however, clarified that this will be subject to any claims which may be raised and proved by the respondents against the petitioner. It is pointed out that some amounts were paid by the respondents. Consequently the balance salary from 1st June, 2004 till 29th May, 2007 be paid within 4 weeks. Considering the facts and circumstance, the parties are, however, left to bear their own costs.

The writ petition is disposed of.

April 07, 2008
'smp'

ANIL KUMAR, J.