

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

+ **WP(C) 6844 OF 2007**

Date of Decision: 18th November, 2009

VIJAY SINGH Petitioner
! Through: Mr. Bankey Bihari, Advocate.

versus

\$ THE UNION OF INDIA & ORS. Respondents
^ Through: Mr. I.S. Kohli and Mr. A.K. Sharma
Advocates for R-1.
Mr. Rajeeve Mehra, Sr. Advocate
with Mr. Anupam Verma,
Advocate for R-2
Ms. Renuka Arora, Advocate for
R-3

* **CORAM:**
HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J(ORAL)

The petitioner was employed with respondent no. 2 as a driver on a lump sum payment of Rs. 7000/- p.m. initially for three months from 27-04-1994 but then he continued to be employed for years with some intermittent breaks. His last term of employment was from 01-07-1998 to 31-12-1998. During that period he was arrested by the police for an offence under Section 498-A IPC which led to his absence from duty with the respondent no. 2 and his services were

terminated pre-maturely. During the period of his absence, respondent no. 2 appointed one Sanjay Singh, who was also already working as a driver and was admittedly junior to the petitioner, as a driver on temporary basis on 25-02-99. He joined w.e.f. 1-3-99.

2. The case of the respondent no. 2 is that the petitioner as well as that Sanjay Singh were both appointed on contractual basis since there was only one regular post of driver and against that one post one Bhagwant Singh was employed. Bhagwant Singh, however, died on 6th January, 1999 and that made the regular vacancy available. Since the petitioner was not reporting for duty because of his being involved in the afore-said criminal case, the respondent no. 2 converted the temporary employment of Sanjay Singh into regular employment on 1st March, 2000. The petitioner finally got acquitted in the criminal case on 29th June, 1999 and thereafter he was again employed by respondent no. 2 on contract basis from 13-08-1999 upto 31-12-1999 since the regular vacancy had already been given to Sanjay Singh. Petitioner then staked his claim for regular appointment against the post which had been given in his absence to Sanjay Singh. Since the respondent no. 2 did not accept that request of the petitioner he filed a writ petition (being WP(C) No. 7790/2000). That writ petition came to be disposed of on 23rd July, 2004 in view of the statement made in that petition on behalf of the respondent no. 2 herein by its counsel that as and when there would be either a leave vacancy or a regular vacancy in future the petitioner would be considered and given preference.

3. The grievance of the petitioner in the present writ petition is that despite having given the afore-said assurance to this Court

respondent no. 2 had engaged the services of respondent no. 3 herein, namely Shri Subhanand, as a driver in January, 2007. In this writ petition he has sought a writ of mandamus directing respondent no. 2 to appoint him as staff car driver in terms of order dated 23rd July, 2004 in WP(C) No. 7790/2000.

4. The writ petition has been opposed by respondent no. 2 as well as respondent no. 3. In their respective counter affidavits the averments made in the writ petition that respondent no. 3 has been engaged by respondent no. 2 as a driver has been denied. Not only that, today during the course of hearing of this matter learned senior counsel appearing for respondent no. 2 once again reiterated that neither there is any regular vacancy available now nor respondent no. 3 has been appointed as a driver by respondent no. 2 and further that even now if in future a regular vacancy arises for the post of driver the petitioner would be duly considered and given preference.

5. Learned counsel for the petitioner has submitted that even though there is no documentary proof with him that respondent no. 3 had been appointed as a driver by respondent no. 2 but it is very much clear from the stand taken by the respondents in their counter affidavit that in order to avoid the consequences of violation of the afore-said assurance given to this Court in the earlier writ petition respondent no. 3 has been given the appointment through some other agency. The grievance of the petitioner is that all that has been done because respondent no.3 happens to be the personal driver of Director General of respondent no. 2. These contentions raised by counsel for the petitioner have been strongly refuted by the learned senior counsel for respondent no. 2 as being totally false.

6. After giving my due consideration to the averments made in the writ petition, counter affidavits of the respondents and the submissions made today at the Bar, I am of the view that the petitioner cannot get any relief in this writ petition. He has prayed for issuing a writ of mandamus to respondent no. 2 to give him appointment. He has, however, no legal right in that regard. In my view, the real grievance of the petitioner appears to be that the respondent no. 2 has violated the assurance given to this Court in his earlier writ petition and to avoid the consequences of that violation it has adopted the method of recruitment of respondent no. 3 through some other agency. However, all these contentions, which are disputed by respondent No.2, cannot be gone into by way of an independent writ petition. If at all the petitioner had felt that all that had been done only to avoid the consequences of non-compliance of the undertaking given by the respondent no. 2 in the earlier writ petition he had other remedy to pursue in that regard and not by way of filing an independent writ petition seeking a mandamus. In fact, during the course of hearing learned counsel for the petitioner had submitted that at one point of time the petitioner had thought of initiating contempt proceedings against respondent no. 2 but because of the limitation aspect he did not take recourse to that remedy. Be that as it may, as far as this writ petition is concerned, I do not find any merit in the same and so it is dismissed.

P.K. BHASIN,J

NOVEMBER 18, 2009
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