

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

CWP No.5495 of 2013

Date of decision:06.02.2015

Mohan Lal

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

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TEJINDER SINGH DHINDSA, J.

The petitioner is aggrieved of the order dated 08.08.2012 passed by the Civil Surgeon, Narnaul in terms of which he has been denied salary for the period 04.07.2003 to 04.03.2004.

Facts of the case lie in a very narrow compass. The present petitioner along with one Ram Karan filed CWP No.16258 of 1990 praying of the issuance of a writ of mandamus to direct the respondents to treat them as regular appointees on the post of Peon. Further prayer was for grant of interim protection that their services be not terminated except by due process of law. In CWP No.16258 of 1990, interim protection was granted to both the petitioners therein as regards their services to be not dispensed with. It so transpires that CWP No.16258 of 1990 was dismissed on 08.04.2003 for want of prosecution. CM No.16724 of 2003 having been filed, the writ petition was restored vide order dated 01.08.2003 and the writ petition was directed to be placed for hearing before the regular Bench.

The respondent/department apparently taking advantage of the

writ petition having been dismissed in default, dispensed with the services of the present petitioner. The writ petition thereafter having been restored on 01.08.2003, the petitioner approached the respondent/department repeatedly for being taken back in service. On finding no favourable response, the petitioner was constrained to file CM No.1526 of 2004 raising a prayer for issuance of directions to the Civil Surgeon, Narnaul to allow him to resume his duties as a Peon during the pendency of the writ petition. Such application and prayer made therein was allowed by a Coordinate Bench of this Court vide order dated 12.02.2004 and appended as Annexure P-3 along with the instant petition. It is against such brief factual backdrop that the petitioner was allowed to rejoin duties w.e.f. 05.03.2004. The facts noticed herein above would also cull out the period in question i.e. 04.07.2003 till 04.03.2004 for which salary has been denied to the petitioner apparently on the ground of 'no work, no pay'.

Having perused the pleadings on record and having heard counsel for the parties at length, this Court is of the considered view that the action of the respondent/authorities in denying to the petitioner salary for the period in question is, arbitrary and wholly untenable.

It has gone uncontroverted that there was an interim protection granted to the petitioner as regards his services to be not dispensed with. CWP No.16258 of 1990 came to be dismissed in default on 08.04.2003. Such order was recalled by this Court on 01.08.2003 itself. Thereafter inspite of the petitioner having made repeated efforts to join back on duties, he was not permitted to do so. It was only upon the intervention of this Court and on account of passing of the order dated 12.02.2004 in CM No.1526 of 2004 in CWP No.16258 of 1990 that the petitioner was made to

join back in service. As such, it was for no fault of the petitioner that he has been denied salary and wages for the period in question. It is certainly not the case that the petitioner had refused to join on the post in question. That apart, the action of the respondent/department would also be seen as discriminatory and violative of Articles 14 & 16 of the Constitution of India. CWP No.16258 of 1990 was a joint petition at the hands of the present petitioner as also one Ram Karan. The writ petition having been dismissed in default, the respondent/department for reasons best known to them permitted Ram Karan to continue in service. It would be difficult to fathom the reason why such benefit was not extended to Mohan Lal i.e. the present petitioner herein. This Court does not find any justifiable basis on the part of the respondent/department to deny to the petitioner payment of salary from 04.07.2003 to 04.03.2004.

For the reasons recorded above, the impugned order dated 08.08.2012 at Annexure P-7 cannot sustain. In taking such view, this Court would also draw support from the fact that CWP No.16258 of 1990 already stands finally decided in terms of judgment dated 23.05.2011 at Annexure P-4 and whereby both the petitioners therein (including Mohan Lal) have been held entitled to be treated as holding regular posts from the date of their initial appointment.

Accordingly, the writ petition is allowed. The order dated 08.08.2012 at Annexure P-7 is set aside.

Directions are issued to the respondent/authorities to release to the petitioner the salary for the period 04.07.2003 to 04.03.2004 within a period of eight weeks' from the date of receipt of a certified copy of this order, failing which, such amount shall carry interest at the rate of 8% per

annum.

Petition allowed in the aforesaid terms.

06.02.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**