

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

CWP No. 6973 of 2015

DATE OF DECISION : 23.11.2016

Ved Parkash

.... PETITIONER

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kartar Singh Malik, Advocate,
for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G., Haryana.

Mr. Dinesh Arora, Advocate,
for respondent Nos.2 and 3.

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RAMENDRA JAIN , J.

1. Briefly stated, case of the petitioner is that he was appointed as Gate Keeper in the respondent Society on 02.11.1998. Subsequently, vide letter dated 14.08.2000, he was appointed as Chowkidar in the respondent Society with effect from 16.08.2000. His work and conduct remained satisfactory. The respondent Society is paying fixed amount of ₹ 4,550/- per month to the petitioner as his salary, whereas another employee, namely Shri Deepak, who is also working as Chowkidar, is getting salary in full pay scale. The salary which is being paid to the petitioner is even lower than the DC rates (Annexure P-7) and is also less than the salary of the full pay scale of Chowkidar. Hence, the petitioner submitted many representations to the

respondents in this regard, last being on 23.03.2009 (Annexure P-3), but no action was taken. Thereafter, the petitioner served legal notice dated 05.06.2009 (Annexure P-4) on the respondents, but all in vain. Hence, on 18.07.2009, the petitioner filed a civil suit regarding his aforesaid claim, but the same was dismissed vide judgment dated 03.03.2012 (Annexure P-5). The appeal filed by the petitioner against the said judgment was dismissed as withdrawn vide order dated 28.10.2013 (Annexure P-6). Thereafter, the petitioner filed Original Application (Annexure P-8) before respondent No.1. Upon notice, the respondent Society filed reply (Annexure P-9). After hearing learned counsel for the parties, respondent No.1 vide order dated 25.02.2015 (Annexure P-1) dismissed the OA (Annexure P-8) of the petitioner.

2. Hence, the petitioner has filed the instant petition under Article 227 (though the correct provision is Article 226) of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned order dated 25.02.2015 (Annexure P-1). Further, issuance of a writ in the nature of mandamus has been sought to direct the respondents to pay the scale of Chowkidar to the petitioner as per D.C. Rates with interest @ 18% per annum from the date of entitlement.

3. Learned counsel for the petitioner argued that vide the impugned order passed by respondent No.1, the OA has been dismissed being not maintainable, on the ground that the claim of the petitioner has already been rejected by the civil court on merits, and he cannot move from one legal forum to another to press his claim. In this regard, learned counsel submitted that the civil suit was filed by the petitioner due to wrong advise.

Since the civil court was not having jurisdiction to adjudicate the controversy between the parties, therefore, instead of dismissing the suit on merits, it was incumbent upon the civil court to return the plaint to be presented before the proper court. In support of his submission, he relied upon **ONGC Ltd. Vs. M/s Modern Construction and Co.,** AIR 2014 SC 83 and a decision of this court in **Kedar Nath (Dead) through LRs Vs. Chawali,** 2003 (4) RCR (Civil) 663. While relying upon another decision of this court in **Balwinder Singh and others Vs. The State of Haryana and others,** (RSA No. 2993 of 2004, decided on 20.01.2009), learned counsel argued that the findings recorded by a Court which lacks jurisdiction are not binding upon the parties. Further, while pressing claim of the petitioner on merits and relying upon **U.P. Land Development Corporation and another Vs. Mohd. Khursheed Anwar and another,** 2010 (7) SCC 739 and **State of Punjab and others Vs. Jagjit Singh and others** (Supreme Court), (Civil Appeal no. 213 of 2013, decided on 26.10.2016, learned counsel argued that on the principle of 'equal pay for equal work', the petitioner is entitled for the salary equal to that being drawn by Shri Deepak, Chowkidar.

4. On the other hand, learned counsel for the respondents argued that the civil suit filed by the petitioner was dismissed on merits and the issue of maintainability of the suit was decided in favour of the petitioner. Even the appeal filed by the petitioner against the judgment of the civil court was also dismissed as withdrawn and no liberty whatsoever was granted to the petitioner to approach any other forum. The appeal was dismissed as withdrawn on the statement of the petitioner that he did not wish to proceed with the appeal. Therefore, learned Tribunal while

dismissing the OA of the petitioner vide the impugned order has rightly held that the petitioner cannot claim the same relief, as was sought by him before the Civil court, where he lost his case. The principle of 'equal pay for equal work' is not applicable in the instant case, as Shri Deepak was much senior to the petitioner and was readjusted as Chowkidar on D.C rates in the respondent Society in January, 1995, as has been observed by the civil court in para 14 of its judgment dated 03.03.2012.

5. We have given our thoughtful consideration to the rival contentions of learned counsel for the parties.

6. A perusal of the judgment dated 03.03.2012 passed by the civil court reveals that the respondents did not raise the objection of jurisdiction of the civil court and while dismissing the suit on merits, the issue of maintainability of the suit was decided in favour of the petitioner. Even while withdrawing the appeal against the aforesaid judgment of the civil court, the petitioner simply stated that he did not wish to proceed with the appeal. No liberty was sought by the petitioner to raise his claim before the Central Administrative Tribunal or any other forum. In these circumstances, he cannot be allowed to re-agitate his claim, on the ground that the civil court was not having jurisdiction and instead of dismissing the suit, the plaint should have been returned. The decisions in ONGC Ltd.'s case, Kedar Nath's case and Balwinder Singh's case (supra), relied upon by learned counsel for the petitioner, are therefore not relevant to the facts of the instant case. Hence, respondent No.1 has rightly dismissed the OA of the petitioner being not maintainable.

7. So far as the contention with regard to the principle of 'equal

pay for equal work' is concerned, we do not find any merit in the same. The case of Shri Deepak, with whom the petitioner is claiming parity, is on better footing. Shri Deepak was readjusted as Chowkidar on D.C rates in the respondent Society in January, 1995, whereas the petitioner was appointed as Gate Keeper on 02.11.1998 and as Chowkidar on 16.08.2000. Hence, the decisions in **U.P. Land Development Corporation and another Vs. Mohd. Khursheed Anwar and another** (supra) and **State of Punjab and others Vs. Jagjit Singh and others** (supra) are of no help to the petitioner, and he cannot be allowed to take the benefit of the principle of 'equal pay for equal work'.

8. In view of the above, we do not find any illegality or perversity in the impugned order dated 25.02.2015 passed by respondent No.1.

9. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

November 23, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes