

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 9922 of 2016

Date of Decision: 16.8.2016

Pawan Kumar

....Petitioner.

Versus

Union of India and others

...Respondents.

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

PRESENT: Mr. Sanjay Jain, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 4.11.2015 (Annexure P-1) passed by respondent No.6-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) and the orders dated 12.3.2015 (Annexure P-2) passed by respondent No.3 and dated 29.6.2015 (Annexure P-6) passed by respondent No.4. Further, a writ of mandamus has been sought directing the respondents to consider the case of the petitioner for the post of Gram Dak Sewak Mail Deliver.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner was appointed as Gram Dak Sewak Mail Deliver against the vacant post on 1.10.2013 and as such he joined on the same day at village Manka-Manki, District Ambala.

No appointment letter was issued to him. The petitioner had been doing his work sincerely and diligently and even the Sarpanches of surrounded villages had given in writing dated 14.7.2014 (Annexure P-7) that the petitioner had been distributing the mail/post sincerely and diligently and they have not received any complaint against the petitioner. After June 30, 2014, the respondents have not released the salary of the petitioner though the petitioner had been working since 1.10.2013. Respondent No.4 terminated the services which was communicated to the petitioner vide order dated 12.3.2015 (Annexure P-2). The petitioner moved a representation dated 19.1.2015 (Annexure P-3) to respondent No.2 against non-payment of monthly salary, but to no effect. Thereafter, the petitioner served a legal notice dated 20.5.2015 (Annexure P-4) upon respondents No.2 and 3 for allowing him to continue to work on the post and pay the salary w.e.f. 1.7.2014 along with interest. The claim of the petitioner was rejected by respondent No.3 vide reply dated 3.6.2015 (Annexure P-5). Respondent No.4 vide order dated 29.6.2015 (Annexure P-6) terminated the services of the petitioner. Feeling aggrieved, the petitioner filed OA before the Tribunal which was amended on 30.7.2015 (Annexure P-8). The Tribunal vide order dated 4.11.2015 (Annexure P-1) dismissed the said OA. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The Tribunal has noticed that if the petitioner worked in arrangement with Smt. Urmila, Branch Post Master, the respondents were not liable to pay any salary or allowance when he had not been engaged even as 'outsider' by the competent authority. Even the petitioner had not

produced sufficient material to show that he in fact had worked as such during the aforesaid period. Further, as per the instructions, the petitioner as an 'outsider' could not be engaged for more than 89 days in a single span and for more than 150 days in a year. The petitioner having worked upto June 2014 for more than 150 days, he could not be continued as 'outsider' since 1.7.2014 onwards. The Tribunal had recorded that the petitioner had no right to continue either as outsider or as Gram Dak Sewa Mail Deliver against vacant post. Even no appointment letter was issued to the petitioner by the competent authority. The relevant findings recorded by the Tribunal read thus:-

“4. Counsel for the applicant contended that the applicant worked as GDSMD since 01.07.2014 till June, 2015 also, but has not been paid any salary or allowance for the said period and, therefore, respondents should be directed to pay the same.

5. The contention cannot be accepted. Firstly, no such prayer has even been made either in the OA or in the amended OA. Secondly, if at all the applicant worked in arrangement with Urmila, Branch Post Master, the respondents are not liable to pay any salary or allowance when the applicant had not been engaged even as 'outsider' by the competent authority of the respondents. There is also no sufficient material on record to depict that the applicant in fact worked as such during the aforesaid period. It may also be added that according to instructions on the subject, the applicant as

'outsider' could not be engaged for more than 89 days in a single span and for more than 150 days in a year. The applicant having worked upto June, 2014 in the year 2014 had worked for more than 150 days and, therefore, he could not be continued as 'outsider' since 01.07.2014 onwards.

6. Counsel for the applicant also contended that the post of GDSMD is still lying vacant and work is available and, therefore, the services of the applicant should not be discontinued. This contention is also untenable because it is for the respondents to decided whether they have to engage an 'outsider' or not and how they have to fill the post of GDSMD. The applicant has no vested right to get engaged as 'outsider' or to get appointed as GDSMD against vacant post. It may be added that even for his engaged as 'outsider' there is no appointment order on the file although the applicant has alleged that he was appointed vide appointment dated 01.10.2013. The respondents have specifically pleaded that no appointment order was ever issued by the competent authority for appointing the applicant. Thus examined from any angle, the applicant has not right to continue either as outsider or as GDSMD against vacant post. There appears to be no infirmity or illegality in the impugned order, Annexure A-1 and impugned letter Annexure A-7.”

5. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the aforesaid findings recorded by the Tribunal, which may warrant interference by this Court. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 16, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes