

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

COCP No.1565 OF 2018 (O&M)

Date of decision: 24.5.2018

Pardeep Kumar

...Petitioner

Versus

Sant Lal Pruthi

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr.Uttam Kumar, Advocate for the petitioner

RAJIV NARAIN RAINA, J (Oral)

1. I have heard learned counsel for the petitioner and perused the paper-book.

2. The petitioner was appointed as a Lower Divisional Clerk (Field Cadre) on 26th July, 2011 by the Haryana Power Generation Corporation Ltd. (HPGCL) at DCRTTP, Yamuna Nagar, as per policy to provide a job to one dependent of the land owning family whose land, subject to minimum of two acres, was acquired for setting up thermal power plant. The petitioner was issued a show-cause notice on 21st October, 2011 (Annex. P-4) pointing out to him that as per the Recruitment and Promotion Policy of Class III employees issued vide Office Order dated 25th November, 2002 read with Notification dated 26th February, 2004 duly adopted by HPGCL vide Office Order dated 15th September, 2005, the minimum qualification for direct recruitment of Lower Divisional Clerk (LDC) was 10+2/10+2 (Vocational) 2nd Division or equivalent and above (for ex-serviceman 10+2 only), with working knowledge of computer whereas marks obtained by the petitioner were less than 50% in the aggregate. Since the petitioner did not possess the

prescribed qualification of passing 10+2 in the 2nd Division, it was tentatively decided by the competent authority to cancel the appointment of the petitioner and to consider him for the lower post of Peon for which he was eligible on the basis of qualifications possessed by him.

3. However, before proceeding further, the respondent offered the petitioner an opportunity of hearing either to submit consent for the post of Peon and in case reply is not received within 10 days positively; appointment will be cancelled without any further opportunity to resist. The petitioner submitted reply admitting that he had qualified the examination obtaining 45.60% marks in 10+2 and in addition he held one year diploma in computers and 2 years ITI in electrician trade during 2007-09 (Distance Education) and further 2 years ITI in electrician trade during academic sessions 2009-11. He further stated that in case he is not eligible for the post of LDC, then he will be considered for any other post(s) (Technical/Non Technical) equivalent to his qualification instead of Peon.

4. His plea was considered by the appointing authority and on consideration of his case, his services as LDC were dispensed with w.e.f. 30.11.2011 (AN), as per terms and conditions of his offer of appointment issued to him vide Memo dated 26th July, 2011. He was again offered an opportunity to submit consent for appointment to the post of Peon within 15 days from the date of issue of the communication. That order was passed on 29th November, 2011.

5. Aggrieved by the order of reversion, the petitioner approached this Court in CWP No.23187 of 2011 which case was decided on 14th December, 2011 the Court observing that any consideration of the claim of the land owner who applies for a job in lieu of land acquired has

to be considered sympathetically. In case the petitioner possessed the requisite technical qualification, he was vested with a right to be considered for the technical/non-technical post for which he was qualified in terms of the recruitment/promotion policy. The writ petition was disposed of with a liberty to the petitioner to make a detailed request to the 2nd respondent by mentioning material and furnishing proof of the qualifications he possessed. The 2nd respondent was also directed to take into consideration the fact of availability of post etc. and to consider such claim of the petitioner in due process of law. Upon filing of such a request, requisite decision would be taken within a period of six weeks from the date of receipt of certified copy of the order. It was further directed that in the meanwhile, the petitioner would be permitted to join on the post of Peon in terms of order dated 29th November, 2011.

6. In pursuance of the directions of this Court, the petitioner made a request on 17th January, 2012 (Annex. P-4) for appointment as Plant Attendant & Technician instead of Peon (Field). The petitioner was allowed to continue as Peon, subject to final decision on his representation.

7. It is the complaint of the petitioner that his request for appointment as Plant Attendant has not been decided even after lapse of more than six years, although the respondent had to take decision within six weeks. This inaction on the part of the respondents amounts to willful disobedience of the orders passed by this Court, and thereby the respondent has made himself liable to be punished under the provisions of the Contempt of Courts Act, 1971. Although there is no limitation prescribed in the provision, but as per the provisions of Section 20 of the Contempt of Courts Act, 1971, no court shall initiate a proceeding for

contempt after the expiry of one year from the date on which the contempt is alleged to have been committed.

8. The Gujarat High Court in **Dinesh A. Parikh vs. Kripalu Cooperative Housing Society Ltd. Nagarvel, Ahmedabad, AIR 1980 Guj. 194** has held that Section 20 of the Contempt of Courts Act places an absolute fetter on the power of the court to initiate proceedings for contempt after the expiry of one year from the date contempt is alleged to have been committed. Any delay of more than one year can be condoned by the court, if reasonable ground for delay exists. The delay in the present case has not been explained. The petitioner slept over his right since 2011 and filed this petition in 2018, although the petitioner has pleaded that he kept making representations and sending reminders to the authorities. In the narration of facts as found in paragraphs 4 to 8, the petitioner filed representation on 17th January, 2012, a reminder dated 7th October, 2017 followed by a legal notice dated 15th January, 2018. It is well settled position in law that even in contempt jurisdiction, repeated representations do not cover up the delay and delay is a ground to be considered while initiating contempt proceedings having regard to the provisions of Section 20 of the Act.

9. Having not sought legal recourse after expiry of the period fixed in the orders of this Court, the petitioner would be accepted as acquiescing to the post of Peon (Field) and not having agitated the matter in Court, the petitioner would be deemed to have surrendered his right for appointment as Plant Attendant, the post he craves for. On the admission of the petitioner itself, the petitioner does not possess the prescribed desired qualification in 10+2 examination. He has thus no claim on the post of LDC, and therefore, the cancellation of the order is legal and valid

as the appointment is in the nature of direct recruitment, although under special Scheme approved by the Government for providing job to the family of dispossessed land owners on acquisition of land. I would, therefore, not be in a position to initiate contempt proceedings against the respondent and would dismiss the contempt petition.

10. However, having dismissed the contempt petition and with a view to give effect to the spirit of the order passed by this Court in the aforesaid writ petition, the respondent would still consider the request of the petitioner by passing a speaking order and in case orders have not already been passed, the same would be passed within two months from the date of receipt of a certified copy of this order and the result conveyed to the petitioner.

11. Dismissed with the aforesaid observations and directions.

(RAJIV NARAIN RAINA)
JUDGE

24.5.2018

MFK

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No