

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

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**CWP-17229-2002 (O&M)
Date of decision:23.01.2018**

Superintendent of Post Offices, Sonapat Division, Sonapat, Haryana.

....Petitioner

Versus

The Chief Commissioner for Persons with Disabilities and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Namit Sharma, Advocate for the petitioner.

Ms. Preeti Sharma, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the validity of orders dated 06.11.2001 and 20.08.2002 passed by respondent No.1 (Annexures P8 and P12 respectively).

Respondent No.2 was appointed as a Chowkidar on 12.06.1985. While working as such he remained unauthorized absent w.e.f. 11.07.1992. Thereafter, he was re-employed on 17.11.1992. He has submitted his resignation on 13.01.1993. The petitioner abolished chowkidar post including the post held by respondent No.2 on 15.01.1993 w.e.f.

20.01.1993. When things stood thus, respondent No.2 filed a complaint before respondent No.1 stating that he is entitled for re-employment with the petitioner. Thus, respondent No.1 proceeded to issue notice and decided the complaint of respondent No.2. Complaint was decided in favour of respondent No. 2 on 06.11.2001. Feeling aggrieved by the order dated 06.11.2001 petitioner filed review petition, review petition was also dismissed on 20.08.2002. Hence the present petition.

Learned counsel for the petitioner submitted that respondent No.1 has no jurisdiction to decide service matter relating to Chowkidar in the petitioner-department. It was further submitted that there is delay of nearly 7 years in submitting complaint before respondent No.1. Further it was contended that once the post held by the petitioner was abolished on 15.01.1993 w.e.f. 20.01.1993 question of re-employing respondent no.2 do not arise. It was also submitted that by virtue of interim order passed in the present petition in the month of Decembner 2002, respondent No.2 was taken back to duty subject to resut of this petition. Thus, respondent No.2 is discharging the duties of the post of Chowkidar.

Per contra, learned counsel for the respondent No.2 submitted that resignation was submitted on 13.01.1993 under duress. Respondent No.2 is a disabled person. Therefore, whatever grievance relating to respondent No.2 is required to be examined by respondent no.1. Thus, there is no infirmity in the order of respondent No.1 dated 06.11.2001 and 20.08.2002. Petitioner has not made out a case so as to interfere with the impugned decisions. It was also submitted that respondent No.2 worked

from 1985 to 1993. Further from 2002 as on this day therefore, no interference is called for.

Heard learned counsel for the parties.

Undisputed facts are that the post held by respondent no.2- Chowkidar was civil post. If there is any dispute relates to service condition with reference to Chowkidar post held by respondent No.2 jurisdiction lies to the Central Administrative Tribunal. Therefore, respondent No.1 has no jurisdiction so as to decide the service dispute of the respondent no.2. Thus, for want of jurisdiction, orders of respondent No.1 dated 06.11.2001 and dated 20.08.2002 are liable to be set aside. Accordingly, orders dated 06.11.2001 and 20.08.2002 (Annexure P8 and P12) are set aside. It is also to be noted that when respondent No.2 contends that resignation was under duress at the same time it was duty of 2nd respondent to challenge the acceptance of resignation. So also there is no challenge to the abolition of post. By virtue of interim order if respondent no.2 is continued it is only *ad hoc* arrangement. Interim order merges with the final order, when respondent No.1 has no jurisdiction to decide the service dispute of respondent no.2. Thus, respondent No.2 has not made out a case so as to entertain the contentions urged by the respondent No.2. Accordingly, CWP stands allowed.

23.01.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No