

CWP-1088-2018 (O&M)

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

**CWP-1088-2018 (O&M)
Date of decision : 17.10.2019**

Suresh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Govind Mor, Advocate for
Mr. Jasbir Mor, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

CM-4816-2018

For the reasons stated in the application, which is supported by an affidavit, replication along with annexures P-14 to P-17 is taken on record, subject to all just exceptions.

CM stands disposed of.

MAIN CASE

The petitioner has challenged the impugned action of the respondents in not allowing him to join the services as he was verbally told that his services have been terminated.

Learned counsel appearing on behalf of the petitioner submitted that petitioner was appointed as part-time cook on 01.11.1998, had been working with utmost dedication and to the satisfaction of his superiors. As

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per certificate (Annexure P-1), belongs to caste Gadaria Lohar, . Since April 2016, petitioner was not allowed to join his services. Many persons, having animosity against the petitioner, submitted application regarding alleged absent from duty since April 2016 and in this regard, *rapat roznamcha* dated 08.06.2016 (Annexure P-2) was recorded. Petitioner approached the various authorities to take back him in service and take action against one Devi Lal for harassing and humiliating him, but nothing was happened. He was erroneously shown absent from the duty in the year 2009 and 2011-12 and sought the information under Right to Information Act to provide the copy of the Attendance Register, vide Annexure P-9, dated 18.08.2017 and respondents informed that the *rapat roznamcha*, for the period from 19.07.2009 to 25.02.2012, vide office order dated 13.06.2014 by the Committee on 21.09.2015, showing the duties etc, was destroyed and now there is no record. Such action of the respondents, is not sustainable in the eyes of law.

Mr. Kiran Pal Singh, AAG, Haryana, submitted that as per details given in the written statement, petitioner has remained absent from duties, for the following period:-

- "a) 19.07.2009 to 24.07.2009
- b) 28.10.2009 to 30.10.2009
- c) 06.11.2009 to 08.11.2009
- d) 18.11.2009 to 17.12.2009
- e) 26.12.2010 to 25.01.2011
- f) 26.01.2011 to 25.02.2011
- g) 26.02.2011 to 25.03.2011
- h) 26.03.2011 to 25.04.2011
- i) 26.04.2011 to 25.05.2011
- j) 26.05.2011 to 25.06.2011

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- k) 26.06.2011 to 25.07.2011*
- l) 26.07.2011 to 25.08.2011*
- m) 26.08.2011 to 22.09.2011*
- n) 08.12.2011 to 11.12.2011*
- o) 13.11.2011 to 25.01.2012*
- p) 26.01.2012 to 25.02.2012*
- q) 26.02.2016 to 25.03.2016*
- r) 18.04.2016 to 08.06.2016"*

Even DDR No.29 dated 18.04.2016, in this regard, was also recorded and then Superintendent of Police, Sirsa, approved the termination of petitioner, in this regard, a DDR No.14 dated 08.06.2016, was recorded. The then Superintendent of Police, Hisar Range, vide letter dated 20.06.2017, conducted the enquiry report, wherein it was been concluded that the petitioner was in habit of remaining absent. Factum of absence has been admitted by the petitioner, in replication.

In rebuttal, Mr. Govind Mor, submitted that in the information received under RTI Act, details of attendance register are very dim and do not reflect absence of the petitioner. However, the details of pay received by the petitioner is also extracted in para No.1 of the replication. This fact has not been denied by the respondents. As far as absence from 2011, he was willing and ready to do the work, but was not permitted. From March 12 to 18.04.2019, he continuously served, though had taken two days' leave, but he was not allowed to join the duties, for the reasons best known. Even in 2012, petitioner was also transferred.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a fit case where action of the respondents in not allowing the petitioner to join the services, without passing any order of

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termination or holding the appropriate enquiry, cannot be said to be sustainable in the eyes of law.

It would be apt to extract the contents of information (Annexure P-10), which reads as under:-

"Point No.1

Sir, Rojnamcha for the period from 19.7.2009 to 25.2.2012 has been destroyed on dated 21.9.2016 by constituting a committee as per the office letter No.8120-41 dated 31.6.2014. The complainant Shri Suresh Kumar son of Roshan Lal was posted as cook and the record pertaining to his presence and absent pertaining to the period from 2009 to 2012 have been destroyed. The report is submitted. The photo copy of the report of the committee with signatures for destroying the roznamcha is enclosed herewith.

Point no.2.

The committee of the officers is like this for terminating the services of Sh. Suresh Kumar son of Sh. Roshan Lal in the year 2016. The President of the committee Sh. Vijay Kumar Kakar DSP HQ. Sirsa, member sh. Jagdish Jothsi, Welfare Inspector, Sirsa and Sh. Kulbir Singh S.I. Line Officer, Sirsa.

Point No.3

In the year 2016 Shri Suresh Kumar was terminated from the services by the committee. The said committee has given the oral order. Normally D.S.P.HQ, Welfare Inspector and Line Officers are the members of the said committee.

POINT NO. 4.

The work for recruiting or terminating the part time cook from the year 2000 is being by constituting a committee. An officer of D.S.P. rank is the president of the Committee and one Assistant Sub Inspector and Line Officers are the members of the said committee."

On perusal of the aforementioned information, the respondents

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had been candour in not passing the order of termination as it was only an oral order. Once they did not have the record pertaining to the period from 2009 to 2012, having been destroyed, employer cannot permitted to adopt anarchical approach in not allowing the contractual employee to join the duties. This can though fall under expression "exploitation", but I would not be commenting further, for, the petitioner was required to be confronted with the proof regarding his absence particularly when information received under RTI Act, disclosed destruction of the record.

Keeping in view the aforementioned facts, the present writ petition is allowed and the respondents are directed to allow the petitioner to join the services and take necessary action, after holding appropriate enquiry within a period of six months from the date of receipt of certified copy of this order, if required. In case, decision is taken in favour of the petitioner, all the consequential benefits shall be released within a period of one month thereafter, failing which, there shall be interest @ 12% p.a.

17.10.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**