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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13135-2018 (O&M)
Date of decision : 16.09.2019

Abhijeet Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Gupta, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

Petitioner has sought indulgence of this Court claiming two fold relief; i) writ of mandamus directing the respondents to extend the contract of petitioner by applying principle of '*Last Come First Go*', as and when applicable and ii) quashing instructions dated 03.11.2017 (Annexure P-4), restricting the benefit of equal pay for equal work.

In pursuance to advertisement (Annexure P-1), inviting the applications for filling up various posts including Computer Programme, petitioner, being eligible, applied for the same and was appointed in 2011 and had been working with utmost dedication and sincerity. Thereafter, in December 2012, Sanjay and Bhagwan, also joined and had been working with the respondents/Department. The immediate officer of petitioner recommended continuous service, but petitioner was not allowed to mark

his presence w.e.f. 15.05.2017, eventually relieved on 02.05.2018.

Mr. Keshav Gupta, learned counsel appearing on behalf of the petitioner submitted that as per categoric averment in para 5 of the writ petition, the persons junior to petitioner i.e. Sanjay and Bhagwan, were appointed in December 2012 and in such circumstances, they should be relieved being juniors to petitioner. Action of the respondents/State is wholly preposterous, illegal, much less, not falling within the principle of '*Last Come First Go*'.

He further submits that Hon'ble the Supreme Court in "*State of Punjab V/s Jagjit Singh*" 2017 (1) SCC 148, had issued the directions to the State to grant minimum regular pay scale at par with regular employee, even to the contractual employees i.e. equal pay for equal work. In order to implement the aforesaid directions contained in the judgment, State of Haryana, vide instructions dated 03.11.2017 (Annexure P-4), has given the effect of the same w.e.f. 01.11.2017, which is totally illegal as it tantamounts to sitting over the judgment. In fact, it is a contemptuous purview of the provisions of Article 141 of the Constitution of India. Instructions do not reflect the application of mind or applicability of yardstick, restricting the period from November 2017.

Mr. Hitesh Pandit, Addl. A.G., Haryana, supported the impugned action of the respondents/Department, by drawing attention of this Court to para 5 of the written statement and submitted that aforesaid persons i.e. Sanjay and Bhagwan, were hired by other Commissionerate and their appointments cannot be treated at par with petitioner, therefore, in such circumstances, applicability of principle of '*First Come Last Go*', would not

be there.

As regards the other issue, he submits that issuance of instructions were to bring respite to disgruntled persons as well as parity amongst two classes discharging the same duties.

I have heard learned counsel for parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Keshav Gupta.

It would be apt to extract para 5 of the petition and corresponding para of written statement, which reads as under:-

“Para 5 of the Petition

5. That two persons have joined on the post of Computer Programmer Post the joining of the petitioner in 2011. The said persons are named Sanjay and Shri Bhagwan and had joined in December 2012 and are still working with the respondents.

Corresponding Para in the written statement

5. That in reply to the contents of para No.5 of the writ petition, it is submitted that the services of Sh. Sanjay Kumar and Shri Bhagwan were hired for Police Commissionerate Gurugram, which is separate unit whereas the services of the petitioner were hired for Police Commissionerate Ambala, Panchkula. As mentioned above, services of the petitioner were not required by Commissioner of Police, Panchkula. Accordingly, no further extension was granted to the petitioner by respondent No.2.”

To the specific averments, there is no emphatical denial, which is requirement of law as per provisions of Order 8 Rule 5 of the Code of Civil Procedure. Concededly, Sanjay and Bhagwan are 2012 appointees, viz-a-viz petitioner being 2011. Relieving of petitioner, in my view, is totally against the principle of Last Come First Go, as the juniors, who joined in 2012, were required to be relieved. Reasoning of allocation of different Commissionerate cannot apply, as all the posts were filled up on contract basis by the Director General of Police being Head of the Police Department, Haryana.

Instructions dated 03.11.2017, in my view, are also in derogation of settled law as there cannot be any deviation from the direction of Hon'ble the Supreme Court, which is to be applied in the letter and spirit, as per the provisions of Articles 141 of the Constitution of India. No plausible reasons have been assigned in making it applicable w.e.f. 01.11.2017, when the State intended to enure the benefits to all the affected persons, but it cannot be at their Will and convenience. It has to be from the date, when the judgment came to be passed i.e. on 26.10.2016 and prior also, for, judgment does not specify its applicability prospectively.

Keeping in view the aforementioned facts, the impugned action of respondents, relieving the petitioner, is not sustainable being arbitrary and fallacious, the same is hereby set aside/quashed. Petitioner is ordered to be reinstated. Respondents/Department shall apply the principle of Last Come First Go and he shall also be granted benefit of continuity and full back wages of service, within a period of 15 days from the date of receipt of certified copy of this order. The respondents are also directed to give effect

the principle of equal pay for equal work in view of observations made hereinabove.

It would not be impediment for the respondents/Department to non-suit the claim of the aforesaid persons i.e. Sanjay and Bhagwan, in case of existence of posts.

With the aforesaid observations, present writ petition stands allowed.

16.09.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No