

Review Application No.381 of 2019 in
Civil Writ Petition No.8864 of 2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.A.No.381 of 2019 in
CWP No.8864 of 2017
Date of Decision: September 24, 2019

Suresh Kumar

...Petitioner

Versus

Haryana Urban Development Authority & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Yesh Paul Malik, Advocate,
for the applicant-petitioner.

AMIT RAWAL, J. (Oral)

Notice of the application to the non-applicants.

Mr. Hitesh Pandit, learned Additional Advocate General,
Haryana accepts notice on behalf of respondent No.1.

Mr. Yesh Paul Malik, learned counsel for the applicant-petitioner submits that once the Court has given a finding with regard to the intention of the applicant-petitioner to place on record voluminous record and found it to be involving disputed question of fact, instead of dismissing the petition, petitioner may be relegated to avail the remedy of civil suit. This prayer of the applicant-petitioner is not being opposed by the learned State Counsel, however, with a condition whether it is permissible or not.

I have heard the learned counsel for the parties and appraised the paper book.

This Court while noticing the stand observed as under:-

“In respect of aforementioned claim, reply has been filed on behalf of respondents and in unison have alleged that there has been manipulation by the petitioner, who in connivance with Raj Pal, Water Pump Operator appended his signature, though had been always working as Chowkidar. Vide Annexures R-1 and R-2, explanations were sought from petitioner. Post of Chowkidar is Group D post whereas Water Pump Operator is a Group C post. Appointment and promotion of employees are governed by Regulations 2009 i.e. Haryana Urban Development Authority (Regular Work Charged, Field Staff in Civil Electrical and Horticulture Wing) of Engineering of HUDA (Group C) Service Regulations 2009 and qualification of Water Pump Operator is extracted herein below:-

- (a) Direct Recruitment*
- (i) Matriculation with Hindi/Sanskrit.*
 - (ii) ITI Certificate in the trade of Motor/Diesel/Mechanical/Electrical Wireman.*
- (b) By promotion*
- (i) Minimum 7 years experience as WPO Helper/Keyman/Oilman/Petrolman/Mali-cum-Chowkidar/Head Sewerman/Sewerman/Mali-cum Pump Attendant.*
 - (ii) Field Test.*

In these circumstances, claim of petitioner is being rebutted vehemently.

I have gone through reply and of the view that issue involved in writ petition is disputed question of fact as the petitioner, as per averment in paragraph 3 of writ petition intends to place on record voluminous record to establish from log book of discharging duty as Water Pump Operator. This cannot be adjudicated under Article 226 of Constitution of India as required to be proved in according with law by leading direct and cogent evidence. Even otherwise, assertions

made in written statement have remained un rebutted in the absence of any replication or rejoinder. The stand of respondents calling explanations vide Annexure R-1 and R-2 fortified that petitioner never worked as a Chowkidar. In view of such circumstances, I do not find any merit in writ petition and accordingly dismissed.”

No doubt, the applicant-petitioner did not file any rejoinder to the specific averment in the written statement enclosing Annexures R-1 and R-2, i.e., the explanations sought from the petitioner, but since voluminous record is required to be led, learned counsel for the petitioner prays that instead of dismissing the writ petition, it may be treated as dismissed as withdrawn with liberty to file a civil suit on the same cause of action as the controversy involved in the present case requires detailed evidence.

Ordered accordingly.

Revision application stands disposed of.

September 24, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No