

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

CWP No.14002 of 2020

Date of Decision: 13.10.2020

Naresh Kumar Sharma Petitioner

Vs

State of Haryana and others Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Surender Lamba, Advocate for the petitioner.

Ms. Deipa Singh, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of mandamus directing respondent No.3 to allow him to join his duty as Peon without any delay.

[3]. Brief facts are that respondent No.3 has not allowed the petitioner to join his duty for want of relieving order/report from Prison Department in which the petitioner was earlier selected on the post of Cook, but he never joined in the said Department, rather filed a CWP No.3535 of 2019 before this Court for change of cadre. The said writ petition is still pending. During pendency of the said petition, the petitioner has been re-allocated to the post of Peon in Treasury and Accounts

Department, Haryana. However, despite the re-allocation of the petitioner, he has not been allowed to join his duty, whereas one Rajendra Kumar, selected on the post of Cook in Prison Department, who also did not join his duty in Prison Department, has been allowed to join duty in Higher Education Department, Haryana on re-allocation in an identical situation, without insisting upon his relieving order from the Prison Department.

[4]. Petitioner is an Ex.-Serviceman having retired from Indian Army. In pursuance of Advertisement No.4/2018, petitioner applied under Ex.-Serviceman category giving preference to category code No.101 (Peon). Petitioner was declared successful in the result declared on 19.01.2019 for the post of Cook in Prison Department. Petitioner was issued appointment letter for the post of Cook on 24.01.2019 and was asked to submit his joining report till 29.01.2019. Petitioner did not join the post of Cook. Petitioner represented to the Department for change of his cadre to other category such as Peon on 27.01.2019. Petitioner also filed CWP No.3535 of 2019 for change of his cadre. Notice of motion was issued in the said petition and the same is still pending.

[5]. Petitioner as well as various other persons applied for re-allocation of Group-D posts. On 09.12.2019, petitioner was informed that he has been re-allocated with new post. Petitioner downloaded the list of re-allocation and found that he has been

re-allocated the post of Peon at Sr. No.1765 in Treasury and Accounts Department. On 27.12.2019, petitioner submitted his joining report with respondent No.3. On 14.01.2020, petitioner was directed to submit the relieving report from his previous department i.e. Prison Department. On 21.01.2020, petitioner wrote a letter that he had not joined in Prison Department, therefore, no question arises for production of any relieving report from the said Department. Petitioner received a letter dated 28.01.2020 issued by Respondent No.3 to the Chief Secretary, Govt. of Haryana informing that as per Government instructions dated 11.12.2019, petitioner cannot be allowed to join his duty without submission of relieving order from his previous department. Petitioner again informed respondent No.3 on 01.02.2020 that he had not joined the Prison Department and now has been re-allocated the post of Peon in Treasury and Accounts Department, therefore, there is no question of getting his relieving report from the Prison Department in which he never joined.

[6]. On 29.05.2020, the Chief Secretary to Government of Haryana has issued instructions to grant last opportunity to Group-D employees to join within 15 days, failing which their candidature may be cancelled by the Department. Petitioner again filed an application before respondent No.3 on 09.06.2020 for allowing him to join the duty, but to no effect.

[7]. Petitioner came to know that similarly situated person namely Rajendra Kumar, who was initially offered the post of Cook in Prison Department has been allowed to join the Post of Peon in Haryana Education Department on re-allocation without insistence of any relieving order/report from his earlier Department i.e. Prison Department. Petitioner was constrained to file the present writ petition.

[8]. As per reply filed by respondent No.3, a stand has been taken that admittedly the petitioner did not join his duty as Cook which was allotted to him initially. As per Government instructions submission of relieving report is mandatory for all the candidates, who have been transferred to other Departments of the Government. The petitioner cannot join his duty as Peon in the respondent-Department without submitting relieving report from his previous Department i.e. Prison Department.

[9]. Perusal of letter dated 28.01.2020 issued by the Director General, Treasury and Accounts Department, Haryana to the Chief Secretary, Government of Haryana on the subject of one time opportunity for change of Department to newly joined persons in Group-D posts would show that the petitioner at Sr. No.1765 was re-allocated from Prison Department and has joined the present Department i.e. Treasury and Accounts Department on 27.12.2019 (wrongly shown as 27.11.2019 due

to some typographical error because order of re-allocation itself is dated 09.12.2019) but has not attached the proof of his relieving from the Prison Department. Relieving report from the Prison Department was asked for.

[10]. Having heard learned counsel for the parties, I find that once the re-allocation was allowed by the Department itself, then insistence for submitting relieving report from the earlier Department is of no consequence, particularly when the petitioner has already submitted that he did not join the earlier Department. Despite the aforesaid facts, respondent No.3 has re-allocated the post of Peon to the petitioner in the present Department of Treasury and Accounts. Even otherwise perusal of notice of re-allocation (Annexure P-6) would show that no condition was put for re-allocation. Information as contained in the notice reads as under:-

“Monday 9 December 2019

With regard to your application for re-allocation of Group D Post/Dept. the Govt. has re allocated you a new post and/or deptt. Vide instructions dated 9th Dec. 2019. Please check the re-allocation list of Group-D posts on the Haryana Govt. website- www.csharyana.gov.in.

*You are directed to Repo
View all.”*

[11]. This aforesaid notice is accompanied by the list of

candidates so re-allocated. Name of the petitioner finds mention at Sr. No.1765. The communication issued vide notice Annex.P-6 is unconditional. Therefore, in my considered view, it would be unfair to the petitioner to deprive him the post of Peon on re-allocation for want of relieving order from the earlier Department in which he never joined.

[12]. At the time of issuance of notice of motion, this Court specifically relied upon the case of identically situated person, who was permitted to join as a Peon without submitting a relieving order. In the present writ petition, the petitioner has named the said person as Rajendra Kumar, who was initially offered the post of Cook in Prison Department, but on re-allocation, has been given post of Peon in Haryana Education Department, where he has joined without submitting any relieving order from the Prison Department. Respondent No.3 has not adverted to any such information in the reply filed on behalf of respondents No.1 to 3.

[13]. Keeping in view the correspondence made by the Director General, Treasury and Accounts Department with the Chief Secretary, Government of Haryana in the context of giving last opportunity to the petitioner for change of Department subject to furnishing a relieving report, I deem it appropriate to direct respondent No.3 not to cancel the candidature of the

petitioner to the post of Peon on re-allocation to the Department of Treasury and Accounts Department, rather allow him to join which he had already joined on 27.12.2019, without insisting upon submission of relieving order from the Prison Department. The present writ petition was filed keeping in view the urgency arising out of proposed cancellation of re-allocation in view of order dated 28.01.2020. The subject matter of CWP No.3535 of 2019 was only confined to the prayer for re-allocation. Since re-allocation was done on 09.12.2019, therefore, CWP No.3535 of 2019 has virtually become infructuous.

[14]. For the reasons recorded hereinabove, I accept this writ petition with the direction to respondent No.3 to allow the petitioner to join the post of Peon on re-allocation to Treasury and Accounts Department, Haryana without insisting upon submission of relieving order from his previous Department i.e. Prison Department. Let the needful be done within a period of two weeks from the date of receipt of certified copy of this order.

(RAJ MOHAN SINGH)
JUDGE

October 13, 2020

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No