

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21702 of 2016
Date of Decision: 13.02.2020

Mukesh Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. RK Malik, Sr. Advocate with
Mr. Sunil Hooda, Advocate for the petitioner

Ms. Safia Gupta, AAG Haryana

GIRISH AGNIHOTRI, J. (Oral)

(1) The present writ petition has been filed by Mukesh Kumar, Sub Inspector *inter alia* praying for a writ in the nature of *certiorari* to quash the order dated 17.06.2016 (P5) by which petitioner has been ordered to be repatriated without taking into consideration the fact that he has already been permanently absorbed vide order dated 16.03.2016 (P4). Learned senior counsel for the petitioner has made various submissions.

(2) The brief facts which need to be noticed are that the petitioner who was initially appointed as Haveldar in Central Industrial Security Force (CISF) in 1998 was promoted as ASI in 2001 and further promoted as Sub Inspector in 2009 and continued as such in CISF. The petitioner, on 21.03.2014, had joined as Sub Inspector in Haryana Police on deputation. It is then the case of the petitioner that in July 2014, Haryana Police had asked no objection from the competent authority. On 22.08.2014 (P2), the Assistant Director General of CISF had conveyed it to the Directorate General, Haryana Police that the competent authority has approved the permanent absorption of the petitioner. Learned counsel submits that by this

order dated 22.08.2014 NOC was granted by CISF. Thereafter on

22.12.2015 (P3), the order was passed by the Additional Chief Secretary to Government of Haryana, Home Department whereby the Director General of Police was asked for to obtain written confirmation from the petitioner to the effect that he will be placed in the bottom of the seniority list of Sub Inspectors of the concerned range.

(3) Learned senior counsel has then placed reliance on the communication dated 16.03.2016 (P4) from the Additional Chief Secretary, Government of Haryana, Home Department to the Director General of Police whereby it was conveyed that proposal for absorption of the petitioner to the post of Sub Inspector permanently subject to the conditions mentioned therein has been agreed upon. Learned counsel then with emphasis submits that once vide this letter dated 16.03.2016 (P4), decision to permanently absorb the petitioner was taken, the Director General of Police, Haryana vide order dated 17.06.2016 could not pass an order relieving him from Haryana Police. Learned counsel contends that by this order he has been repatriated to CISF without taking into consideration the fact that on 16.03.2016, a decision had already been taken to permanently absorb the petitioner.

(4) Notice of motion was issued on 20.10.2016. It is a matter of fact that in compliance of the impugned order dated 17.06.2016 the petitioner has joined the CISF.

(5) Reply has been filed on behalf of respondents No.1 to 3. Learned State counsel has made reference to the various documents and has referred to letter dated 16.03.2016 (R4) and also the memo dated 01.03.2018 R7) to submit that in fact it is the specific case of the Department that though the Government had approved the proposal of absorption of the petitioner in Haryana Police, the same was not implemented and no formal order was

ever passed or conveyed to the petitioner prior to his repatriation to his parent Department (on completion of his deputation period).

(6) For the reasons mentioned hereinunder, this Court is in agreement with the submissions made by learned State counsel.

(7) Learned senior counsel has submitted that before withdrawing the decision to absorb the petitioner and before passing the order dated 17.06.2016, an opportunity of hearing was required to be given. This Court finds that a civil right would have accrued to the petitioner only if a formal communication would have been sent to him and a formal communication would have also been sent to the parent Department with a request to terminate his lien. In the present case, in the absence of both, as this Court finds, there is no civil right that has accrued to the petitioner and thus in absence of a civil right, the action so taken cannot be said to be vitiated.

(8) Learned senior counsel then submits that it is the specific pleaded case of the petitioner and in support of which he has appended orders (P7 to P11) whereby various other officers/officials who were similarly-situated as the petitioner were absorbed and are still continuing. This Court finds that this itself would not vitiate the action taken by the respondents. Firstly, it is not case of the petitioner so pleaded or argued before this Court that any person junior to him was absorbed and is still continuing. Secondly, in the detailed memo dated 01.03.2018 (R7) regarding the persons absorbed earlier i.e. vide orders (P7 to P11) between the period 2012 to 2014, the stand taken by the State before this Court in para 7 is to the following effect:-

“That in reply to the para No.7 and sub paras (i) to (iii) of writ petition, it is submitted that no order of permanent absorption of the petitioner in Haryana Police were issued.

Moreover, the State Govt. vide date 01.03.2018 Annexure R-7 has decided to withdraw approval of permanent absorption of the petitioner issued vide dated 16.03.2016. Detailed submissions made in preliminary submissions and foregoing paras are reiterated here.

7(iv) That in reply to sub para No.7(iv) of the writ petition, it is submitted that Inspector Amrik Singh Chahal No.882220212/CISF, Inspector Satyawar No.881020090/CISF, Inspector Vishnu Bhagwan No.95254084/BSF, Inspector Satish Kumar No.982220047/CISF and Sub Inspector Yudhvir Singh No.98450026/CISF were taken on deputation from their parent departments i.e. CISF/BSF. However, they were permanently absorbed after taking NOC from their respective departments.

7(v) That in reply to sub para No.7(v) of the writ petition, it is submitted that the petitioner has been relieved vide dated 17.06.2016. It is also submitted that in case the other similar situated persons State Govt. has decided not to repatriate them to their parent department i.e. CISF/BSF because their lien has not been retained in their parent department, whereas, lien of the petitioner still exist para 3 of preliminary submissions. Therefore, prayer of stay of operation of impugned order has become infructuous. Submissions made in preliminary submissions and foregoing paras are reiterated here.”

(9) For the reasons mentioned above, this Court finds that there is no legal right of the petitioner that has been infringed and therefore no fault can be found in the action of the respondents.

(10) Dismissed.

13.02.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No