

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Letters Patent Appeal No. 223 of 2021 (O&M)
Date of decision:- 25.02.2021

Ram Phal

.....Appellant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present:- Mr. Vikas Malik, Advocate, for the appellant.
Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the respondents.
(The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual Court).

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RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

This appeal has been filed by the appellant being aggrieved by an order dated 08.02.2021 passed in Civil Writ Petition No. 2706 of 2021 dismissing the petition filed by him wherein he had assailed the order dated 20.03.2020 passed by the Director General, Higher Education, Haryana, Panchkula-respondent No.2 rejecting his representation claiming for adjustment on the post of Peon in some other college.

Brief facts leading to the filing of this appeal are that the appellant-petitioner was engaged in the year 2011 and was working on the post of Peon with respondent No.3 college. Thereafter a regular appointment on the post of Peon was made by the college as the post of Peon was a regular sanctioned post. On appointment of the regular incumbent, the appellant was relieved from his duties. Being aggrieved by this, the appellant-petitioner filed a Civil Writ Petition No. 715 of 2020 before this Court and the said writ petition came to be disposed of on 18.02.2020. Learned Single Judge while disposing of the said petition had observed as under:-

“Undoubtedly, while issuing the relieving memo at Annexure P-7 the Principal of the College apparently has made a recommendation to the Director, Higher Education, Haryana to adjust the petitioner in any other Government college against the backdrop that he had served on the post of Peon on contractual basis from the year 2011 till 20.12.2019.

In the considered view of this Court a mandamus cannot be issued to enforce the recommendation made by Principal and as contained in the relieving letter at Annexure P-7.

In view of the above and while declining to interfere, writ petition is disposed of.

It would however be open for the petitioner to pursue the matter as regards his adjustment in the light of the recommendation contained in the relieving letter dated 20.12.2019 (Annexure P-7).”

From a perusal of the aforesaid, it is apparent that the learned Single Judge had declined to interfere in the matter. However, while doing so, the Court left it open to the appellant-petitioner to pursue the matter in terms of the recommendations contained in the relieving letter (Annexure P-7).

After the aforesaid, the appellant-petitioner approached the respondent-authorities for adjustment whereupon vide impugned order dated 20.03.2020, the petitioner’s claim for adjustment was rejected. The respondent-authorities while rejecting the representation/request of the appellant-petitioner has made the following observations:-

“It is stated that the Haryana Government vide dated 23.07.2019 has decided that in view of the large number of recruitments made already Government has taken a decision to stop all fresh engagements of Group-D personnel under Part-II of the Outsourcing Policy. It is also stated that the petitioner submitted the representation dated nil receipt on 07.01.2020

requesting therein to adjust him in the same College or any nearby colleges.

Keeping in view the instructions dated 23.07.2019, the recommendation of the Principal and the request of the petitioner received on 07.01.2020 to adjust the petitioner at any place under Part-II of the outsource policy is not sustainable.

In view of above, the case of the petitioner regarding adjust him as Peon in any other College on DC Rate under Part-II of the outsourcing policy having no merits as the petitioner has rightly been replaced by a regular candidate duly selected by the Haryana Staff Selection Commission and hence, the action of the Principal is quite legal and just. The recommendation dated 20.12.2019 of the Principal and the request of the petitioner to adjust him is hereby rejected.”

The petitioner being aggrieved filed a second petition before this Court which came to be dismissed by the impugned order dated 08.02.2021 passed in Civil Writ Petition No. 2706 of 2021 which is the subject matter of this appeal. Learned Single Judge has again reiterated his previous findings and held as under:-

“It is the pleaded case of the petitioner himself that he was relieved from his contractual assignment on 20.12.2019 on account of a regular incumbent having joined on the post. Petitioner undoubtedly had served on the post of Peon on a contractual basis from the year 2011 till 20.12.2019.

Initial engagement of the petitioner was not pursuant to any regular selection process which would encompass issuance of an advertisement, laying down qualification as also a regular selection procedure. It was a purely contractual engagement against which the petitioner had served.

Having been relieved on account of joining of a regular employee, no vested right would accrue in favour of the petitioner to seek adjustment against any other vacant post.

A writ of mandamus would issue only towards enforcing a statutory or a constitutional right. Prayer of the petitioner seeking adjustment against any other vacant post cannot be accepted solely on the basis of a recommendation that may have been made by the Principal of the college concerned while issuing the relieving memo.”

Learned counsel appearing for the appellant submits that the appellant had worked with the respondent-authorities on contractual basis since 2011 and in such circumstances, the authorities should have taken a sympathetic view in the matter and adjust the appellant in some other college. He has also brought to the notice of this Court an interim order passed by this Court on 15.10.2020 in Civil Writ Petition No. 17182 of 2020 wherein the learned Single Judge while taking into consideration the letter dated 02.02.2019 of the Government of Haryana, by an interim order directed the respondent-department to adjust the petitioner on the post which was lying vacant around Jind.

We are of the considered opinion that the reliance placed by learned counsel for the appellant on this letter is patently misconceived firstly on account of the fact that it is an interim order and secondly it is observed that pursuant to the aforesaid interim order dated 15.10.2020 passed in Civil Writ Petition No. 17182 of 2020 the petitioner therein was adjusted by the authorities subject to the final outcome of the writ petition. However, the learned Single Judge by an order dated 26.11.2020 disposed of the writ petition without deciding the same on-merits just because the petitioner therein had been adjusted and it was observed that no further orders were required to be passed. Apparently, the aforesaid order passed in Civil Writ Petition No. 17182 of 2020 is not a precedent and cannot be considered as such.

On the other hand, learned Single Judge in the present case has observed that the initial engagement of the appellant was not pursuant to any regular selection process which required issuance of proper advertisement, laying down qualification as also a regular selection procedure and thereafter being appointed against the vacant sanctioned post in the establishment. The aforesaid observations made by the learned Single Judge are apparently in consonance of the law laid down by the Supreme Court in ***State of Karnataka v. Uma Devi 2006 (4) SCC 1, Official Liquidator v. Dayanand 2008(10) SCC, National Fertilizers Ltd. and others v. Somvir Singh, 2006(5) SCC 493 and State of Orissa v. Mamta Mohanty 2011(3) SCC 436.***

We are also of the considered opinion that a person who has been engaged without following any procedure prescribed by law cannot be made regular or adjusted against the vacant sanctioned post. For, such appointments or even regularizations on such post have already been held to be violative of Article 14 of the Constitution of India by the Supreme Court in the above mentioned cases.

In the circumstances, we do not find any perversity or illegality in the order passed by the learned Single Judge warranting interference. The appeal filed by the appellant being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

25.02.2021
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Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No