

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

CWP No. 16043 of 2021 (O&M)

Date of decision: 19.08.2021

Krishan Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Y. P. Malik, Advocate, for the petitioner.

Ms. Rajni Malik, Additional Advocate General, Haryana.

(Presence marked through video conferencing).

Arun Monga, J.

Grievance of the petitioner herein *inter alia* is *qua* non according the benefit of Government Instructions dated 03.11.2017 (Annexure P-6), inasmuch as, having been appointed as Peon on 01.12.2015 through Employment Exchange, under out-sourcing Policy Part-II with proper selection process by a duly constituted committee. His services were arbitrarily terminated vide order dated 13.02.2019 (Annexure P-5).

2. The petitioner also seeks issuance of a writ in the nature of Mandamus directing the respondents to grant minimum of the regular pay scale, as entitled to a peon (Category-D) on the principle of "*equal pay for equal work*" relying on State Government instructions dated 03.11.2017 (Annexure P-6) read with Apex Court judgment rendered in

Civil Appeal No.213 of 2013 - State of Punjab versus Jagjit Singh, decided on 26.10.2016.

3. Learned counsel for the petitioner argues that the petitioner is 100% handicapped person (mid arm amputated as per disability certificate as Annexure P-1). He also belongs to BC Category. In view of number of vacant/ sanctioned posts of peons in the office of respondent no. 2 (Deputy Commissioner, Karnal) at the relevant time, a requisition was sent to the Employment Exchange for filling up of these posts under Out-sourcing Policy Part-II. Pursuant thereto, the petitioner's name was sponsored by the Employment Exchange, Karnal. After conducting proper selection process through interviews by a duly constituted Selection Committee comprised of City Magistrate, Karnal, the petitioner along with 8 other candidates was selected from amongst many others who had appointed.

4. Learned counsel for the petitioner relies on an office order dated 04.12.2015 (Annexure P-4) issued by the then Deputy Commissioner, in support of his contention that petitioner was appointed under Out-sourcing Policy Part-II after having competed for the post, being at Sr. No. 8 of the selected candidates. Notwithstanding, the petitioner's services were terminated as a bolt from the blue on 13.02.2019, on the ground that 46 regular peons were appointed through Haryana Staff Selection Commission. Services of 10 contractual peons, named in the impugned order, where petitioner's name figures at Sr. No.1, were therefore terminated with immediate effect. The petitioner requested the competent authority to take him back in service after termination of his services claiming that he is entitled to be given the

benefit of doctrine of “*last come first go*”. As against this, some of the peons appointed along with the petitioner, who are lower in merit, have been retained in service. Whereas, the services of the petitioner have been summarily dispensed with. He also claimed the benefit of minimum of the regular pay scale in terms of the Government instructions dated 03.11.2017 (*ibid*).

5. Learned counsel for the petitioner further contends that the respondents though kept on assuring the petitioner that they would take him back in service but kept procrastinating on one pretext or the other. The petitioner also did not want to create any hostility and kept on waiting for a positive response. In the ensuing, Pandemic Covid-19 hit the entire world and the case of the petitioner remained pending. Finally, having waited for a considerable time, the petitioner caused a legal notice dated 30.08.2020 (Annexure P-7). Since the same was not adverted, he sent another reminder to legal notice on 31.05.2021 (Annexure P-8). Legal notice dated 31.05.2021 was adverted vide a reply dated 15.07.2021 (Annexure P-9) by the office of Deputy Commissioner, negating the claim of the petitioner on very flimsy and summary grounds by ignoring the contents of the legal notice. Hence, the petition.

6. Notice of motion.

7. On advance service of copy of petition, learned State counsel join the proceedings. She submits that the legal notice of the petitioner has been validly decided by the competent authority giving reasons therein vide response dated 15.07.2021 (Annexure P-9). She argues that perusal of writ petition reflects that the petitioner has not

challenged the same and, therefore, the writ petition is liable to be dismissed.

8. Having heard the arguments as aforesaid and on perusal of the contents of the writ petition as well as legal notices issued by the petitioner viz-a-viz the response dated 15.07.2021 to the legal notice, it appears that the legal notice has indeed been summarily dealt with without specific detailing with the issues raised therein. There hardly is any reasoning to reflect the mind of the competent authority so as to enable the petitioner to assail the same. Neither there is any office order giving reasons for non grant of the benefits as sought by the petitioner which can be assailed. The merits pleaded by petitioner have been given a complete short shrift.

9. In the premise, writ petition is disposed of with a direction to the competent authority to pass a speaking order within 60 days giving specific reasons qua the contentions contained in the legal notice as well as the contents of the writ petition herein, by treating the same as supplementary representation. In case any favourable order is passed pursuant thereto, benefit of the same be accorded to the petitioner within a period of 30 days since he continues to be out of service.

19.08.2021

VS

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No