

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28649 of 2022
Date of decision: 13.12.2022

Rakesh Kumar

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Fateh Saini, Advocate for the petitioner.

Mr. Pankaj Middha, AAG, Haryana.

VIKRAM AGGARWAL, J (ORAL)

The petitioner challenges the order dated 20.10.2022 (Annexure P-4) vide which the services of the petitioner who was working as a Peon in the Office of respondent no.3 were dispensed with on the ground that he did not fulfill the essential qualifications for the same. The petitioner also seeks a writ of *mandamus* directing the respondents to take the petitioner back in service with all due benefits.

The petitioner was appointed as a Peon by respondent No.3 in November, 2017 under the outsourcing policy of the Government of Haryana. In June, 2022 policy dated 30.06.2022 (Annexure P-1) was issued. Clause 8.1 thereof provided that while porting the existing contractual persons, if any such person did not fulfill the educational qualifications prescribed for a particular post, the person could be given relaxation if he had completed minimum three years experience on the same post. The petitioner was called upon to remove the deficiency in his qualification but since he could not do so, he was removed from service by way of order

dated 20.10.2022 (Annexure P-4).

Aggrieved by the same, the petitioner has preferred the present writ petition.

Learned counsel for the petitioner has strenuously urged that the action in removing the petitioner from service despite there being a provision in the policy (Annexure P-1) is violative of the said provisions and the same has been done with a view to accommodate some other preferred person. It has been contended that the action was initiated against the petitioner when the respondent realized that there was a provision in the policy (Annexure P-1) as per which the petitioner could be retained in service. Learned counsel has submitted that the petitioner is pursuing his matric and will clear the same in a short time and, therefore, his services need to be protected.

I have considered the submissions made by learned counsel for the petitioner and have also perused the documents filed by him along with the writ petition. However, I am unable to agree with the arguments advanced by learned counsel. Merely because the petitioner has spent five years with respondent No.3, would not give him a right to continue on the post even when he does not fulfill the qualifications for the same. In fact, his initial appointment appears to be illegal as has rightly been held in the impugned order (Annexure P-4). The contention that the respondents initiated action against the petitioner once they found that there was a clause in the policy (Annexure P-1) vide which the petitioner could be retained in service is devoid of merit. Order (Annexure P-4) states that in view of Para 8.1 of the policy (Annexure P-1), the petitioner was given time to complete his qualification and an affidavit was submitted by the petitioner on

05.05.2022 that he would complete his matriculation within a period of two months. However, he did not do the same and did not provide any proof regarding his having completed matriculation. Respondent No.3, therefore, took the view that if the petitioner was permitted to continue on the post, the whole purpose of laying down an educational qualification would stand defeated. A rational view was, therefore, taken and the petitioner was ordered to be removed from service. I do not find any illegality in the said decision.

Even otherwise, Clause 8.1 of the policy (Annexure P-1) is not binding and the same does give a discretion to the concerned employer which has been exercised by respondent No.3 vide order (Annexure P-4).

In view of the above aforesaid, I do not find any merit in the present writ petition and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

13.12.2022

R. Sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No