

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-32576 of 2018 (O&M)

Date of Decision:06.09.2022

Sandeep Sharma

.....Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for the respondent Nos.1 to 7.

G. S. SANDHAWALIA, J. (ORAL)

1. The challenge in this writ petition is to the order dated 25.07.2018 (Annexure P-10), whereby two original applications filed by the petitioner i.e., OA No. 060/00364/2017 and OA No.060/00598/2017 were dismissed. In effect, the prayer in one of the two OAs', was to set aside the order dated 17.08.2016, whereby the candidature of the petitioner for the post of Gramin Dak Sewak (GDS) was cancelled for the MTS exam, which was held on 17.07.2016. The challenge in the other one was regarding the termination of services as Gramin Dak Sewak vide order dated 22.08.2016 (Annexure P-9).

2. The Tribunal, while dismissing the said two original applications came to the conclusion that detailed order had been passed cancelling the petitioner's candidature for the MTS examination on account of the videography mismatch and since the photo on the application form

for the MTS exam, did not match with the applicant and the result was not declared. An inquiry had been conducted as to the fact that petitioner had not been engaged as a regular GDS and worked as an outsider GDS from 01.09.2015 to 04.06.2016 against a vacant post. It was further held that regular appointment of the petitioner was a condition required to be fulfilled for appearing in the MTS exam.

3. Regarding the issue of termination of the services for the post of GDS which was done by paying him a sum equivalent to the amount of his basic allowance plus DA for the period of notice at the rate which he was currently drawing, it was held that same was done in terms of rules cited for the termination of the applicant. It was further held that it is not for the Tribunal to conduct an inquiry regarding the legal or illegal engagement of the applicant and if his engagement was clouded by certain irregularities, it was held that it was for the respondents to take action as provided under the rules.

4. Mr. Ashok Bhardwaj, Advocate, for the petitioner has argued before us that there are two issues involved and the appointment was made on 30.03.2016 (Annexure P-5) after following due procedure and therefore, the termination as such was not justified on account of the fact that no enquiry was conducted before dispensing service. Further no opportunity was granted before cancelling the candidature for MTS examination therefore, it would not be fair to sustain the termination order dated 22.08.2016, which was passed in pursuance with order dated 17.08.2016, whereby the result of the MTS examination had been cancelled. It is submitted that both issues are inter-se connected and there were two sets of rules namely the Department of Posts, Gramin Dak Sevaks (Conduct and

Engagement) Rules 2011 and Rule 6 (b) of Post and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964, whereby termination would be governed.

5. Similarly, Mr. Pankaj Gupta, Senior Panel Counsel, argued that the appointment was only on contractual basis, thus, as per Service Rules, 1964, the petitioner having been appointed on a contractual basis, his services could be terminated in the manner as mentioned above.

6. The said aspect has been opposed by Mr. Ashok Bhardwaj, Advocate, who submits that petitioner is a regular appointee by referring to the Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules 2011 to point out that under Rule 3-A and sub clause (iii), the Sevak shall have to give undertaking that he has other sources of income besides the allowance already being paid or to be paid by the Government for adequate means of livelihood for himself and his family. As per Rule 3-A (i), he is not required to perform duty beyond the period of 5 hours in a day, and thus contends that it is on this account the word contractual is mentioned in his appointment letter dated 30.03.2016.

7. In such circumstances, it is submitted that there is no concept of a regular appointment as all are appointed on the same terms. These are issues which should have been addressed before the Tribunal and the entire set of both the rules have to be considered. The termination on 22.08.2016 is apparently on the basis of misconduct and is on the basis of letter dated 17.08.2016, which is another aspect which has to be examined by the Tribunal.

8. We find that the Tribunal did not discuss the impact of the said rules, as services of employees who have not rendered services for more

than three years can be terminated by giving a notice in writing either by the employee to the Appointing Authority or by the Appointing Authority to the employee, as per Rule 8 of the Conduct and Engagement Rules, 2011.

9. Keeping in view the facts and circumstances as above, we deem it appropriate to remand this matter for decision afresh.

10. Accordingly, this writ petition is allowed and order dated 25.07.2018 (Annexure P-10), is set aside and the Tribunal shall proceed to decide the matter afresh.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

September 06, 2022
rekha sharma

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