

[Neutral Citation No. 2023:PHHC:048612]

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

1. COCP-1090-2021 (O&M)

Sahab Singh

...Petitioner

Versus

Anurag Rastogi, IAS and others

...Respondents

2. COCP-1183-2022 (O&M)

Sahab Singh

...Petitioner

Versus

Shekhar Vidhyarthi and another

...Respondents

**Reserved on : 10.04.2023
Pronounced on : 11.04.2023**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R. S. Mamli, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

ARVIND SINGH SANGWAN, J.

The petitioner, by way of filing COCP-1090-2021, alleges violation of the order dated 29.06.2015, passed by this Court in CWP-10462-2015, vide which, it was directed that the services of the petitioner shall not be dispensed with till the regular appointments are made.

In the aforesaid writ petition, the petitioner has stated that he

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has joined services as Driver on contractual basis on 16.12.2013. The writ Court, while issuing notice of motion on 29.06.2015, issued the aforesaid directions. Later on, the writ petition was disposed of on 01.09.2015 on a statement made by the Additional Advocate General, Haryana that the department has no intention of replacing the petitioner, who is working on contractual basis, with another set of employee on similar terms. The petitioner alleges that there were three sanctioned posts in the office of Deputy Excise and Tax Commissioner, Kurukshetra, however, in order to fill up the third post, one person namely Tarsem Lal, who is a regular employee, was transferred to Kurukshetra and, therefore, the services of the petitioner were dispensed with.

Thereafter, the petitioner filed another writ petition bearing CWP-10046-2021, which was disposed of on 27.04.2022 by passing the following order:

“1. Petition herein, inter alia, is for issuance of a writ in the nature of certiorari to quash the order dated 28.04.2021 (Annexure P-16) and allow the petitioner to work till all the sanctioned posts are filled up as the petitioner is senior most contractual driver in the department.

2. Learned counsel for the petitioner submits that petitioner was appointed on contract basis against the sanctioned post of driver. He joined on 16.12.2013 under Part-II outsourcing policy and worked up to 25.06.2014 and again he was taken in service and worked continuously. Respondents wanted to replace the petitioner by some other contractual worker. He filed CWP No.10462-2015 wherein stand taken by the

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respondents was that they have no intention of replacing the petitioner. Thereafter, petitioner filed another CWP No.9813-2016 which is still pending wherein dispute is regarding the policies that when sanctioned posts are available then the petitioner has to be re-engaged through Part-II policy and not Part-I policy. Petitioner has been working since 2013. Services of the petitioner have been terminated verbally on 30.04.2021. Learned counsel for the petitioner submits that many other contractual drivers are still working, who had joined much after the petitioner. Hence, the instant petition.

3. In view of the order dated 29.06.2015 passed in CWP No.10462-2015 since a direction was issued that “services of the petitioner shall not be dispensed with till regular appointments are made, which was disposed of vide order dated 01.09.2015 in the following terms:

“Reply filed in Court today is taken on record. Copy supplied.

Respondents have stated that they have no intention of replacing the petitioner who is working on contractual basis with another set of employees on similar terms.

Be that as it may, then the grievance of the petitioner stands redressed and the petition is disposed of in terms of the reply filed by the respondents.”

4. In course of hearing, learned counsel for the petitioner strenuously argued that currently there are 3 sanctioned posts in the department and only 2 regular drivers have been appointed on the sanctioned posts and third remains vacant. Notwithstanding, vide an order dated 28.04.2021 (Annexure P-16) services of the petitioner have been summarily dispensed with without assigning any reasons

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and in violation of the stand taken by the department in the return filed to the aforesaid CWP, which was disposed of, on the basis of respondents undertaking that unless regular appointment is made, petitioner shall be allowed to continue.

5. In view of the conceded stand taken by the department, writ petition is disposed of with directions to the respondents that in case regular appointee has not joined on the third post, the department shall remain bound by the undertaking/stand taken in the CWP No.10462-2015 and the petitioner shall be allowed to resume his duties subject to the third sanctioned post being vacant for non-availability of regular appointee, as has been contended by learned counsel for the petitioner.

6. Necessary exercise be carried out within a period of 30 days from today, needless to say, subject to the third sanctioned post being vacant.

7. Disposed of accordingly.

8. Pending applications, if any, also stand disposed of.”

The petitioner, thereafter, filed the second contempt petition i.e. COCP-1183-2022 alleging non-compliance of the aforesaid order dated 27.04.2022.

Learned counsel for the petitioner has submitted that against the third post, the petitioner has not been permitted to join as by transferring a regular employee from other district to Kurukshetra, the third post was filled up and it amounts to violation of the aforesaid orders dated 29.06.2015 and 27.04.2022.

Reply, on behalf of Deputy Excise and Taxation Commissioner (Excise), Kurukshetra was filed on 28.06.2021, in which, the position was explained that the petitioner was initially engaged through service provider

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under Part-A of the Outsourcing Policy, after obtaining sanction from the Excise and Taxation Commissioner i.e. respondent No. 2. It is further stated that there are only two running vehicles in the office and two drivers are required for the said vehicles. It is further stated that one regular driver namely Tarsem Lal was transferred from the Head Office to the office of Deputy Excise and Taxation Commissioner, Kurukshetra on 23.04.2021 and one Narender Kumar was promoted to the post of Driver and posted in the office of the Deputy Excise and Taxation Commissioner, Kurukshetra, therefore, the services of the petitioner were no more required and intimation was sent to the petitioner, vide letter dated 28.04.2021.

A rejoinder was filed by the petitioner reiterating the version as taken in the petition that the third post is vacant and the respondents are deliberately not allowing the petitioner to join services. The petitioner has also filed written synopsis during the course of arguments taking similar pleas.

The petitioner has also relied upon an information, received under RTI, to submit that there were three sanctioned posts of Drivers in the office of the Deputy Excise and Taxation Commissioner, Kurukshetra.

In response thereto, again an affidavit of the Deputy Excise and Taxation Commissioner, Kurukshetra has been filed in Court on 10.04.2023, in which, it is explained that on 15.07.2021, the earlier driver namely Devender Singh was posted and he has joined service in the office of the deponent. It is further stated that Devender Singh has joined against the third vacant post as the earlier two drivers, namely Tarsem Lal and Narender Kumar, are already working in the office. It is further stated that in

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terms of order dated 27.04.2022, the petitioner cannot be allowed to resume his duties as third sanctioned post is neither vacant nor available as a regular appointee has already joined on the said post.

In view of the above categorical stand taken by the respondents that all the three sanctioned posts are being manned by the regularly appointed drivers, no case of any willful disobedience is made out against the respondents.

Accordingly, the present petitions are dismissed.

Rule stands discharged.

Let a photocopy of this order be placed on the file of other connected case.

11.04.2023
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>