

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

**CWP No.11270 of 2020
Date of decision : 25.05.2023**

Sandeep Sharma

....Petitioner

Versus

Punjabi University Patiala and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.P. Singh, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondents.

PANKAJ JAIN, J.

Petitioner prays for issuance of a writ in the nature of certiorari seeking quashing of the communication dated 24th of September, 2019 (Annexure P-10) whereby the petitioner has been asked to furnish affidavit to the effect that he shall not claim any salary for the period he remained out of job as a condition precedent for his reinstatement as Junior Engineer. Further prayer is that the order (Annexure P-8) dated 18th of May, 2017 be ordered to be treated as annulled in the facts and circumstances of the case.

2. Petitioner joined respondent-University in the year 2010 as Junior Engineer (Civil) on adhoc basis. The petitioner approached this Court by way of CWP No.5979 of 2014 seeking regularization of services. Counsel for the petitioner submits that during the pendency

of the said writ petition he met with a serious accident and suffered injuries owing to which he remained bedridden and became permanently disabled. Vide order dated 15th of December, 2014 placed on record as Annexure P-4, the petitioner along with similarly situated persons working as Junior Engineers (Adhoc) were redesignated as non-work charge Junior Engineers w.e.f. 1st of April, 2012. On 16th of December, 2016 the University ordered to regularize services of non-project work charge Junior Engineers who had completed five years of service. It was also ordered that the services of the petitioner shall be regularized on completion of five years w.e.f. 1st of April, 2012. It is claimed that prior to the aforesaid decision the petitioner was asked to furnish affidavit that he will withdraw his writ petition i.e. CWP No.5979 of 2014 pending before this Court. Such affidavit has been placed on record as Annexure P-6. Before the services of the petitioner could be regularized w.e.f. 25th of April, 2017 in the light of order dated 16th of December, 2016 (Annexure P-5) the writ petition preferred by the petitioner came up for final consideration on 6th of April, 2017 and the same was dismissed. From the order dated 6th of April, 2017 passed by this Court in CWP No.5979 of 2014 it is evident that none of the counsels brought it to the notice of the Court that the petitioner's services have already been ordered to be regularized vide order Annexure P-5 and the petitioner had also

submitted an affidavit before the University authorities for withdrawal of the said writ petition. In spite of Annexure P-5, the respondent authorities ordered to relieve the petitioner immediately on 17th of May, 2017 taking shield of the orders passed by Writ Court. Faced with the situation, the petitioner filed review application before this Court. Order dated 6th of April, 2017 was reviewed and it was ordered as under :-

“10. If it had been brought to the notice of the court that the University had already taken a decision to regularise the services of the petitioner herein, in terms of the office order dated 16.12.2016, this court would not have dismissed the writ petition. The court would have permitted the petitioner to withdraw the writ petition in terms of the order dated 16.12.2016 and the affidavit filed. The argument advanced that the decision of the University to regularise the services of the petitioner could not be brought to the notice of the court at the time the writ was argued, as the petitioner had suffered an accident and had not contacted his lawyer, seems to be more than plausible. The fact that he had suffered an accident has not been controverted by the respondent University, either in its reply or in its arguments. After filing of the reply in the writ petition, the fact that the University had taken a decision to designate the petitioner as Non-Project Work Charge Junior Engineer w.e.f. 01.04.2012 and regularise the services of the petitioner on completion of 5 years of service, should have been brought to the notice of this court by the University itself. It should have also been brought to the notice of this court that the petitioner had already filed an affidavit that he would withdraw the writ petition from this court. It is expected of the University to have acted fairly, which has not been done in the instant case, since the record is with them. In fact, a reading of the reply would reflect that the services could not be regularised as on 31.3.2017, as he had

availed of leave without pay for 25 days and his time period for completion of 5 years of work charge service was extended by 25 days. In case the writ had been taken up a month later the services of the petitioner stood regularised. It is only that the writ petition got decided in the meantime on 06.04.2017, that his services are sought to be dispensed with.

11. In the background of above noted facts, this is a fit case for this court to exercise power of review of the judgement dated 06.04.2017 rendered in Civil Writ Petition 5979 of 2014, dismissing the writ petition. Ordered accordingly.

12. After re-calling and reviewing the judgement dated 06.04.2017 in Civil Writ Petition No. 5979 of 2014 and taking note of the subsequent events as placed on the record after filing of the writ petition and the written statement the petitioner herein is permitted to withdraw his writ petition in terms of order dated 15.12.2016 and 16.12.2016 and the affidavit filed.”

3. After the order passed in review application was brought to the notice of the respondent University, communication dated 23rd of September, 2019 has been issued whereby the petitioner has been asked to give up his claim over salary for the period he remained out of job w.e.f. 17th of May, 2017 till 24th of September, 2019. The present writ petition has been thus filed by the petitioner impugning the aforesaid communication claiming that once the University has taken decision vide Annexure P-5 to regularize the services of the petitioner the petitioner ought not have been relieved vide impugned order. It has been further claimed that owing to the fact that the petitioner was physically disabled and was bedridden he could not

approach his counsel and it was duty of the respondent-University to have brought the decision dated 16th of December, 2016 to the notice of the Court. Counsel for the petitioner further relies upon another event which is reflected in Annexure P-11 i.e. disability Certificate issued to the petitioner whereby the petitioner has been certified to be permanently disabled to the extent of 68% to assert that any discrimination against the petitioner will also be in violation of Section 47 of the 1995 Act which specifically prohibits an establishment to dispense with the service of any employee which became disabled during the service of that particular establishment.

4. Respondents in the written statement do not dispute the factual narration in the writ petition. However reliance is being placed upon recommendations of the Committee constituted by Vice Chancellor and communication Annexure P-10 is stated to be in line with such recommendations.

5. I have heard counsel for the parties and have gone through records of the case.

6. University admits that vide Annexure P-5 the University ordered to regularize the services of the petitioner w.e.f. 1st of April, 2017 on completion of five years of work-charge service. It is also not in dispute that the aforesaid order could not be brought to the notice of this Court on 6th of April, 2017 when CWP No.5979 of 2014 filed by

the petitioner was ordered to be dismissed. The University authorities opted to relieve the petitioner vide order dated 18th of May, 2017 despite there being orders to regularize the services of the petitioner vide order dated 16th of December, 2016 (Annexure P-5). Order dated 6th of April, 2017 passed in CWP No.5979 of 2014 stands recalled by this Court vide order dated 13th of December, 2017. Thus, the respondent authorities cannot be now allowed to take U-turn and impose conditions upon the reinstatement of the petitioner. Trite it is that once the authorities have treated the petitioner at par with other similarly situated persons and resolved to grant him the similar treatment any reversal from such decision without any basis to distinguish the case of the petitioner from others would amount to hostile discrimination. On the day CWP No.5979 of 2014 was being heard it was duty of the parties to have brought to the notice of this Court regarding the decision taken by the respondent-authorities to regularize the services of the petitioner and the affidavit submitted by the petitioner to withdraw the writ petition. Petitioner is categorical in his pleading that submission of affidavit before the respondent authorities *qua* the condition precedent to passing of order dated 16th of December, 2016 (Annexure P-5). Reference can be made to Para No.7 of the writ petition which reads as under :

“7. That even the petitioner was asked to submit an affidavit

that he is bound to withdraw the writ petition which is pending in the High Court, obviously the reference was to CWP No. 5979 of 2014. The petitioner submitted the affidavit to the respondent University, a true translated copy of which dated 15.12.2016 is attached herewith as **Annexure P/6.**”

7. Surprisingly respondents have opted not to respond to the same specifically and an evasive reply has been submitted as under :

“7. That the contents of para No. 14 of the writ petition are wrong and missed projected and hence, denied. Is submitted that the persons who have been regularized, fulfilled the conditions for regularization. The case of the petitioner is not on the same footing as the persons named in the para.”

8. Thus once the respondent authorities were in possession of the affidavit tendered by the petitioner to withdraw the writ petition it was their duty to bring it to the notice of the Court. Handicap of the petitioner owing to the physical disability suffered by him is written large on the record. However, no explanation has come-forth from the respondent-authorities as to why the fact of order dated 16th of December, 2016 and the affidavit dated 15th of December, 2016 could not be brought to the notice of this Court by them. Not only this once the respondent authorities themselves ordered that the services of the petitioner were regularized there is nothing in dismissal of the writ petition which calls for relieving of the petitioner. From the above it can be safely concluded that the petitioner was kept out of job not on

account of any act or omission on his part but on account of highhandedness on part of the respondents. Otherwise also once order dated 6th of April, 2017 ceases to exist in the light of order dated 13th of December, 2017 and specific observations were made by the writ Court to the following effect :

“.....After filing of the reply in the writ petition, the fact that the University had taken a decision to designate the petitioner as Non-Project Work Charge Junior Engineer w.e.f. 01.04.2012 and regularise the services of the petitioner on completion of 5 years of service, should have been brought to the notice of this court by the University itself. It should have also been brought to the notice of this court that the petitioner had already filed an affidavit that he would withdraw the writ petition from this court. It is expected of the University to have acted fairly, which has not been done in the instant case, since the record is with them. In fact, a reading of the reply would reflect that the services could not be regularised as on 31.3.2017, as he had availed of leave without pay for 25 days and his time period for completion of 5 years of work charge service was extended by 25 days. In case the writ had been taken up a month later the services of the petitioner stood regularised. It is only that the writ petition got decided in the meantime on 06.04.2017, that his services are sought to be dispensed with.”

there is nothing on record to justify impugned order.

9. The University authorities on their own kept on delaying the issue asking the petitioner to give up his claim for backwages without there being any basis. It is settled proposition of law that principle of no work no pay is not absolute and is not applicable in a situation wherein an employee has been kept out of job not on account

of any fault on his part but on account of fault on the part of employer.

10. In view of the above, present writ petition is allowed. Conditions imposed in communication dated 24th of September, 2019 asking the petitioner to suffer an affidavit to give up his right to backwages before joining is ordered to be quashed. Respondents are directed to consider the claim of the petitioner for regularization in terms of order dated 16th of December, 2016 placed on record as Annexure P-5 and award all consequential benefits including monetary as well as notional from the said date within a period of four weeks from the date of receipt of copy of this order.

11. Keeping in view the highhandedness shown by the University Authorities and the fact that the petitioner has been forced to approach this Court twice i.e. once in review application and second time in the present writ petition, present writ petition is allowed with costs which are assessed to be Rs.50,000/-. The same shall be payable to the petitioner by the respondent-authorities within two weeks from the date of receipt of copy of this order.

12. Ordered accordingly.

May 25, 2023

Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No