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

CWP-15133-2021 (O&M)

Date of decision : 02.02.2023

Parshant Singh Dahiya

...Petitioner

Vs.

Food Corporation of India and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

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

Mr. Sunish Bindlish, Standing Counsel with
Mr. Gagandeep Singh Malhotra, Advocate and
Mr. Prashant Rana, Advocate for non-applicant/respondents.

MANOJ BAJAJ, J.

Parshant Singh Dahiya-petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari/Mandamus seeking direction to the respondents to allow him to join the post of Assistant Grade-III (Technical) with respondent No.1- Food Corporation of India (in short FCI) subject to the outcome of FIR No.775 dated 01.11.2019 registered against him, under Sections 323, 354, 376, 377, 498-A and 506 IPC at Police Station Gharaunda, District Karnal.

Today, applicant-petitioner has filed an application bearing No.CM-578-2023 seeking amendment of the writ petition in order to challenge the order dated 03.09.2021, whereby his appointment to the post of Assistant Grade-III (Technical) has been cancelled for not joining

the post.

During the course of hearing, learned counsel for the parties jointly prayed for pre-poning the date of hearing of the main writ petition, which is fixed for 10.07.2023.

On the oral request of learned counsel for the parties, the date of hearing is pre-poned to today and the main writ petition is taken up for hearing.

Learned counsel for the petitioner submits that pursuant to the advertisement No.1 of 2019, petitioner applied for the post of Assistant Grade-III (Technical) under EWS category, who was selected and appointed through letter dated 11.02.2021 (Annexure P-1). He submits that petitioner's sister-in-law had lodged FIR No.775 dated 01.11.2019 under Sections 323, 354, 376, 377, 498-A and 506 IPC, wherein petitioner, his parents and others were implicated as accused and for this reason, petitioner was not allowed to join the post. Mr. Mamli, learned counsel has invited the attention of the Court to the order dated 12.07.2021 (Annexure P-5) passed by this Court in CRM-M-6312-2021 to contend that the accused persons had filed a petition for quashing of FIR on the basis of compromise dated 05.02.2021 (Annexure P-7), and vide order dated 17.09.2021 the FIR (Annexure P-6) was quashed. Learned counsel further argued that during the pendency of this petition, respondents have cancelled the appointment letter dated 11.02.2021 vide order dated 03.09.2021 (Annexure P-7), therefore, the necessity has arisen to amend the writ petition in order to challenge the said order. He submits

that the petitioner visited the office of respondents on number of occasions to join the post of AG-III pursuant to the appointment letter dated 11.02.2021, but he was not allowed to join because of the pendency of the FIR. According to him, now though the FIR stands quashed vide order dated 17.09.2021, but two weeks before that petitioner's appointment was cancelled. He prays that as the order dated 03.09.2021 was passed during the pendency of writ petition, the application for amendment be allowed. He prays that the respondents be directed to allow the petitioner to join the post of Assistant Grade III (Technical).

Learned counsel for the respondents has argued that the petitioner was never prevented to join the post, who himself repeatedly sought extension of joining time. In this regard, learned counsel has invited the attention of the Court to the various communications between the petitioner and the department, which are appended with the written statement. He submits that the claim of the petitioner seeking mandamus is not maintainable as he himself failed to join the post pursuant to the appointment letter dated 11.02.2021 and prays that the writ petition be dismissed.

After hearing learned counsel for the parties and considering their submissions, it transpires that the petitioner was offered appointment for the post of Assistant Grade III, Technical in FCI vide letter dated 11.02.2021, who was required to communicate his acceptance by 25.02.2021 and he was further required to report for duty to General Manager (Region), Regional Office Haryana, Panchkula on or before

12.03.2021. Thereafter, the petitioner vide his communication dated 16.02.2021 (Annexure A-2) forwarded the acceptance and also requested for extending the joining time. In response, through communication dated 03.03.2021 (Annexure R-2), his request for extension of time was accepted, and the petitioner was asked to join on or before 11.05.2021. Again, in a similar manner, petitioner's another request dated 16.07.2021 was accepted by the respondents vide their communications dated 03.08.2021 (Annexure A-3) and his joining time was further extended up to 11.08.2021. A careful analysis of these communications clearly shows that it is the petitioner, who had been continuously requesting the respondents for extending his joining period, and last extension was accorded on 03.08.2021, therefore, on 04.08.2021 i.e. the date of filing writ petition, he had no valid cause of action to seek indulgence of this Court to facilitate his joining to the post of Assistant Grade III (Technical).

During the course of hearing, Mr. Mamli, learned counsel is unable to point out any communication or material to substantiate petitioner's stand that he was not allowed to join because of the pendency of the FIR, and concededly originally the writ petition dated 04.08.2021 was filed by the petitioner only for issuance of a writ of mandamus directing the respondents to allow the petitioner to join his service. Here it is also relevant to note that on 16.03.2022, the counsel for the petitioner made a prayer for permitting the petitioner to join the duties, whereupon this Court accepted the prayer and allowed him to join, in case there is no

other hurdle qua his eligibility and even at that stage, it was not disclosed to this Court that the appointment letter dated 11.02.2021 already stands cancelled on 03.09.2021.

Apart from it, the communication dated 16.02.2021 sent by the petitioner to the General Manager, Haryana, FCI reveals that he requested for extension of joining time on the ground that his father is sick and the said communication is absolutely silent about the registration of the FIR against him or pendency of the criminal case. Though, the second request dated 16.07.2021 sent for extension of time contains the fact of pendency of the case against him, but this was not taken as a ground by the respondents as a material circumstance while cancelling his appointment to the post of Assistant Grade-III and this establishes that the petitioner had voluntarily not joined the post. Thus, it is clear that as the petitioner failed to join, therefore, respondents were left with no alternative, but to cancel the appointment through communication dated 03.09.2021.

In view of the above discussion, this Court has no hesitation in holding that the order dated 03.09.2021 is based upon the petitioner's conduct, who instead of joining the post pursuant to the appointment letter dated 11.02.2021, repeatedly kept on seeking extension of time for joining. In the facts and circumstances of this case, this Court is not inclined to accept petitioner's prayer for amendment of the writ petition as the amendment sought to be incorporated in the writ petition would not only materially change the basic structure of the writ petition, but would

also alter the cause of action.

Resultantly, no case is made out for either amendment of the writ petition or for exercise of jurisdiction under Article 226 Constitution of India.

Dismissed.

(MANOJ BAJAJ)
JUDGE

02.02.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No