

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

243

CWP-14692-2020 (O&M)

Date of Decision : 16.11.2023

SANJAY KUMAR

..... PETITIONER

V/S

UNION OF INDIA AND ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms.Anu Chatrath. Sr. Advocate with
Mr. Nishant Maini, Advocate and
Mr. Nikhil Singh, Advocate
for the petitioner.

Mr. Arun Gosain, Sr.Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 17.04.2020 (Annexure P-23) whereby his claim for absorption has been rejected.

2. The petitioner vide appointment letter dated 15.09.2016 came to be appointed with National Institute of Solar Energy, Gawal Pahari, Faridabad-Gurugram Road, Gurugram on deputation. The deputation period was 02 years and it could be extended. The respondents twice extended deputation period which ultimately had to expire on 06.10.2019. The respondents decided neither to absorb the petitioner nor extend his deputation period and for the said purpose, an order dated 04.10.2019 was

passed. The said order came to be challenged before this Court which by interim order dated 15.10.2019 directed the respondents to maintain status quo. The petitioner preferred miscellaneous application seeking directions to respondents not to give effect to order dated 04.10.2019. This Court vide interim order dated 01.11.2019 directed the respondents not to give effect to order dated 04.10.2019. The respondents preferred intra court appeal by way of LPA No.1846 of 2019 before a Division Bench of this Court. A Division Bench of this Court vide order dated 08.11.2019 stayed operation of interim order dated 01.11.2019 passed by a Single Bench of this Court. The petitioner preferred SLP(C) No.27416 of 2019 before Supreme Court. The SLP(C) came to be disposed of by Supreme Court vide order dated 18.12.2019 by directing this Court to ensure that main writ petition itself be decided on or before 31.01.2020. It was further observed that in the event the petitioner joins his parent department, it would be subject to final result of the writ petition.

3. This Court vide order dated 13.02.2020 disposed of CWP No.29546 of 2019. The operative portion of the judgment dated 13.02.2020 reads as :

“On the above analysis, the writ petition is allowed to the extent indicated hereunder. The Corrigenda dated 19.03.2019 and 26.03.2019 issued by NISE in relation to the Advertisement dated 01.03.2019, apropos the post of Deputy Director General (Solar Photovoltaic), are set aside. The process of recruitment already initiated in this regard, be it at whatever stage, shall stand nullified. Further, the Speaking Order dated 04.10.2019 passed by the Ministry of New and Renewable Energy, Government of India, and the Office

Order dated 04.10.2019 passed by NISE, are also set aside. However, as the petitioner's deputation would admittedly have come to an end on 06.10.2019 and there was no extension thereafter, he cannot be permitted to continue in the service of NISE at this stage. The same would, however, not impact his claim to be considered for absorption in the service of NISE under Rule 7 (iv) of the Recruitment Rules of 2015, read with his Offer of Appointment letter dated 15.09.2016. This exercise shall be undertaken afresh by the Minister-in-charge of the Ministry of New and Renewable Energy, Government of India, and upon an objective analysis of his claim, a reasoned order shall be passed and communicated to him. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order. In the event he is found fit to be absorbed, NISE shall initiate the process of obtaining approval from his parent organization so as to absorb the petitioner in its service in accordance with due procedure. It is only after conclusion of this exercise that NISE would be at liberty to initiate the process of direct recruitment, if warranted. Such process shall be strictly in accordance with the Recruitment Rules of 2015 and it would not be open to NISE to add or modify the qualifications prescribed for the post without bonafide amendment of the rules as per due procedure.”

4. The respondents in compliance of aforesaid order passed impugned order dated 17.04.2020 whereby claim of the petitioner qua absorption was rejected.

5. Learned counsel for the petitioner, at the outset, submits that the petitioner has re-joined his parent department, thus, he does not want

his absorption with respondents, however, the period from 04.10.2019 to 16.01.2020 may not be treated as absent period because there was an interim order in his favour. The petitioner joined his parent department on 17.01.2020 and this Court by order dated 13.02.2020 has set aside order dated 04.10.2019 whereby the petitioner was relieved, thus, it would be unjust and unfair if petitioner is treated as absent from duty from 04.10.2019 to 16.01.2020.

6. Per contra, learned counsel for the respondents submits that initial interim order was passed by this Court on 15.10.2019 and thereafter another interim order was passed on 01.11.2019. The interim order dated 01.11.2019 was stayed by a Division Bench of this Court vide order dated 08.11.2019 and the said order remained in operation till final disposal of the writ petition. Thus, petitioner cannot be treated on service from 04.10.2019 onwards.

7. Faced with this, learned counsel for the petitioner submits that the petitioner filed writ petition assailing order dated 04.10.2019 well within time and there was interim order dated 15.10.2019 and 01.11.2019 in his favour. The order dated 01.11.2019 was stayed on 08.11.2019, thus, he in any case should be extended benefit of service from 04.10.2019 to 07.11.2019.

8. I have heard the arguments of learned counsel for the parties and perused the record.

9. From the perusal of operative portion of the judgment dated 13.02.2020, it comes out that the petitioner was relieved by respondents on 04.10.2019 and his deputation period had to expire on 06.10.2019. The respondents could extend deputation period as well as absorb the petitioner.

This Court vide order dated 15.10.2019 read with 01.11.2019 directed the respondents not to give effect to order dated 04.10.2019. The order dated 04.10.2019 was ultimately set aside and respondents were directed to consider claim of the petitioner for absorption. The petitioner on account of litigation which dragged from Single Judge of this Court to Supreme Court, could not join either respondents-department or his parent department. The petitioner ultimately could join his parent department on 17.01.2020 and Supreme Court while disposing of SLP(C) had observed that joining of parent department would be subject to outcome of pending writ petition. The writ petition was allowed and order dated 04.10.2019 was set aside. The interim order dated 15.10.2019 read with order dated 01.11.2019 remained in operation till 07.11.2019. A Division Bench of this Court stayed aforesaid interim orders vide order dated 08.11.2019.

10. Considering the facts and circumstances which led the petitioner to remain idle without his fault, this Court is of the considered opinion that the respondents should consider the petitioner on duty for the period from 04.10.2019 to 07.11.2019. The respondents shall issue an appropriate certificate for the said period. The petitioner shall be entitled to consequential benefits as permissible by law for the said period.

11. The petition stands disposed of.

16.11.2023
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(JAGMOHAN BANSAL)
JUDGE

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