

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

**CWP-13551-2017
DECIDED ON: 16.08.2023**

OM PARKASH RANA

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.K. Agnihotri, Advocate
for the petitioner.

Ms. Nandini Gupta, Advocate for
Mr. Abhilaksh Grover, Advocate for respondents No.2 to 4.

SANDEEP MOUDGIL, J

1. This writ petition filed under Article 226 of the Constitution of India seeks issuance of a writ in nature of *certiorari* for quashing the order dated 19.12.2008 (Annexure P7) passed by the Respondent No.-4 Chief Engineer/PTPS-2, Haryana Power Generation Corporation Limited (HPGCL) whereby the services of Petitioner has been terminated w.e.f. 01.02.2006 and for directing the respondents to release all pensionary benefits of the petitioner.

2. Learned counsel for the petitioner contends that the petitioner had joined the respondent No.2 as T-Mate on 09.05.1977 on work-charge basis and was subsequently regularised w.e.f. 23.11.1989 and promoted to the post of Helper Grade-I and thereafter, a charge sheet was issued against the petitioner since he remained absent from his service w.e.f. 16.11.2003 to 4.5.2005 and after w.e.f. 1.2.2006 and consequently, vide office order dated 19.12.2008 (Annexure P-7), the Petitioner was removed from service from 1.2.2006 having failed to join the duty without any sufficient cause. He urged that the reason behind petitioner's absence is backed by a medical certificate as per which the same was on account of

depression being suffered by the petitioner which was a circumstance beyond his control.

3. Reply has been filed by the respondents wherein it has been averred that no cause of action has occurred in favour of the petitioner to file the present writ petition as he wilfully remained absent from his duty without informing the respondents and also failed to join the duty despite the fact that he was directed by the respondent to join duty on various occasions. Further, it is contended that the petition suffers from delay and laches as the petitioner was removed from service on 19.12.2008 and he approached this Court after about 10 years.

4. Heard learned counsel for the parties and gone through the record.

5. Admittedly, the petitioners have been appointed through outsourcing agency being Respondent Nos. 8/9. Annexure P-17 being a memo dated 12.02.2021, which has been termed as 'termination letter' by the petitioners has not been addressed to the petitioners and is a communication inter-se the respondents. A perusal of the same shows that the outsourcing agency was asked to replace the petitioners with another set of outsourced employees. Clearly, no termination letter has been issued by the UHBVNL to the petitioners. Further, throughout the petition, serious disputed questions of facts concerning the dereliction of duties by the petitioners have been raised especially when it is the contention raised on behalf of the petitioner that the petitioner did approach the authorities to join his duties but the official respondents did not allow him to resume his duty despite repeated requests made by the petitioner as is evident from the letter dated 29.04.2008 (Annexure P4).

6. Further the averment of the respondents to the effect that despite various correspondence to the petitioner through registered AD sent on 14.11.2003, 29.11.2003, 23.12.2003, 22.01.2004 directing the petitioner to resume his duties, is also liable to be rejected in view of the fact that the said registered AD posts were

sent, however, the same were received back unserved with the report “unclaimed return” which clearly shows that the petitioner never received any communication from the respondents at any time *albeit* the petitioner was not allowed to join his duties by the respondents.

7. In view of above discussion, the writ petition is allowed and the order dated 19.12.2008 (Annexure P7) vide which the petitioner was removed from service on the ground of absence from duty, is set aside and the respondents are directed to accept the joining report of the petitioner on 29.04.2008 (Annexure P4) and accordingly, grant all service/pensionary benefits to the petitioner along with interest @ 9% p.a. from that very date, within a period of two months from the date of receipt of certified copy of this order.

16.08.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No