

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

CWP No.20227 of 2019 (O&M)

Date of Decision.20.03.2023

Arif Hussain

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Jagbir Malik, Advocate
for respondent No.3.

-.-

JAISHREE THAKUR J. (ORAL)

The present writ petition has been filed seeking a writ in the nature of Certiorari to quash order dated 07.06.2019 (Annexure P-12) whereby petitioner's services have been withdrawn without giving him an opportunity to rebut allegations made in the said order i.e. 'petitioner has been found guilty for not checking and detecting the unauthorized constructions and also not taking timely action against such unauthorized constructions at the nascent stage coming up in the respective area of his posting which tantamount to gross misconduct, negligence and dereliction in the discharge of his duties.'

Learned counsel appearing for the petitioner would contend that the petitioner has been working as a Junior Engineer with Municipal Corporation, Faridabad and vide impugned order dated 07.06.2019, which is stigmatic in nature, services of the petitioners have been ordered to be dispensed with.

Per contra, learned counsel appearing for respondent No.3 would submit that the writ petition itself is not maintainable on account of the fact that services of the petitioner were placed at disposal of the Municipal Corporation,

Faridabad through an outsourcing agency namely M/s Imperial Electricals & Allied Services-respondent No.4. It is submitted that as on date, there is no master-servant relationship between the petitioner and the Municipal Corporation, Faridabad nor any appointment letter issued by the Municipal Corporation, Faridabad to the petitioner and therefore, the petitioner cannot be permitted to continue in service. It is further submitted that order dated 24.07.2019 whereby interim stay has been granted qua order dated 07.06.2019 is liable to be vacated.

I have heard learned counsel for the parties and have perused the paper book. In view of the fact that the petitioner herein has been employed with the Municipal Corporation, Faridabad through respondent No.4-outsourcing agency, this Court finds that the present writ petition is not maintainable, in view of the judgment passed by the Division Bench of this Court in *Nishan Singh Vs. State of Punjab and others 2014 (11) RCR (Civil) 262* wherein it has been held that service provider is not an agency of the State to make recruitment against the civil posts and therefore, action of the respondent-University dispensing with service of the contractor cannot be challenged.

However, a reading of impugned order (Annexure P-12) as issued by the Commissioner, Municipal Corporation, Faridabad would reveal that the Commissioner has ordered for withdrawal of services of the petitioner on the ground that the petitioner is guilty of not working diligently and his conduct tantamount to gross misconduct, negligence and dereliction in discharge of his duties, which is wholly stigmatic in nature. Taking note of the fact that the petitioner herein was not given any opportunity of hearing before the impugned order was passed, this Court deems it appropriate to hold that such observation would not come in the way of the petitioner seeking employment elsewhere. This

order is being passed keeping in view the fact that principles of natural justice were not complied with while passing the impugned order, which is stigmatic in nature.

At this stage, learned counsel appearing for the petitioner would submit that in view of the finding of this Court that the writ petition is not maintainable, the petitioner would have no recourse seeking setting aside of the observations of the Commissioner, Municipal Corporation, Faridabad, and therefore, seeks liberty to be granted to the petitioner to challenge the impugned order qua withdrawal of his services before any appropriate forum in accordance with law.

The prayer made by the counsel appearing for the petitioner is acceded to and the petitioner is granted liberty to avail any other remedy available to him in accordance with law to challenge the impugned order dated 07.06.2019.

The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

March 20, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No