



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 24th August 2023**

+ **W.P.(C) 12432/2019 and CM APPL.No.50794/2019**

NIRANJAN SINGH

..... Petitioner

Through: **Mr.V.P.Tripathi, Advocate**

versus

S. S. KUSHWAHA, MANGAGER, TAURUS CANTEEN AND ANR.

.... Respondents

Through: **Mr.Santosh Kumar Pandey, Advocate for R-1 and 2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner by way of the present petition under Article 226 and 227 of the Constitution of India seeks the following reliefs:

- ② *set-aside the Impugned official Show Cause Notice no.3712/Disc/Can dated 26.10.2019 passed by respondent no.1:*
- ② *set-aside the impugned standing order dated 11.08.2014 with a direction to the respondents to make fresh terms and conditions of service of the regular as well as the contractual/ daily wager and casual employees;*





- ② *Stay the operation of the Impugned official Show Cause Notice no.3712/Disc/Can dated 26.10.2019 and to the standing order dated 11.08.2014 till the disposal of the present case;*
- ② *Any other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice, natural justice, equity, law and humanity.*
- ② *Grant the cost of the Petition and proceedings in favour of the Petitioner.*

2. A brief background of events leading up to the filing of the instant case is that the petitioner was appointed as an ECR operator (Salesman) on 10th September 1995, and is now working as a Billing Operator with the respondent no. 1. On 11th August 2014, an Official Letter/Standing Order bearing No. 96029/Q/DD/GCS was issued by the Management and Supervisory Authority of respondent no. 1, i.e., respondent no. 2, stipulating guidelines relating to terms and conditions of civilian employees of the Unit Run Canteen.

3. Thereafter, on 26th October 2019, the petitioner was given a Show Cause Notice by the respondent no. 1 asking the petitioner to show cause as to why his services shall not be terminated on the ground that he had been absent without valid reason for 100.5 days during the period from year 2013 to 2019. The petitioner furnished his reply to the Show Cause Notice on 2nd November 2019 and is now before this Court seeking intervention by way of granting the aforementioned reliefs.

4. The learned counsel appearing on behalf of the petitioner submitted





that the respondents have issued the Show Cause Notice without appreciating the applicability of the Standing Order dated 11th August 2014. It is submitted that the said guidelines were to be issued only to regulate the employment of regular employees and not of contractual employees and since the petitioner services of the petitioner were never regularised, the guidelines in question were not applicable to him. Reliance has been placed Clause 5 of the Standing Order dated 11th August 2014 which states that as under:

“5. Applicability. These guidelines shall apply to all civilian employees/URCs paid out of Non-Public Fund account but shall not be applicable to any person engaged on daily wages or on casual employment or those hired on a contractual basis whose conditions of service will be regulated by their appointment letters. These guidelines shall not be applicable to any government employee, who may for the time being, be detailed to work therein in any capacity whatsoever.”

5. It is submitted that there are no rules regarding leaves that are delineated in the Standing Order in question and neither are there on detailed terms or conditions of service of the petitioner stating the number of leaves he is entitled to. Hence, there is no ground for issuing a Show Cause Notice to the petitioner.

6. It is submitted that the Show Cause Notice is bad in law since the guidelines on which the same is relying are not even applicable to the petitioner, being a contractual employee and hence, is liable to be quashed/set aside.



7. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 1 and 2 vehemently opposed the instant petition and, at the very outset, submitted that the respondent is a Unit Run Canteen under the aegis of HQ Delhi area and as such does not fall within the definition 'State' under Article 12 of the Constitution of India. It is not receiving any public fund from the Ministry of Defence and it runs on regimental funds.

8. It is submitted that the petitioner was appointed by the respondents on contractual basis for a period of one year, and thereafter, his contract was extended from time to time. During the course of his employment, the petitioner was given several warnings pertaining to insubordination and indiscipline.

9. It is submitted that the petitioner was served the Show Cause Notice due to his behaviour and absence from work, however, even after receiving the Show Cause Notice in question the petitioner did not improve his behaviour and continued to abstain from duty. The petitioner, in reply to the Show Cause Notice, informed the respondents that he was absent due to medical exigencies, however, he failed to submit any medical documents. Moreover, after the issuance of the petitioner again remained absent from 6th May 2020 to 30th June 2020, i.e., 58 days without approval of the competent authority.

10. It is also submitted that due to consistent inadequacies on behalf of the petitioner, his services were finally terminated vide order dated 22nd September 2020 and as such the Show Cause Notice has been merged into



the final order. Hence, nothing is left in the instant petition which may be granted in favour of the petitioner.

11. Heard the learned counsel for the parties and perused the record.

12. In the instant petition, preferred by the petitioner in the year 2019 after the issuance of the Show Cause Notice dated 26th October 2019, the petitioner only sought quashing/setting aside of the said Show Cause Notice as well as the Standing Order issuing guidelines to the employees working with the respondents. The relevant Clauses of the Standing Order dated 11th August 2014 is reproduced as under:

“7. Termination of Employment. The services of an employee on probation may be terminated by the employer at any stage without assigning any reason during the period of probation. the services of a temporary employee may be terminated by the employer if he/she is found to be unfit for performance of he assigned duties.

17. Sanction of Leave. Leave of absence of any kind shall not be deemed to have been sanctioned, unless its approval has been communicated to the employee either verbally or in writing. The leave has to be sanctioned by a person appointed in this behalf by the Appointing Authority.”

13. The guidelines as reproduced above clearly stated that the services of an employee may be terminated, in case he is found unfit to perform the duties assigned to him. The guidelines, in Clause 16 to 19, delineate the leave and the regulations thereto while making the provision for sanction of leave, which signifies the indispensable condition that while seeking leave



the concerned employees are required to approach the concerned and competent authority to have their leaves sanctioned. Based on the conjoint consideration of the said provisions, a Show Cause Notice was issued to the petitioner. The Show Cause Notice dated 26th October 2019 was issued to the petitioner calling upon him to show cause as to why his services shall not be terminated and set forth the grounds as reproduced under:

“SHOW CAUSE : ABSENT WITHOUT LEAVE

1. *Please refer to Integrated HQ of MOD (Army), QMG Branch, Dy Dte Gen Canteen Services letter No 96029/Q/DDGCS dated 11 Aug 2014.*
2. *On introduction of Bio-metric attendance system, clubbing the same with pay and allowances and updating the records there to, it has come to notice that you have absented yourself from duty for 100.5 days from 2013 to 2019 without any valid reason.*
3. *Please show cause as to why your services should not be terminated under the provisions of above letter.*
4. *Your reply should reach the undersigned by 02 Nov 19.”*

14. The respondents invited the reply of the petitioner on the Show Cause Notice on the ground that he had been absent from duties for 100.5 days without approval. To the said Notice the petitioner replied on 31st October 2019, the relevant portion of which is reproduced as under:

“5. I respectfully submit that my service record is unblemished and I have worked with the utmost satisfaction of the management. My above absence from the work is very justifiable and I have in my possession the medical certificates of the same and I also had



explained to the previous concern officers regarding the said leave and they had permitted/approved for said leave for the genuine health reason and another.

6. The leave taken by me are very less, therefore, my services must be continued considering my long term unblemished services with the organization, however, I apologies if I does any wrong in regarding my services.”

15. Thereafter, considering the guidelines in operation pertaining to the leave and other terms of the service, the Show Cause Notice, the reply of the petitioner, and the subsequent demeanour of the petitioner, the respondents on 22nd September 2020 passed the Termination Order, the relevant portion of which reads as follows:

“5. In the past, you had also been issued verbal warnings for insubordination and indiscipline. You were also issued counselling in regard to your misbehaviour with customers at the Taurus Shopping Arcade/ Taurus Station Canteen. Even after verbal warnings, counseling and Show Cause Notice dated 26/10/2019 you have still shown no sign of improvement and have continued to abstain from duty without any reasonable cause and approval from the Competent Authority.

6. You had been issued Show Cause Notice dated 26/10/2019 in regard to your continuous absence. In your response to the Show Cause Notice dated 31/10/2019, you had informed that your absence was on account of medical grounds. However, till date no medical document/medical certificate has been submitted to the Competent Authority to suggest your ground of absence.

7. You had approached the Hon'ble High Court of Delhi in W.P. (C.) No. 12432 of 2019 for setting aside the Show Cause Notice dated 26/10/2009. However, the



Hon'ble High Court was not pleased to stay the operation of the said Show Cause Notice.

8. *That now you again were absent from service without approval from the Competent Authority from 06/05/2020 to 30/06/2020 i.e. 58 days. You have till date failed to provide any medical document/medical certificate to suggest your absence from service for these 58 days.*

9. *You reported for duty on 01/07/2020 and again were absent without approval from the Competent Authority on 03/07/2020. Thereafter, you continued to come regularly from 04/07/2020 to 10/07/2020. You sought for Leave Without Pay from 11/07/2020 to 15/07/2020; which was granted. On 18/07/2020 you reported late for duty and were issued a verbal warning for coming late. In defiance, you have abstained to report on duty from 19/07/2020 till date.*

10. *It has come to the knowledge of the Competent Authority that from 06/05/2020 till 18/09/2020, you have come on duty for only 9 days out of 166 days. You have also not given any reason for your absence from service for 157 days to the Competent Authority from 06/05/2020 to 18/09/2020.*

11. *That you, Niranjana Singh S/o Sh. Risal Singh have shown unsatisfactory, unacceptable, deplorable and poor service.*

12. *Accordingly, your contract is terminated with immediate effect. You are required to collect your belongings and settle your dues within 10 days of receipt of this Termination Order."*

16. Admittedly, the Termination Order has not been challenged by the petitioner in the instant petition. The law regarding this position stands



absolutely settled that a relief which has not been sought before the Court cannot be adjudicated upon or granted by the Court. The only challenge before this Court pertains to the Show Cause Notice dated 26th October 2019, however, at this stage, the final order of termination of services dated 22nd September 2020 has already been passed after issuance of the Show Cause Notice and the reply thereto, and the same remains in operation since there is no challenge to Termination Order before this Court. Since, the Termination Order has already been passed, the previously issued Show Cause Notice cannot be considered by this Court by way of issuance of writ.

17. After passing of the Termination Order, the relief sought by the petitioner pertaining to the Show Cause Notice has become infructuous since a subsequent order is already in existence, which is not before this Court. The remedy sought by the petitioner cannot be adjudged at this stage as the Show Cause Notice, originally challenged, stands merged in the final Termination Order.

18. Therefore, considering the facts and intervening circumstances, including the fact that the petitioner has already been terminated from services and the Show Cause Notice stands merged in the final Termination Order, the challenge to which is not before this Court, this Court does not find any reason to interfere in the dispute which is before this Court in the instant petition and issue any writ in favour of the petitioner. There is no relief that can be granted by this Court at this stage after the Termination Order already has been passed, the veracity of which cannot be entered into



by this Court.

19. Accordingly, the instant petition stands dismissed, along with pending applications, if any.

20. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 24, 2023
SV/MS

Click here to check corrigendum, if any