

CM-6069-CWP-2024 in/&
CWP-1092-2024

-1- 2024:PHHC:058422

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-6069-CWP-2024 in/&
CWP-1092-2024
Date of Decision :23.04.2024

Kuldeep Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Munish Mittal, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 21.12.2023 (Annexure P/11) by which, petitioner, who was working on the post of Data Entry Operator with the respondents has been relieved from service on the ground that his performance is 'Good' and only the employee whose performance is 'Very Good' can be allowed extension in service.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner got appointment as Data Entry Operator on contract basis on 28.10.2010 through HARTRON for a period of six months or till the regular selected candidates are appointed. The petitioner continued working as such on the said post as his contract was being renewed by the

respondents time and again.

4. While working on the said post, on 21.08.2022, the petitioner unfortunately suffered a paralytic attack. Keeping in view the said paralytic attack due to the restricted mobility, performance of the petitioner got reduced but still petitioner had been adjudged as 'Good' employee keeping in view the performance given by him even after suffering a paralytic attack but respondents vide order dated 21.12.2023 (Annexure P/11) declined to grant him further extension in service on the ground that only the employees, who have been adjudged as 'very good' will be entitled for extension in service on the said post and as the petitioner has been adjudged as 'Good', he cannot be granted extension in service, which order is under challenge in the present petition.

5. It may be noticed that while issuing notice of motion, operation of the impugned order was stayed by this Court.

6. Respondents have filed reply, wherein it has been mentioned that after the passing of impugned order dated 21.12.2023 (Annexure P/11), an order relieving the petitioner from service dated 09.01.2024 (Annexure P/10) was passed, which order is not under challenge in the present petition. Learned counsel for the respondents submits that only the internal communication has been challenged by the petitioner but the order relieving the petitioner from service should have been challenged by him. Learned counsel for the respondents further submits that once under the policy dated 07.03.2010, only the employees, who have been adjudged as 'very good' are to be granted extension in service and the petitioner has been adjudged as 'good', petitioner has rightly been declined the benefit of extension in

service on the post in question hence, relieving of the petitioner from service is in consonance with the policy dated 07.03.2010, especially, when the impugned order is an order simplicitor.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. It may be noticed that the petitioner is working on the post of Data Entry Operator with the respondents for the last one and a half decade, Nothing has been brought on record that prior to suffering a paralytic attack due to which mobility of the petitioner got restricted, he has been adjudged only as a 'good' employee. As per respondents, extension in service is to be given to those employees who have been adjudged as 'very good', hence, it is to be presumed that prior to suffering a paralytic attack, performance of the petitioner was 'very good' and that was why, he has been granted extension in service time and again by the respondents. Once, an employee suffered a paralytic attack due to which his mobility has been restricted but still he is working with the respondents on the said post and his performance has been adjudged as 'good', the respondents should have also adjudged his performance keeping in view his restricted mobility and not blindly as per the policy, according to which, only employee whose performance is 'very good' is to be given extension in service. Once, an employee has suffered a disability while in service, the respondents are under an obligation to consider the said disability of the petitioner in mind while adjudging his performance so as to grant extension in service. Once, even with the disability, the petitioner is still being treated as a 'good' employee, he could not have been denied extension in service by terming him as a 'dead wood'

so as to throw him out of service, which is not permissible.

9. Even otherwise, in the present case, Section 47 of the Persons with Disability Act, 1995 will come into play. It has not been disputed that the petitioner has suffered disability while he was in service and prior to that the performance of the petitioner has been adjudged as 'very good' and it is only after the said paralytic attack, his performance was reduced from 'very good' to 'good'. It is not the case of the respondents that petitioner is not performing his duties. Once, the petitioner is performing his duties, keeping in view the Section 47 of the Persons with Disability Act, 1995, the respondents could not have taken adverse view without appreciating the disability suffered by the petitioner while in service. Hence, the ground being taken by the respondents that performance of the petitioner has only been adjudged as 'good', keeping in view his disability, he cannot be thrown out of service as there is no misconduct alleged against the petitioner.

10. With regard to the objection taken by the respondents that order relieving the petitioner from service dated 09.01.2024 (Annexure P/10) has not been challenged, it may be noticed that the said order is only an outcome of order dated 21.12.2023 (Annexure P/11) by which, Treasury officer was directed to relieve the petitioner from service due to good appraisal report for the previous year. Once, impugned order has been challenged, even if, the consequential order of relieving the petitioner has not been challenged, it makes no difference.

11. With regard to the argument of the learned counsel for the respondents that impugned order is an order simplicitor, it may be noticed

that in the said impugned order, a ground has been given for not extending the tenure of the petitioner, which extension in service has been given to the other employees, who were appointed with the petitioner. Once, the ground has been given in the impugned order to dispense with the services of the petitioner, the said impugned order cannot be treated as order simplicitor especially, when the ground taken while passing the said impugned order is not sustainable in the eyes of law.

12. Keeping in view the facts and circumstances recorded hereinbefore, order dated 21.12.2023 (Annexure P/11) is set aside and the respondents are directed to extend the service contract of the petitioner.

13. It is further directed that in case, due to the disability of the petitioner, at any given point of time henceforth, the petitioner is not capable to discharge his duties on the said post, the respondents will adjust him to any other post, on which post, he can discharge his duties.

14. Present petition stands allowed in above terms.

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Keeping in view the order passed by this Court in the main writ petition, no further orders are required to be passed in the present application and the same is accordingly disposed of.

April 23, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No