

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CWP-10778-2024

Decided on : May 09, 2024

AMANDEEP SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rishu Garg, Advocate
for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab
for Respondent No.1.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to reinstate the petitioner as 'Conductor' on account of his acquittal in criminal case registered against him, vide judgement dated 09.03.2023 (Annexure P-3), passed by the court of learned Sub Divisional Judicial Magistrate, Phul.

2. It is the case of the petitioner that he was appointed as 'Conductor' in the respondent department (PRTC), vide appointment letter dated 11.01.2010 and joined, as such, on 27.01.2010. On 14.09.2018, FIR No.119 dated 14.09.2018, under Section 61 of the Punjab Excise Act was registered at Police Station – City Rampura and thereafter his services were terminated by the respondent

department vide order dated 20.09.2018 on account of registration of abovesaid FIR, while he was on duty, and since now he has been acquitted by the court of learned Sub Divisional Magistrate, Phul, vide judgement dated 09.03.2023 (Annexure P-3), therefore, he served legal notice dated 27.08.2023 (Annexure P-4), however, no action has been taken by the respondent – department to reinstate the petitioner in service. Hence, this petition.

3. Learned counsel for the petitioner submits that the petitioner has been acquitted in the criminal case, therefore, the respondents be directed to reinstate him in the service as 'Conductor'.

4. On receipt of advance copy, learned State counsel has put in appearance on behalf of the State of Punjab - Respondent No.1 and submits that there is a concealment of material facts in the present petition, as from a perusal of letter dated 20.09.2018 (Annexure P-2), it is clear that the petitioner was engaged as 'Conductor' through 'Service Provider' namely 'S.S. Service Provider, 37 D, Model Town, Patiala' and on account of registration of above said FIR, he remained absent from 20.09.2018 onwards and therefore, he was returned back to the service provider as his services were not beneficial to the respondent department – PRTC in future. He further submits that the above said service provider i.e. 'S.S. Service Provider, 37 D, Model Town, Patiala' has not been impleaded as party respondent in the present writ petition. He also submits that the writ petition against a service provider is not maintainable.

4. I have heard learned counsel for the parties and gone through the records.

5. From perusal of letter dated 20.09.2018 (Annexure P-2), it is clear that the services of the petitioner were engaged as 'Conductor' by the respondent-department (PRTC) through Service Provider i.e. 'S.S. Service Provider, 37 D,

Model Town, Patiala', however, the petitioner has chosen not to implead the said 'Service Provider' as party-respondent in the present petition, who is not only proper but necessary party.

6. Be that as the case may be, the sole question, which arises for the determination of this Court in the present writ petition is 'whether writ petition is maintainable against the service provider/outsourcing agency'. The said question has been answered in various Judgements of this Court, wherein it has been held that the writ petition against the service provider/outsourcing agency is not maintainable.

7. It is a settled proposition of law that a writ against an Outsourcing Agency, which is a private entity, is not maintainable, since the outsourcing agency is not an instrumentality of the State and, therefore, any appointment offered by it, would not constitute a civil post.

8. Law in this regard is well settled in the Judgement dated 30.09.2013 passed by the Division Bench of this Court in LPA No.469 of 2013 titled as '**Nishan Singh and others versus State of Punjab and others**', 2014 (11) RCR (Civil) 262, wherein it has been held that *a service provider is not an agency of the State to make the recruitment against the civil posts and therefore, the writ petition itself would not be maintainable.*

9. To the same effect is the Judgement dated 11.12.2019 passed by a Co-ordinate Bench of this Court in CWP No.19762 of 2018 titled as '**Vikash Vs. The State of Haryana and others**' wherein it has been held that *no writ petition would lie against an outsourcing agency, being a private entity which is not an authority in terms of the Article 12 of the Constitution.*

10. Admittedly, the services of the petitioner were engaged as 'Conductor' by the respondent-department (PRTC) through Service Provider and

the petitioner has chosen not to implead the said 'Service Provider' as party-respondent in the present petition, and in the entire petition, the petitioner has not given any reference to the effect that his services were engaged through service provider and it has been stated that the petitioner was 'appointed' as 'Conductor' by the respondent department and his services have been terminated vide order dated 20.09.2018 (Annexure P-2), so there is active concealment on the part of the petitioner in making wrong averments in the petition with reference to above facts and, therefore, the petition is primarily hit by the doctrine of non-joinder of necessary parties and concealment of necessary facts and since it is a settled proposition of law that the writ petition against the service provider is not maintainable, therefore, the petition is liable to be dismissed.

11. Dismissed with no orders as to costs, however, if the petitioner is having any other legal right against the service provider/outsourcing agency namely 'S.S. Service Provider, 37 D, Model Town, Patiala', this order shall not preclude him from taking recourse to appropriate remedies available to him, in accordance with law.

May 09, 2024
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(NAMIT KUMAR)
JUDGE

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