

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23795 of 2018 (O&M)
Date of decision: 25.01.2024

Harpal Singh
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rahul Dev Singh, Advocate
for the petitioner.

Mr. T.P.S. Walia, AAG, Punjab.

Ms. Kusum Raj, Advocate
for Mr. A.D.S. Jattana, Advocate
for respondent No.5.

NAMIT KUMAR J.

CM-21040-CWP-2023

Prayer in the instant application filed under Section 151 of
CPC is for placing on record the joining order dated 15.12.2022 as well
as appointment letter dated 30.12.2022, as Annexures P-7 and P-8.

Allowed as prayed for subject to all just exceptions.

CWP No.23795 of 2018 (O&M)

1. The petitioner has invoked the jurisdiction of this Court by
filing the present writ petition under Articles 226/227 of the
Constitution of India, seeking a writ of certiorari for quashing the letter
dated 03.08.2018 (Annexure P-6), vide which the claim of the petitioner
for appointment as Bus Driver has been rejected. Further a writ of

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mandamus has been sought for directing the respondents to allow the petitioner to rejoin the services, along with all service benefits as he was before being relieved.

2. The brief facts as have been pleaded in the writ petition are that respondent No.5 – Lehri Solutions Private Limited, S.A.S. Nagar, Mohali, published an advertisement for inviting applications for appointment of Drivers in PUNBUS on outsource basis and the petitioner submitted his required documents to respondent No.5 and in consequence thereof, he was asked to take a driving test in Ludhiana, which he successfully passed and also deposited a draft of Rs.10,000/- in favour of respondent No.5. It has further been averred that the petitioner has paid a sum of Rs.2.00 lacs to respondent No.5 as their fee for the appointment, however, no receipt was issued by respondent No.5. It has further been averred that on 06.04.2018, the petitioner was asked to join the PUNBUS Training Centre/School in Chandigarh to take training of the driving of the buses and he took the training till 20.04.2018. Thereafter, he received a letter dated 07.06.2018, issued by respondent No.5, which contained the list of successful candidates and petitioner was shown at Serial No.73 with an allocation to Nangal Depot of PUNBUS and he was allocated Driver No.PB-13 at Nangal Depot and was attached along with various Drivers of buses plying on different routes till 10.06.2018 so as to identify the routes to be undertaken from the Nangal Depot and thereafter, from 11.06.2018 till 22.06.2018, the petitioner was asked to ply buses on various routes. On 22.06.2018, while the petitioner reached at Nagal Depot, his vehicle was

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taken over from him and he was shown a list in Punjabi language and he was asked to get his appointment order issued by respondents No.1 to 3 and thereafter, he was relieved and since then, he is approaching the respondents to get his appointment order and since, no action was taken by the respondents, therefore, he served a legal notice and in response to the said legal notice, the petitioner received a letter dated 03.08.2018 (Annexure P-6) from the office of Depot Manager, PUNBUS, Nangal wherein it has been stated that since the petitioner was not fulfilling the terms and conditions of the Selection Committee and due to this reason, the selection of the petitioner was rejected by the Committee. Hence, the present writ petition.

3. On issuance of notice of motion, reply by way of counter-affidavit of Gursewak Singh Rajpal, Depot Manager, PUNBUS, Nangal, has been filed on behalf of respondents No.1 to 4 wherein it has been stated that the basic qualification for recruitment of Bus Driver was having 05 years old HTV/HMV Heavy Motor Vehicle Licence, on the date of advertisement and when it came to the notice of the training officer, Driver Training School/Committee of State Transport, Punjab, Chandigarh, that at the time of trial, the petitioner was having heavy licence less than 05 years and was not fulfilling the criteria as laid down in the advertisement and therefore, the petitioner was removed from his services. It has further been stated that the advertisement was not for selection of regular drivers and rather the same was through outsourcing agency i.e. respondent No.5 and the said advertisement was issued by respondent No.5 i.e. Contractor and since the petitioner was not

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fulfilling the required qualification for the post of Driver, therefore, he cannot claim any right.

4. Learned counsel for the petitioner submits that the action of respondent No.5 in not issuing appointment letter to the petitioner is illegal and arbitrary and whereas the other similarly situated persons have been appointed and the only ground for rejection of the candidature of the petitioner is that the petitioner did not fulfill the terms and conditions of the Selection Committee and whereas no reasons have been assigned for rejection of his candidature by respondent No.5.

5. On the other hand, learned counsel for the State as well as learned counsel appearing for respondent No.5, submits that the present writ petition is not maintainable against an outsource agency/respondent No.5. He submits that the advertisement was issued by respondent No.5 for recruitment of Drivers on outsource basis, therefore, no relief can be claimed by the petitioner in the writ jurisdiction of this Court. He further submits that even otherwise, the petitioner was not fulfilling the required qualification, therefore, his name has rightly been removed from the list and he has been relieved.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. Admittedly, an advertisement (Annexure P-1) was issued by respondent No.5 – Lehri Solutions Private Limited, S.A.S. Nagar, Mohali, for recruitment of Drivers in PUNBUS, on outsource basis. A writ against an outsource agency, which is a private entity, is not maintainable. The law in this regard is well settled that an Outsourcing

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Agency is not an instrumentality of the State and, therefore, any appointment offered by it, would not constitute a civil post. In this regard, reference can be made to the judgment rendered by the Division Bench of this Court in *Nishan Singh and others versus 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, the writ petition itself would not be maintainable. Reliance has also been placed upon the judgment rendered by this Court in *Vikash versus The State of Haryana and others passed in CWP No.19762 of 2018 decided on 11.12.2019*, 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 Article 12 of the Constitution of India.

8. Consequently, the instant writ petition is disposed of being not maintainable. However, if the petitioner is having any other legal right against the service provider respondent No.5 – Lehri Solutions Private Limited, S.A.S. Nagar, Mohali, this order shall not preclude him from taking recourse to appropriate remedies available to him and it is open for him to seek remedy, in accordance with law.

(NAMIT KUMAR)
JUDGE

25.01.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No