

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

.....Petitioner

.....Respondent(s)

Learned counsel for the petitioner submits that the respondents issued an Advertisement No.5 of 2016, copy of which has been appended as Annexure P-1 by which the post of Drivers in the various departments of the Government of Punjab were advertised. The petitioner applied and competed for the post of Tractor Driver in the Department of Animal Husbandry but the respondents did not finalise the selection for the post so as to appoint the petitioner and thereafter the post of Tractor Driver in the Department of

Animal Husbandry was withdrawn. Consequently, the petitioner was not given any selection/appointment to the post in question.

Aggrieved against the said action of the respondents, the petitioner approached this Court by filing CWP No.17382 of 2024, which was disposed of vide order dated 26.07.2024 (Annexure P-11) on the asking of the petitioner that his representation be decided and in pursuance of the said direction given, now vide order dated 16.08.2024, copy of which has been appended as Annexure P-12, the claim of the petitioner has been rejected on the ground that the post advertised in the Department of Animal Husbandry has been withdrawn by the Department hence, the petitioner cannot be appointed on the post in question, which act on the part of the respondents is arbitrary and illegal.

Learned counsel for the petitioner further submits that in the present petition, the grievance of the petitioner is that the respondents cannot withdraw the post especially when the respondent-Board has given a reason that the posts of Tractor Drivers are to be filled from outsourcing as per the provisions of the Rules hence, the petitioner, who had competed for the post in question and was waiting for appointment for the last 8 years, has a right to seek a direction from this Court that the respondents should go ahead with the selection process qua the post of Tractor Driver as advertised vide Annexure P-1.

Keeping in view the advanced copy given, the State has appeared and on instructions, the respondents have stated before this Court that the requisition given by the Department of Animal Husbandry has been withdrawn and no candidate has been appointed against the advertised

vacancies of the post of Tractor Driver in the Department of Animal Husbandry.

Learned counsel for the respondents submits that as when necessary, the posts will be filled in accordance with the Rules governing the service hence, the petitioner cannot raise any grievance qua appointment and as and when, the posts are advertised in consonance with the Rules governing the service, the petitioner is free to compete for the post.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It is a settled principle of law that the employer has full right to withdraw the requisition and no candidate, who is competing in pursuance to any requisition received by the recruiting agency, can claim that the Department has to go forward to make a selection. As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.4150 of 2022*** titled ***"Employees State Insurance Corporation and ors. Vs. Dr. Vinay Kumar and ors."***, decided on 18.05.2022, a candidate does not have a legal right to insist that the recruitment process set in motion be carried to its logical end. The relevant paragraph of the said judgment is as under:-

"The cardinal principle we must bear in mind is that this is a case of direct recruitment. As candidate who has applied does not have a legal right to insist that the recruitment process set in motion be carried to its logical end. Even inclusion of a candidate in the select list may not clothe the candidate with such a right. This is, however, different, no doubt, from holding that the employer is free to act in an arbitrary manner. But, at the same time, in the first place, direction which is given by the High Court to conclude the recruitment within 45 days is clearly untenable. This is for the reason that, as a noticed, the advertisement dated 01.03.2018 was put on hold on 21.03.2018 before the last date indicated for filing the application by advertisement dated 01.03.2018. As the very advertisement was put on hold, it is quite likely that an candidate who may have

being desirous of applying, may not have applied being discouraged by the fact that the advertisement has been put on hold. Therefore, the direction to conclude the proceedings within 45 days is unsupportable.”

The learned counsel for the petitioner has not been able to dispute the said proposition of law.

Further, the argument being raised by the learned counsel for the petitioner is that on one hand, the respondents are not making the selection in pursuance to the Advertisement Annexure P-1, but on the other hand the recruiting agency has given the reason that the post in question are to be filled through outsourcing which is incorrect, as the respondents cannot resort to outsourcing process against the available regular sanctioned posts. The said argument has to be addressed keeping in view the letter Annexure P-10 which is being relied upon by the petitioner to say that the Department is resorting to the outsourcing, wherein it has been clearly mentioned that as per the Rules governing the service, the posts of Tractor Driver are to be filled on the basis of the outsourcing policy.

Once, the Rules provide that the said post is to be filled through the outsourcing agency, the petitioner cannot claim that the action of the Department is anyway arbitrary or illegal in any manner. There is no challenge to the relevant Rules governing the service in the present petition.

At this stage, learned counsel for the petitioner submits that if the post of Tractor Driver in the Department of Animal Husbandry has been withdrawn, the petitioner should have been given an option to apply for the other post in other departments.

The said argument of the learned counsel for the petitioner cannot be accepted. There was no restriction on any of the candidate that

he/she can apply only with one Department. The petitioner had an option while filing an application in pursuance to Annexure P-1 to apply for all of the posts in all the Departments in case, he was eligible but the petitioner only chose only to apply for the post of Tractor Driver in Animal Husbandry and Town Planning Department of State of Punjab, wherein posts were withdrawn hence, once, the petitioner had never applied for the post of Tractor Driver in the other Department, the petitioner cannot now come and claim that after withdrawing the post of Tractor Driver in the Department of Animal Husbandry and in Town Planning Department, he should have been given an option to apply for the post of Driver in other departments especially when the selection qua all the posts in other departments was being made simultaneously. Once, the petitioner never applied for the post of Driver in the other Department, he now cannot turn out to claim consideration in the other Department.

Keeping in view of above, no ground is made out for any interference by this Court.

Hence, the present petition is dismissed.

Pending application, if any, also stands disposed of.

15-10-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking : YES/NO
Whether reportable : YES/NO