



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-11700-2018 (O&M)
Date of Decision:11.09.2024

P.C. Sharma

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Naveen Sihag, Advocate for
Mr. Sunil Kumar Nehra (Sirsa), Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Mr. Rajesh K. Sheoran, Advocate and
Ms. Ojaswi, Advocate for respondent No.2.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the impugned order dated 03.04.2018 (Annexure P-11) and impugned letter dated 27.04.2018 (Annexure P-12) and further seeking a writ in the nature of *mandamus* for directing respondent No.2 to release the withheld salary and dues to the petitioner alongwith interest.

2. While giving the brief facts of the present case, learned counsel for the petitioner submitted that the petitioner was working as a Private Secretary with respondent No.2-Haryana Electricity Regulatory Commission, Panchkula, (hereinafter to be referred as 'Commission') and on attaining the age of superannuation, he retired on 31.12.2009. Thereafter, the petitioner was granted extension by the respondent-Commission for a period of six months initially but thereafter further extensions were granted to the petitioner



from time to time till 21.12.2017 regarding which the respondents have not raised any dispute. He submitted that since there was no person available with the respondent-Commission for discharging his duties as Private Secretary, a meeting was held on 15.03.2018 by the respondent-Commission which was 84th meeting and vide Annexure P-7 minutes of the aforesaid meeting has been attached with the present petition, whereby the issue with regard to grant of extension of contract of the petitioner beyond 21.12.2017 was considered. In the aforesaid meeting, 02 members have given their consent in favour of the petitioner for grant of extension to him but the Chairman of the meeting did not agree to the same but since the majority was in favour of the petitioner, it was so decided by the respondent-Commission by majority that the contract of the petitioner be extended by one year or till the availability of his substitute whichever is earlier and his joining report has been recommended by both the members and it was decided that the same should be accepted and his salary and dues should be released immediately w.e.f. 22.12.2017. Learned counsel further submitted that the aforesaid decision was taken by the respondent-Commission as the respondent-Commission was the appointing authority of the petitioner and was also the competent authority. In this regard, he referred to the provisions of **‘The Haryana Electricity Regulatory Commission (Officers and Employees Conditions of Service) Regulations, 2011** (hereinafter to be referred as ‘Regulations-2011’) which have been attached along-with the present petition as Annexure P-13.

3. Learned counsel for the petitioner referred to Regulation 7 of Regulations-2011 which defines the ‘Appointing Authority’ wherein it has been so provided that the Commission shall be the appointing authority in



respect of all the posts mentioned in Part 'A' of Appendix 'A' to these regulations and thereafter he referred to the aforesaid Appendix 'A' in Part A of the Regulations 2011, wherein the post of Private Secretary has been shown to be at Sr. No.23 and, therefore, the appointing authority of the petitioner was the respondent-Commission, in view of the aforesaid Regulation No.7 read with Appendix 'A' regarding which the respondents have not raised any dispute. Learned counsel further submitted that since the respondent-Commission was the appointing authority, then by virtue of the aforesaid Regulations-2011 (Annexure P-13), the respondent-Commission had granted extension to the petitioner but thereafter since the dissent was made by the Chairman of the aforesaid 84th Meeting, the matter was sent to the State Government and ultimately, the State Government vide Annexure P-11 had decided that the contractual appointment of the petitioner cannot be extended beyond 21.12.2017 and thereafter, in pursuance of the aforesaid decision taken by the State Government, the respondent-Commission, vide Annexure P-12 dated 27.04.2018 issued a letter to the petitioner whereby he was conveyed that extension of his service contract had been rejected by the Government on 03.04.2018 and further it was advised to the petitioner that he should refrain from handling any file pertaining to the Commission, failing which criminal proceedings as per law shall be initiated against him. Learned counsel further submitted that once the respondent-Commission itself had decided to extend the services of the petitioner beyond 21.12.2017 for a period of one year then the State Government was not empowered to pass any order nullifying the aforesaid decision taken by the respondent-Commission.

4. He further asserted that now the claim of the petitioner is that since



he discharged his duties to the post of Private Secretary for one year, he is entitled for grant of salary for the period he has discharged his services to the post of Private Secretary even if assumingly his extension was irregular. In this regard, he referred to a judgment of Hon'ble Supreme Court in ***Man Singh Vs. State of Uttar Pradesh through Secretary and others, Civil Appeal No.7841 of 2011*** decided on **31.03.2022** to contend that even if the appointment was irregular, the appellant of that case had discharged the duties on the post and in lieu of duties, he had to be paid.

5. On the other hand, learned counsel for the respondent-Commission submitted that so far as discharging of duties by the petitioner on the basis of extension till 21.12.2017 is concerned, the same is not in dispute and he has already been paid all the benefits of salary etc. till the aforesaid period i.e. 21.12.2017 because the extension was granted by the respondent-Commission. He further submitted that however, on that date, the petitioner had attained the age of 65 years and thereafter, his tenure could not have been extended but in the aforesaid 84th Meeting held, only two members of the respondent-Commission vide Annexure P-7 had decided to grant extension of one year to the petitioner but the Chairman of the Commission did not agree and was not in favour of granting extension to the petitioner but since it was the majority decision, the matter was referred to the State Government and the State Government vide Annexure P-11 on 03.04.2018 decided that the terms of the contractual appointment of the petitioner cannot be extended beyond 21.12.2017 and in this regard, the respondent-Commission also issued a letter dated 27.04.2018 (Annexure P-12) to the petitioner.



6. Learned counsel for the respondent-Commission also submitted that the petitioner has not discharged the duties to the post of Private Secretary after 21.12.2017 and there is a biometric system operating in the office of the respondent-Commission in which no record is available to show that he was actually present in the office of respondent-Commission. In case the petitioner had come to the office of the respondent-Commission then that cannot be deemed to be in the nature of discharging of duties and even otherwise also he could not have discharged the duties without there being any extension in this regard. He further submitted that in fact there is no specific averment made by the petitioner in the present petition that as to whether he discharged his duties beyond 21.12.2017 or not but thereafter in the replication filed by the petitioner, he has taken a plea in this regard. He further asserted that since the petitioner has not discharged his duties at all beyond 21.12.2017, he cannot be granted any salary for the period during which he did not discharge his duties on the aforesaid post. He also submitted that the aforesaid judgment cited by learned counsel for the petitioner is distinguishable from the present case because in the present case the petitioner has not discharged his duties to the post of Private Secretary beyond 21.12.2017.

7. I have heard learned counsels for the parties.

8. The dispute in the present case is with regard to the claim of the petitioner that he may be granted the benefit of salary for the period he discharged his duties on the post of Private Secretary after 21.12.2017 for a period of one year. However a perusal of Annexure P-7 would show that the majority decision for extension of the contract of the petitioner for one year



was taken by two of the members of the 84th Meeting of respondent-Commission and the Chairman of the aforesaid meeting did not agree to the same, the matter was sent to the State Government and the State Government vide Annexure P-11 did not accept the plea of the petitioner and decided that the term of contractual appointment of the petitioner beyond 21.12.2017 cannot be extended and thereafter the respondent-Commission wrote a letter to the petitioner vide Annexure P-12 conveying him that his case for extension had been rejected by the Government and the same cannot be extended.

9. However, learned counsel for the respondent-Commission categorically submitted that the petitioner had not discharged his duties as Private Secretary beyond 21.12.2017 because the petitioner was not marked present in the biometric record of the office of respondent-Commission and if at all, he had been visiting the office, he had not been discharging his duties and thus, he cannot be paid the amount of salary for the aforesaid period and even otherwise also, the same could not have been paid to the petitioner because there was no extension granted to him.

10. The issue, therefore, would be as to whether the petitioner had discharged his duties and worked in the office of the respondent-Commission beyond 21.12.2017 or not. This Court has put a specific query to learned counsel for the petitioner as to whether he has specifically averred in the present petition that the petitioner had discharged his duties as Private Secretary after 21.12.2017 or not but learned counsel for the petitioner has not been able to point out any such averment made in the petition with regard to the factual position that he worked and discharged his duties after 21.12.2017

and therefore no such response has come from the respondent-Commission because there is no such averment in the present petition. However, one averment in this regard has been made later on in the replication filed by the petitioner.

11. The aforesaid judgment of Hon’ble Supreme Court in *Man Singh’s case (supra)* is distinguishable from the facts of the present case because in the present case there is a dispute as to whether the petitioner had worked or not in the office of respondent-Commission.

12. In this way, this Court is of the considered view that as to whether the petitioner had discharged his duties to the post of Private Secretary after 21.12.2017 or not, is purely a disputed question of fact, which cannot be gone into by this Court in exercise of its powers under Article 226 of the Constitution of India.

13. In view of the above, the present petition is dismissed.

14. However, liberty is granted to the petitioner to avail any alternate remedy available to him in accordance with law including filing of any civil suit in this regard.

(JASGURPREET SINGH PURI)
JUDGE

11.09.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No