

2025:PHHC:029039



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

206-2

**CWP-7183-2017 (O&M)
Date of Decision: 25.02.2025**

SHER SINGH

... Petitioner

VERSUS

UNION OF INDIA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Abhishek Sethi, Advocate and
Mr. Ramneek Vasudeva, Advocate
for the petitioner.

Mr. Anil Chawla, Sr. Panel Counsel
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

CM-4883-CWP-2020

The instant application had been filed for seeking exemption from filing Court fees as well as the Welfare Stamp of the Bar as the same were not readily available with the petitioner on account of lockdown due to COVID-19 pandemic.

Since the lock down is already over and the situation is conducive as of now, the application is disposed of with a direction to the petitioner to pay the requisite Court fee as well as the Welfare Stamp of the Bar, as per rules.

Needful be done within a period of two weeks of the receipt of certified copy of this order.

CM-4884-CWP-2020

Allowed as prayed for.

The Status Report (Annexure P-11) is ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book.

MAIN CASE

The petitioner has approached this Court for seeking issuance of directions to the respondents to re-engage the petitioner at the post of Chowkidar at ECHS Polyclinic, Sector 47, Chandigarh on contractual basis alongwith all benefits and arrears of previous engagement on the same post. A further prayer has also been made for directing the respondents not to advertise the post of Chowkidar at ECHS Polyclinic, Sector 47, Chandigarh during the pendency of the instant writ petition.

The matter was taken up on 29.11.2019, when a detailed order was passed in CM-17971-CWP-2019 which was moved on behalf of the petitioner.

The said order is extracted as under: -

“The applicant/petitioner is threatened by a public notice, inter alia, advertising one post of Chowkidar and in case the same is allowed to be filled, it will create complications in the matter of implementation of order dated 17.02.2017 rendered in Renu Bala Vs. Union of India & others (CWP No.439 of 2017 & other connected cases).

Notice of the application.

Mr. Vishal Gupta, Advocate, who is present in Court, accepts notice on behalf of the non-applicant/respondents.

Having heard Mr. Gaurav Singla and Mr. Vishal Gupta, this case is brought back from sine die.

This petition had been filed claiming similar relief as the one given by this Court in Renu Bala's case (supra). By that order, all the writ petitions were allowed in terms of the previous case referred to as Union of India & others Vs. Paramjit Kaur & other (LPA No.1691 of 2015 decided on 19.12.2016) and directions were issued to the ECHS/respondents to continue with the services of the petitioner/s even in those cases where they have been disengaged. The positive direction issued was that in the event of disengagement, they would be re-engaged forthwith.

Both counsel say that the order dated 17.02.2017 has attained finality.

The present petitioner's services as a Chowkidar were disengaged w.e.f. 05.02.2017. The petitioner was in Court in March, 2017 claiming similar relief and reinstatement. Petitioner says that his rights stand crystallized by the order dated 17.02.2017 and could have been declared on 08.05.2017, when the case was adjourned or soon thereafter. However, pleadings had to be received which delayed adjudication.

Mr. Singla submits that interviews for the post of Chowkidar have been conducted on 28.11.2019. The petitioner had worked for 5 years and 8 months as Chowkidar prior to his disengagement in February, 2017.

The track record of the petitioner for 5 years and 8 months is well known to the respondents. He was not disengaged for any misconduct or had anything to do with his work. The termination was simplicitor on expiry of period of contract. The contract was renewed year to year. Therefore, there is no need to re-conduct the interview.

Thus, it is directed that one post of Chowkidar shall not be filled. The petitioner's case will be considered for engagement forthwith and the result of the consideration be produced on the next date of hearing together with any response or any reply which the respondents may wish to file in response to this application in

case they still resist the order/directions for which reasons may be assigned.

List again on 06.12.2019.

In case, the argument raised in context of the application was that the directions contained in the order dated 17.02.2017 were confined to the petitioners in those cases decided by a common judgment and, therefore, relief is not available to anyone else including the petitioner herein would be a gross misconception of the law. The officer/s before they take a decision may read the judgment of the Supreme Court in State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347. The officer/s may also read the concluding portion of the order dated 17.02.2017 to prepare them for contempt proceedings in case initiated by this court for issuing public advertisement inviting applications for the post of Chowkidar in the face of the directions in the judgment/order dated 17.02.2017.”

It is evident from a perusal of the same that CWP-439 of 2017 titled as ‘Renu Bala Vs. Union of India and Others’ alongwith other connected matters were allowed vide order dated 17.02.2017 in terms of the previous case referred to as 'Union of India and Others Versus Paramjit Kaur and Others' bearing LPA No.1691 of 2015 decided on 19.12.2016 and directions were issued to the ECHS-respondents to continue with the services of the petitioner(s) even in those cases where they had been disengaged. A positive direction was issued therein that in the event of disengagement, they would be re-engaged forthwith. The said order of 17.02.2017 passed in the matter of **Renu Bala (Supra)** attained finality.

This Court thus specifically upheld the right of the petitioner for seeking re-engagement unless the termination of the petitioner was established to be for certain reasons such as deficiency in the work and conduct of the

petitioner or the project itself having been shelved off for lack of fiscal provision for the same.

Learned counsel for the petitioner further contends that the matter remained pending on account of certain intervening developments and thereafter on 21.11.2024, when the matter was heard at some length, this Court passed the following order:

“Learned counsel for the petitioner also prays for time to file an application to demonstrate that one person has been appointed on the post of Chowkidar.

Learned counsel for the respondents, on the other hand, states that since there is no requirement of engaging a Chowkidar, the advertisement was cancelled. He, however, prays for time to obtain instructions as to whether the authorities would or not fill the said post which is lying vacant.

Adjourned to 25.02.2025.

Photocopy of this order be placed on the connected file.”

He submits that the first part of the order mandated the petitioner to demonstrate that one person has been appointed against the post of Chowkidar so as to show that not only the post exists but there is also an engagement of a person to discharge the said function, the direction issued to the respondents was to establish that there was no requirement of engaging a Chowkidar considering that the advertisement had been cancelled. A further direction was issued to the counsel for the respondent to obtain instructions as to whether the authorities would or not fill the said post which is lying vacant.

Learned counsel for the petitioner contends that in order to discharge his obligations, he be permitted to refer to the additional reply filed on behalf of the respondents, the paragraph No.9 whereof reads thus:

“9. That one Mr. Sobha Ram is continuously working as Chowkidar at ECHS Establishment w.e.f. 2004 wherein he was initially employed at ECHS, Polyclinic Ambala and thereafter, he was employed at ECHS Polyclinic Chandigarh w.e.f. 09 Jul 2008 onwards and paid out of various funds to include Regimental Fund/Station Welfare and Maintenance Fund/Golden Lion Canteen Fund etc. from time to time and since then, he is still in service till date. Whereas the petitioner was employed in ECHS Polyclinic Chandigarh much later w.e.f. 01 Jun 2011 onwards and both of them have served together till termination of the contract of the petitioner and Mr. Sobha Ram continued to work as Chowkidar at ECHS Polyclinic since then. Another reason for which the petitioner cannot be re-engaged at present is the non-existence of work at ECHS Polyclinic Chandigarh due to unprecedented and pandemic Corona nationwide lockdown situation prevalent at present in the country. And the principle of first come last go has also been taken care off. Copy of the judgement passed by the Hon'ble High Court dt 30 Jun 2015 is enclosed as Annexure R-12.”

Referring to the above, learned counsel for the petitioner contends that the respondents have engaged one Sobha Ram to the post of Chowkidar at ECHS Polyclinic, Chandigarh w.e.f. 09.07.2008 onwards and that he has been paid out his salary from the various funds including Regimental Fund/Station Welfare and Maintenance Fund/Golden Lion Canteen Fund etc. from time to time and since then, he is still in service till date. Referring to the above, he further contends that there is only one post of Chowkidar at ECHS Polyclinic, Chandigarh as per the ECHS Scheme and that the said work is being undertaken

from Sobha Ram by getting him paid out of funds from a different source. Hence, it shows that not only the respondents have continued with the post but also being taking the work from Sobha Ram. It also shows that the mandate of the judgment in the case of ***Renu Bala (Supra)*** is being sought to be defeated by a clandestine posting of different persons while drawing funds from other Heads so as to portray a stand before this Court that there is no utilization/ engagement for Chowkidar against the funds assigned under the specific scheme.

He further contends that the petitioner was engaged on 24.01.2007 and his services were discontinued in the year 2017. Hence, the person who was employed at ECHS Polyclinic, Chandigarh w.e.f. 09.07.2008 has been called upon to discharge the functions of the Chowkidar notwithstanding the predominant claim of the petitioner to continue discharging the duties assigned to the post of Chowkidar.

Learned counsel for the respondents, however, contends that since engagement has already been done and Mr. Sobha Ram was already engaged with ECHS Polyclinic, Ambala in the year 2004, hence, the principles of industrial law would become applicable and as per the principle of ‘last come first go’, the petitioner cannot have any preferential claim as against the right of Sobha Ram for re-engagement. Learned counsel for the respondents contends that the instructions received by him from the OIC (Legal) are to the following effect:

“The vacancy has not been filled till date due to stay imposed vide order dated 29.11.2019 and the same will be filled on vacation of stay. The case is pending. The petitioner is not in service.”

Counsel for the petitioner contends that it is evident from a perusal of the aforesaid instructions, received by the learned counsel for the respondents, that they could not fill up the vacancy on account of the stay imposed by this court and it is not a case where they do not intend to fill up the said post at all. Further, they have already made an attempt at filling up the said post in the year 2022, when they were restrained by this Court from filling up the said post and the vacancy/advertisement had to be withdrawn/cancelled. Hence, not only the post is vacant but also there is a will on the part of respondents to engage another person without protecting the right that has already accrued in favour of the petitioner in light of the judgment passed by this Court in the matter of ***Renu Bala (supra)***.

I have heard the learned counsel for the respective parties and have gone through the documents and other material available on record with their able assistance.

From a careful perusal of the material available on record as also the specific instructions received by learned counsel for the respondents pursuant to the directions issued by this Court in its earlier orders, it is apparent that not only the petitioner was earlier engaged on the post of Chowkidar at ECHS Polyclinic, Chandigarh but also that the respondents are currently taking the work of Chowkidar from another person namely Sobha Ram by paying him from a different Head rather than ensuring meticulous compliance to the rule of law and making the payment to the employees engaged against a particular vacancy from the specific Head that has been assigned. It is also evident from the perusal of the above that the act and conduct of the respondents in continuously engaging somebody to discharge the functions of a Chowkidar clearly shows that there is a

necessity for engagement of a Chowkidar; but, as per the instructions received by the learned Counsel for the respondent, they could not fill up the vacancy of Chowkidar due to the stay order passed by this Court on 29.11.2019. Hence, not only the necessity subsists but also the intent of the respondents not to keep the post vacant and to fill it up only after final adjudication of the present writ petition is manifest.

I also find that the counsel for the respondents has not been able to distinguish the case and is also not in a position to discard the entitlement of the petitioner that accrues in his favour in light of the directions issued by this Court in the matter of ***Renu Bala (supra)***. The present writ petition is, accordingly, allowed in terms thereof.

The respondents are accordingly directed to re-engage the petitioner on the post of Chokidar within a period of two months of the receipt of certified copy of this order. The petitioner shall, however, not be given salary for the period during which he remained disengaged, but as a token compensation, the respondents are directed to pay a sum of Rs.50,000/- to the petitioner within a period of two months of his re-engagement.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

FEBRUARY 25, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No