

2025:PHHC:001775



CM-20772-CWP-2024 in/and
CWP-21498 of 2024

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

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CM-20772-CWP-2024 in/and
CWP-21498 of 2024
Date of decision : 09.01.2025

VIKAS SANDHU

..... Petitioner

VERSUS

**PUNJAB AND HARYANA HIGH COURT CHANDIGARH AND
OTHERS**

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Jasbir Mor, Advocate
for the petitioner.

Ms. Sonia Sharma, Advocate (through Video Conferencing)
for respondents No.1 and 2.

Mr. Kanwalpreet Singh Virk, Advocate
for respondent No.3.

Harsimran Singh Sethi, J. (Oral)

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This application is for placing on record communication letter dated 28.11.2024 passed by respondent No.3 as Annexure P-12 with a further prayer to issue interim direction to respondent No.4 not to cancel the appointment of the petitioner during the pendency of the present writ petition.

Application is allowed as prayed for.

By consent of parties, main writ petition which is fixed for 05.02.2025, is taken on board today itself.



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1. In the present petition, prayer of the petitioner is to direct the respondents to accept his technical resignation so as to join on a new post as clerk with the PGI, Chandigarh, for which post the petitioner had participated with the due permission of the District and Sessions Judge, Karnal, which is the appointing authority of the petitioner. Further prayer of the petitioner is that he should be given the last pay drawn certificate so that, the petitioner is able to claim certain benefits of pay protection from the PGI Chandigarh, where the petitioner intends to join the post in pursuance to his selection.

2. Further, prayer is for retaining the lien on the post on which the petitioner is working as of now with the District and Sessions Judge, Karnal, till the petitioner is confirmed as a clerk with the PGI, authorities.

3. Notice of motion was issued and the respondents have filed the reply.

4. Learned counsel appearing on behalf of Punjab and Haryana High Court-respondent No.1 submits that the petitioner will have to submit a resignation and he cannot be granted a technical resignation so as to relieve him to join the new post of clerk as, the petitioner never competed with the permission of the District and Sessions Judge, Karnal for the post of clerk in PGI, on which post the petitioner intends to join after the selection.

5. Learned counsel appearing on behalf of respondent No.1 further submits that the last pay certificate being drawn by the petitioner cannot be given as the petitioner has to resign from the post in question. Learned



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counsel for respondent No.1 further submits that with regard to the prayer for retaining the lien on the post, the same cannot be accepted as petitioner is not a confirmed employee as of now and only the confirmed employee has a right of lien on the post hence, the petitioner, as of now does not have a lien on the post on which he is working as he is yet to be confirmed.

6. Learned counsel appearing on behalf of PGI submits that petitioner is yet to join the post and in case he joins within the time frame granted, the question as to whether any relief can be granted to him will be decided at the relevant time especially when there is no master and servant relationship between the petitioner and the PGI as of now.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. With regard to the prayer of maintaining the lien on the post in office of the District and Sessions Judge, Karnal, the said prayer has rightly been rejected by the respondents. It is a conceded position that even as of now, the petitioner is not a confirmed employee and has not undergone the maximum period of probation provided for a recruit to be confirmed and no order confirming him against the post on which he is working has been passed by the competent authority. In the absence of the fact that the petitioner as of now does not hold a lien on the post on which he is working, question of retaining the said lien till petitioner is confirmed on the post of Clerk with the PGI, does not arise as only an employee who has lien, can retain the same. Hence, the claim of the petitioner for retaining his lien with the office of District and Sessions Judge on the post on which he is working,



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has rightly been rejected by the authorities concerned.

9. With regard to the declining of the grant of technical resignation so as to join the new post of Clerk with the PGI, the only objection taken is that the petitioner never participated in the selection process with the permission of the District and Sessions Judge hence, question of grant of permission to join the said post does not arise. The said argument is to be decided keeping in view the order Annexure P-3 attached with the petition by the petitioner. The order dated 11.07.2023 (Annexure P-3), by which the District and Sessions Judge, Karnal gave him the permission to participate is as under:-

“As desired by the learned District and Sessions Judge, Karnal, vide order dated 10.07.2023, you are requested to inform Shri Vikas Sandhu, Additional Ahlmad of your Court that he has been granted permission to apply for the posts of Research Associate and Lower Division Clerk, on direct recruitment basis, advertised by PGIMER, Chandigarh, vide Advt. No.PGI/RC/035/2023/1676 dated 09.06.2023, subject to the condition that in the event of his selection, he will resign from the post holding in this department and would be governed as per rules/instructions issued by Hon'ble High Court of Punjab and Haryana and Haryana Civil Services (General) Rules, 2016.”

10. Though, it has been mentioned in the letter that the petitioner will have to resign from the post in case, he is selected but, it can be safely said that the petitioner participated for the post of clerk in PGI with the due approval of the District and Sessions Judge, Karnal. Once, the District and Sessions Judge, Karnal is the appointing authority of the petitioner, and the permission was granted to compete for the selection process, it cannot be said that the petitioner participated in the selection process for the post of



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clerk is without following the due process or without the permission of existing employer. Once, the petitioner participated with the permission of the appointing authority for the post of clerk in the PGI, on being selected, the petitioner is only required to submit a technical resignation so as to join the newly selected post. The petitioner cannot be asked to resign simply. Rather, the resignation has to be on the terms that the petitioner intends to join his new post with the PGI, which technical resignation needs to be accepted. The technical resignation will only give a right to the petitioner to claim certain benefits from PGI authorities in case the same are admissible according to the rules governing the service with the PGI. Hence, the District and Sessions Judge, Karnal is directed to accept the resignation submitted by the petitioner to join the new post on which he has been selected with the PGI authorities which will be treated as a technical resignation and not simple resignation.

11. After accepting the technical resignation, the petitioner, be relieved so as to join the post of clerk with the PGI, Chandigarh.

12. Further, an employee is entitled for a certificate with regard to the description as to what salary he was drawing at the time of relieving so that in case the same is favourable to the employee to claim any relief from the subsequent employer, the same can be claimed. The said last pay drawn certificate is only a factual position which is to be depicted as to what salary the petitioner was drawing while working with the District and Sessions Judge, Karnal on the date of his relieving. The same does not bind the

District and Sessions Judge in any manner as the same is only a depiction of



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the actual facts qua the petitioner with regard to the emoluments which he was drawing at the time when he submitted the resignation and was being relieved from service so as to join the newly selected post with the PGI.

13. Keeping in view the above, the District and Sessions Judge, Karnal is also directed to give him the last pay drawn certificate which will depict the salary being drawn by the petitioner at the time of submitting the technical resignation and him being relieved of the duties from the post with the District and Sessions Judge, Karnal.

14. At this stage, learned counsel for the petitioner submits that the last date to join with the PGI, keeping in view the extension already granted is 15.01.2025 after which, even the said offer will lapse. Hence, the District and Sessions Judge, Karnal is directed to grant the benefits of the last pay drawn certificate and acceptance of his technical resignation before 14.01.2025 so that, the petitioner does not loose his subsequent assignment.

15. In case, due to any procedural process, the direction given by this Court is not complied with, the authorities with the PGI will allow the petitioner to join by 15.01.2025 in case he gives a joining report with the copy of this order, so that, the petitioner is not aggrieved in any manner or suffer any prejudice due to the procedure process envisaged after the passing of this order.

16. The writ petition is disposed of in the above terms.

**(HARSIMRAN SINGH SETHI)
JUDGE**

09.01.2025

Rimpal

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No