

(2024) 05 KL CK 0115

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17229 Of 2024

Mukesh Kumar Pandey

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-05-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 05 KL CK 0115

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : V.K.Sathyanathan, Vinod K.C., K.R.Renju, Krishna T C, Ar.L.Sundaresan

Final Decision : Dismissed

Judgement

M.A.Abdul Hakhim, J

1. Petitioner is an Indian Navy Sailor working in the INS Garuda, Naval Base in Kochi. He obtained employment as Deputy Field Officer in the Cabinet Secretariat of the Union Government. When his application for Discharge from Indian Navy was rejected, he filed W.P.(C)No.36307/2023 in this Court and this Court passed Ext.P1 judgment dated 30.11.2023 virtually allowing the writ petition directing to issue orders to discharge the petitioner as prayed for by him and to keep a post of Deputy Field Officer vacant in the establishment of the Cabinet Secretariat for a period of four weeks to enable the petitioner to get appropriate orders for discharge as per Ext.P1 judgment.

2. The respondents in Ext.P1, namely, Union of India and its officers filed W.A.No.2240/2023 challenging Ext.P1 judgment on the ground of maintainability of the writ petition as according to them the remedy of the petitioner was before the Armed Forces Tribunal (AFT) under the Armed Forces Tribunal Act, 2007. The Division Bench of this Court, as per Ext.P2 judgment dated 12.02.2024 set aside the judgment of the learned Single Judge accepting the contention of the

appellants with respect to the maintainability of the writ petition. The Division Bench directed the petitioner herein to approach the AFT for the consideration of the question of discharge and directing to keep post of Deputy Field Officer vacant in the establishment of the Cabinet Secretariat for a period of three months. It also alerted the AFT to take every endeavour to see that the O.A is disposed of within a period of three months.

3. The petitioner approached the AFT, Kochi by filing O.A.No.59/2024 which was allowed by the AFT as per Ext.P3 order dated 25.04.2024 with the following directions:

i. The 4th and 5th respondents are directed to discharge the applicant from Naval service forthwith, at any rate, within a week from today for enabling him to join the post of Deputy Field Officer in the Cabinet Secretariat of the Central Government as the post of Deputy Field Officer will remain vacant till 12th May, 2024 only, as per the directions of the Division Bench of the High Court of Kerala.

ii. if for some reason necessary certificate/letter is not issued to the applicant by the respondents, we direct that the present decision would be treated as sufficient authorisation in favour of the applicant for being relieved from service by the Indian Navy, and in such eventuality, the Cabinet Secretariat of the Central Government is at liberty to accept the joining report submitted by the applicant pursuant to the present order. The formalities, if any, shall follow later.

4. The petitioner filed this writ petition on 07.05.2024 seeking the following reliefs:

i. Call for the records,

ii. issue a writ of mandamus or any other order or direction directing the respondent No.5 & 6 to issue discharge order discharging the applicant from service as directed by the AFT, RB, Kochi,

iii. issue a writ of mandamus to the respondent No.2 to appoint the petitioner as a Deputy Field Officer in the establishment of the Cabinet Secretariat.

iv.

5. The case of the petitioner is that neither the Naval Authorities issue the Discharge certificate to the petitioner nor the Cabinet Secretariat is not permitting him to join on the basis of Ext.P3 order of the AFT; that since the AFT is on vacation upto 31.05.2024 and there is no vacation sitting for AFT, he is unable to approach the AFT for further orders; that he has to join in the Cabinet Secretariat before 12.05.2024 since the period of three months during which the post was directed to be kept vacant in Ext.P2 judgment would expire on that date.

6. When this writ petition was came up for admission on 14.05.2024, this Court recorded the submission of the learned Central Government Counsel appearing for the respondents that the post of Deputy Field Officer in the establishment of

Central Cabinet will be kept vacant until orders are passed by this Court.

7. Senior Panel Counsel for the Central Government filed a Statement dated 12.05.2024 strongly opposing the maintainability of the writ petition.

8. I heard the counsel for the petitioner Sri.Sathyanathan V.K and Senior Advocate Sri.Ar.L.Sundaresan, Additional Solicitor General of India instructed by Adv. Sri. T.C.Krishna, Senior Central Government Counsel for the respondents.

9. The counsel for the petitioner submitted that this Court is perfectly justified to entertain the writ petition since the issue is concluded by Ext.P3 judgment of the AFT and this Court is perfectly justified in passing orders to give effect to the directions given in Ext.P3 judgment, especially when the writ petition was instituted at a time when the AFT was not sitting on account of vacation. He also submitted that he was compelled to approach this Court since the period of three months during which the post was directed to be kept vacant expired on 12.05.2024.

10. Per contra, the learned Additional Solicitor General of India submitted that the jurisdiction of this Court under Article 226 of the Constitution of India cannot be used lightly for execution of the orders passed by other Courts and Tribunals. If the parties to the orders passed by the Courts/Tribunals do not comply with the directions therein, the complaining party has to approach that Court/Tribunal itself or other permitted Forums for enforcing the same in accordance with law. He pointed out that the petitioner has already filed M.A.No.317/2024 in O.A.No.59/2024 of the AFT in which Ext.P3 judgment was passed seeking further directions to implement Ext.P3 order and the same is pending consideration before the AFT.

11. Having heard the parties, I am of the view that the prayers made by the petitioner is not maintainable in this Court in a writ petition filed under Article 226 of the Constitution of India. With respect to the first prayer, he had already approached the AFT and the AFT has passed Ext.P3 order allowing such prayer. According to me, Ext.P3 order is a self working order. In direction No.i, it directs to discharge the petitioner from Naval service and in direction No.ii it directs that in case such discharge certificate/letter is not issued to the petitioner the decision in Ext.P3 would be treated as sufficient authorisation in favour of the petitioner for being relieved from the service by the Indian Navy. It is also made clear that Central Cabinet of the Central Government is at liberty to accept the joining report submitted by the petitioner pursuant to the said order.

12. In Ext.P3, the AFT has not issued any direction to the Cabinet Secretariat of the Central Government presumably because the Cabinet Secretariat is not a party to Ext.P3 O.A. It can not be made a party in the O.A also. In case the Central Cabinet Secretariat does not honour the above declaration made by the AFT in direction No.ii, it is a new cause of action for the petitioner to agitate against the Cabinet Secretariat of the Central Government. The prayer No.ii in the writ petition is seeking direction to the Cabinet Secretariat to appoint the

petitioner as Deputy Field Officer. Such prayer also is not maintainable in this Court since it comes within the jurisdiction of the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985.

13. Consequently, the writ petition is liable to be dismissed as not maintainable in this Court. However, taking into consideration of the direction of the Division Bench in Ext.P2 to keep the post of Deputy Field officer vacant for a period of three months and thereafter the recording of the submission of the Central Government Counsel that the said post will be kept vacant till further orders are passed by this court, I direct the 2nd respondent to keep the post of Deputy Field Officer in the establishment of Central Secretariat of the Union Government vacant for a further period of one week from today in order to enable the petitioner to workout his remedies.

14. Accordingly this writ petition is dismissed as not maintainable.