

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP No. 183 of 2005**

**Decided on 30.4.2007**

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**Kedar Singh.**

**...Petitioner.**

**Versus**

**Union of India and others.**

**...Respondents**

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*Coram*

**The Hon'ble Mr. Rajiv Sharma, J.**

*Whether approved for reporting ?<sup>1</sup>.*

**For the petitioners : Mr. Ashwani Gupta, Advocate.**

**For the respondent No.1 Mr. Sandeep Sharma, Assitt. Solicitor General of India.**

**For the respondents No.2 to 4: Mr. K.D. Sood Advocate.**

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**Rajiv Sharma, J. (Oral)**

The brief facts necessary for the adjudication of this petition are that the petitioner was appointed as Manager at Guma Mines with effect from 4<sup>th</sup> November, 2003. The petitioner though was appointed as Manager at Guma Mines but was not paid pay scale of Rs. 4000-7150. The petitioner sent a legal notice to the respondents on 17<sup>th</sup> September, 2004 to release the salary of the petitioner.

Mr. K.D. Sood, Advocate has filed the reply on behalf of respondents No. 2 to 4 and the same is taken on record today.

Mr. Ashwani Gupta, Advocate appearing on behalf of the petitioner has strenuously argued that once the petitioner has been appointed as

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?*

Manager at Guma Mines on 4<sup>th</sup> November, 2003, he is entitled to the pay scale of Rs. 4000-7150.

Mr. K.D. Sood, Advocate appearing on behalf of respondents No.2 to 4 contended that the petitioner was not qualified as per the provisions of Metalliferous Mines Regulations and Instructions of Director Mines Safety vide letter dated 9.10.2003 as such he was not given the charge of Mines Manager of Guma Mines.

I have heard the parties and perused the record.

It will be apt to reproduce the order dated 4<sup>th</sup> November, 2003 on the basis of which the petitioner was appointed as Manager at Guma Mines:

**“Shri Kedar Singh, Mines Foreman, Mandi Unit is hereby appointed as Manager at Guma Mines with immediate effect. This issues with the approval of the competent authority.”**

Thus it is evident that the petitioner's appointment as Manager Mines was made after the prior approval of the competent authority. This is suggestive of the fact that all the formalities were gone into before the issuance of order dated 4<sup>th</sup> November, 2003. Annexure R-3/1, on which much reliance has been placed by Mr. K.D. Sood, Advocate, is dated 9<sup>th</sup> October, 2003. What has been stated in order dated 9<sup>th</sup> October, 2003 is that on scrutiny of the letter dated 18<sup>th</sup> September, 2003 following deficiencies have been observed:

- 1. “The application has not been made in proper performam;**
- 2. Guma Salt Mine is big mine and is presently under production and hence Sh. Kedar Singh will not have any assistance of statutory qualified persons atleast a foreman certificate holder if he is permitted to work as manager of this mine.”**

There is no mention that the petitioner was not qualified as per letter dated 9<sup>th</sup> October, 2003. What has been stated in this

communication is that the petitioner will not have any assistance of statutory qualified person at-least a foreman certificate holder if he is permitted to work as manager of this mine. The other communication dated 7<sup>th</sup> October, 2003 has been issued after the inspection of Guma Mines by Mr. S.M. Suthar, Dy. Director Mines Safety, Ghaziabad Region, Ghaziabad on 4.8.2003. It has been stated in this communication that Guma Mines would only be started after removing all contraventions as mentioned. The petitioner has been transferred from Guma Salt Mines to Darang Salt Mines with effect from 20<sup>th</sup> March, 2004 vide office order dated 18<sup>th</sup> March, 2004.

This court is of the opinion that the respondents cannot take the help of Annexures R-3/1 and R-3/2 for not releasing the salary to the petitioner. The petitioner has been appointed after the prior approval of the competent authority on 4<sup>th</sup> November, 2003 and the communication Annexure R-3/1 is dated 9<sup>th</sup> October, 2003 followed by communication dated 7<sup>th</sup> October, 2003. Thus, at the time when the petitioner was appointed at Guma Mines as Manager these two communications were before them for consideration.

It can also be viewed from another angle. The petitioner was appointed as Manager at Guma Salt Mine on 4<sup>th</sup> November, 2003 and if this designation was to be withdrawn in that eventuality the petitioner was required to be served with a notice. It is an admitted fact that no notice ever was issued to the petitioner revoking order dated 4<sup>th</sup> November, 2003. Similarly the petitioner's designation could not be changed vide order 18<sup>th</sup> March, 2004 from Manager to Foreman as mentioned in that order.

The Hon'ble Supreme Court of India had termed confidential circular of Reserve Bank of India directing officers by confidential circular

that Tikka Mazdoors, persons helping examiners of notes/coins, should not be engaged continuously but offered work on rotation basis amounting to unfair labour practice. Their Lordships of the Hon'ble Supreme Court have held as under:

**“Not being satisfied with the pleas noted above the respondent-bank had also a case that the appellant was only a badli workman who could be deemed to have worked only on days when the permanent workman or probationer was not employed. The bank did not make available before the Tribunal any documentary evidence to show as to how the appellant could be treated as a badli worker and as to whose place he occupied during the days he worked. The confidential circular directing the officers that workman like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the appellant is a badli worker, have to be characterized as unfair labour practice. The 5<sup>th</sup> Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in Section 2 (ra). Item 10 reads as follows:-**

**“To employ workmen as ‘badli’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.”**

**We have not option but to observe that the bank, in this case, has indulged in methods amounting to unfair labour practice.**

**The plea that the appellant was a badli worker also has to fail.”**

In the present case the Managing Director of the respondent-corporation had issued

The upshot of the above discussion is that the appointment of the petitioner as Manager is in accordance with law and if the same is to be revoked it has to be after issuing him a show cause notice.

Accordingly, the writ petition is allowed. The respondents are directed to release the salary of the petitioner in the pay scale of Rs. 4000-7150 with arrears along with interest @ 6% per annum within a period of four weeks from the date of receipt of copy of this judgment. The petitioner is also held entitled to costs, which are quantified at Rs. 3000/-.

**( Rajiv Sharma), Judge**

April, 30, 2007

*\*Awasthi\**