

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23089 of 2011
Date of Decision: **July 09, 2015**

Mandeep Singh		...Petitioner
	Versus	
State of Punjab and others		...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Vijay Kumar Jindal, Advocate
for the petitioner.

Mr. Gurinder Pal Singh, Addl. A.G., Punjab.

Mr. Salil Sagar, Sr. Advocate with
Mr. Jaspreet Singh, Advocate and
Mr. Sankalp Sagar, Advocate
for respondent No.3. - Ludhiana Improvement Trust.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 21.04.2011 (Annexure P-7), whereby the services of the petitioner have been terminated.

The petitioner is a Graduate and has passed the diploma in Computer A-Level Course and as such is eligible to hold the post of Computer Operator-cum-typist. He submitted an application for contractual engagement against the post of Computer Operator-cum-typist in the office of Improvement Trust, Ludhiana (Respondent No.3). Consent was received from the Secretary, Local Self Government Punjab, for appointing him and two other persons as typist-cum-Computer Operator at Deputy Commissioner approved rates for a

period of six months for computerization of the records of the Ludhiana Improvement Trust. Thereafter, he was issued letter of engagement dated 13.10.2005 (Annexure P-3) for the period from 12.05.2005 to 11.11.2005. This period was extended from time to time through separate orders (Annexures P-3/A to 3/J). Lastly, through memo dated 01.02.2011 (Annexure P-3/J), the petitioner was engaged on contractual basis for period from 08.02.2011 to 07.02.2012. As the termination of the contractual engagement has taken place during the currency of this order, hence this order is reproduced below:

“Ludhiana Improvement Trust, Ludhiana
To *Sh. Mandeep Singh S/o Sh. Rajinder Singh,*
Village Balion, Teh. Samrala,
Ludhiana.

Memo No. 597 Dated 01.02.11

Sub: Contractual Engagement.

As per approval given by the Director, Local Govt., Punjab Chandigarh vide Letter No. 4/12/2011(12)-2SS2/222, dated Chandigarh 31.01.2011. You are hereby offered contractual appointment on the following terms and conditions. If you are willing to work, you may report to the Executive Officer, Improvement Trust, Ludhiana within 7 days of the receipt of this letter of engagement.

- 1) That you shall be required to discharge the duties attached to the post of Clerk-cum-Computer Operator.
- 2) **That this engagement is purely on contractual basis and is for the period from 08.02.2011 to 07.02.2012 unless it is not revoked/terminated any time during the contract period of any reasons.**
- 3) That your contractual engagement shall be governed by the provisions of Rule 1.4 of the Volume 1. Civil Service Rules, 1970.
- 4) That during the period this contract subsists, you

shall be paid fixed contractual amount of Rs. 65,000/- per month.

5) That you shall be required to work on all working days and in case of any absence the contractual amount shall be paid on parole basis.

6) That this engagement shall not be construed as 'Appointment to any post in the Trust' and according you shall not be entitled to any benefit available to the employees of the Trust.

7) That you shall always submit to the orders of the Executive Officer and/or other officers under whom you are asked to work.

8) That this contract can be terminated any time without any previous notice on the basis of the medical evidence declaring you unfit or your becoming incapacitated to discharge the normal duties and the decision of Executive Officer of the Trust in this regard shall be final and binding.

9) That on expiry of the contract period the contractual engagement without any further notice etc. shall automatically stands terminated.

Acknowledge receipt of this letter.

Sd/- 01.02.11

Chairman

*Ludhiana Improvement Trust,
Ludhiana."*

A case FIR No.64 dated 21.03.2011 under Sections 341/323/148/149 IPC, Police Station Division No.5, Civil Lines, Ludhiana City was registered, in which the name of the petitioner was not mentioned. Another FIR No. 81 dated 09.04.2011, was registered under Sections 420/467/468 IPC at the same Police Station. As per FIR No.81, one Yashpal stated before the Police that SIM was sold from his shop and I.D. of the same is of Avtar Singh and this I.D. was given to him by the petitioner. On this basis, the above case of cheating was registered against the petitioner. It is averred that in

both the cases, the petitioner has been granted bail by the Courts below.

On 21.04.2011, the Chairman, Ludhiana Improvement Trust issued impugned order terminating the contractual engagement of the petitioner. The order is reproduced below:

“Consequent upon filing of an FIR No.81 dated 9.4.2011, under Section 154 Cr.P.C. Police Division No. 5, Civil Lines, Ludhiana, against you and your arrest/ Police custody and continuous absence from duties with effect from 11.4.11, your services under Contractual engagement given to you vide this office Memo No. 597 dated 1.2.11 are hereby terminated from the date of filing of FIR.

*Sd/-
Chairman
Ludhiana Improvement Trust.”*

It is this order that has been impugned in the said writ petition.

It is contended that the services were terminated without affording any opportunity of hearing merely on the basis of registration of an FIR. No competent Court has held the petitioner guilty of offences mentioned in the FIR. It is stated that the termination order is a counter blast to the complaints submitted by the petitioner against the Chairman, Improvement Trust, Ludhiana, wherein, the petitioner has highlighted illegal appointments made in the Trust by the Chairman. It is further contended that the termination could not be effected during the subsistence of the contractual period without proper inquiry.

In the written statement filed on behalf of respondent No.3, it has been stated that the petitioner has concealed material facts in the petition. The petitioner had remained absent from duty for a period of 10 days without any explanation whatsoever. Furthermore, the said absence continued even after his release on bail in case FIR No.64 of 21.03.2011. As he did not report for duty at his post after getting bail and remained continuously absent, coupled with his involvement in the above mentioned criminal case, the order terminating the contractual engagement was passed. It is stated that the petitioner is not a Government servant entitled to the protection of Article 311 of the Constitution. It is further stated that his engagement was purely contractual, who has been appointed to a post that is not even provided for under the Punjab Town Improvement Act, 1922 and its accompanying Rules. His appointment was made to cater to a special contingency and purpose. Such appointment having been made in total disregard to the Rules and statutory schemes and for specified purpose is exclusively governed by the terms of the appointment letter, as per which, his engagement could be terminated at any time for any reason. It is stated that the impugned termination order does not contain any imputation of stigma on the character, credentials or ability of the petitioner rather, it only refers to the attendant circumstances of service, which clearly render him unsuitable for engagement.

I have heard Ld. Counsel for the parties and perused the record. Ld. Counsel for the petitioner contends that the order is stigmatic and could not have been passed without giving him an opportunity of hearing and holding an inquiry. On the other hand, Ld. **Counsel for the respondents contends that the petitioner's engagement was contractual for a specific period and purpose, he had no right to the post and even as per the letter of engagement, it could be terminated any time during the contract period for any reasons.** He states that termination of engagement is strictly as per the letter of engagement. He further states that the order is innocuous and non stigmatic and that the mere mention of the attendant circumstances namely his absence from duty and his involvement in a criminal case would not make the order stigmatic and by way of punishment.

It is a settled legal position that contractual/ temporary employees have no right to the post. Their services can be dispensed with in terms of the terms of the contractual engagement. In **Brij**

Mohan Lal v. Union of India, (2012) 6 SCC 502, it was observed:

“78. Normally, there are three kinds of posts that may exist in a cadre—(1) permanent posts; (2) temporary posts; and (3) quasi-permanent posts. Accordingly, there can be a temporary employee, a permanent employee or an employee in quasi-permanent capacity.

79. In Indian Drugs and Pharmaceuticals Ltd. v. Workmen this Court, while elucidating upon the distinction between temporary and permanent employees stated that such distinction is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right

to the post. It is only the permanent employee who has a right to continue in service till the age of superannuation. As regards a temporary employee, there is no age of superannuation because he has no right to the post at all.

80. Thus it follows that for a person to have a right to the post, the post itself has to be a permanent post duly sanctioned in the cadre. The person should be permanently appointed to that post. Normally, it is only under these circumstances that such an employee gets a right to the post, but even when a temporary employee is appointed against a permanent post, he could get a right to the post provided he had at least acquired the status of a quasi-permanent employee under the relevant Rules. Where neither the post is sanctioned nor is permanent and, in fact, the entire arrangement is ad hoc or is for an uncertain duration, it cannot create any rights and obligations in favour of the appointees, akin to those of permanent employees.

81. The appointees in the present case had been appointed not only on ad hoc and temporary basis but the entire FTC Scheme itself was ad hoc and for a duration of five years only as declared by the Central Government. Despite that, some of the States declared the FTC Scheme for two years only. In these circumstances, it is not possible for this Court to hold that the appointees had any right to the post.

82. Decades ago, this Court in *Parshotam Lal Dhingra v. Union of India* was seized with a matter where the appellant had been granted promotion from Class III service in the Indian Railways to Class II, but in view of the adverse remarks in his confidential report, the same was not effected. The action of the State was challenged before the High Court. The learned Single Judge took the view that this action of the State was punitive. However, the judgment was reversed by the Division Bench of the High Court.

83. A Constitution Bench of the Supreme Court allowed the appeal, while holding as under: (*Parshotam Lal Dhingra case*, AIR p. 42, para 12)

“12. ... In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service

cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service.”

84. *In Champaklal Chimanlal Shah v. Union of India this Court held that where a government servant had completed three years’ service and the Rules provided for declaration of his service thereafter as a quasi-permanent employee, the government servant would become a quasi-permanent employee only if such declaration was actually made. Similar view was also taken earlier in Jaswant Singh v. State of Haryana.*

85. *Therefore, the above principles clearly show that there should be a right vested in an employee, which is duly recognised and declared in accordance with the Rules governing the conditions of service of such employee before such relief is granted. Unless the government employee holds any status as aforeindicated, it may not be possible to grant relief to the government employee, particularly when such relief is not provided under the relevant Rules.”*

It is undeniable that the petitioner was engaged on contractual basis. He was not appointed pursuant to any regular selection procedure consistent with the requirements of Articles 14 and 16 of the Constitution. The respondents have stated that he has been engaged for a post that is not even provided for under the Punjab Town Improvement Act, 1922 and its accompanying Rules.

The last letter of engagement (Annexure P-3/J) specifically mentions the period of contractual appointment being from 8.02.2011 to 7.02.2012, unless revoked/ terminated any time during the contract period for any reason. Thus, the termination of engagement appears to be in accordance with the terms and conditions of the letter of engagement and no fault can be found therewith.

The question as to whether a mere reference of the kind made in the instant termination order would make it stigmatic, has been considered by the Hon'ble Supreme Court in number of cases. A case almost identical with the present case is **State of Haryana v. Satyender Singh Rathore, (2005) 7 SCC 518.** In this case the Hon'ble Supreme Court reversed the order of this Court which had quashed the termination order and directed reinstatement of the employee. The Hon'ble Supreme court referred to the facts of the case and the the precedents and observed as under:

“2. The respondent (hereinafter referred to as “the employee”) was appointed as Medical Officer in the Directorate of Health Services, Haryana by an order dated 6-11-1997 on a fixed salary of Rs 8000 per month for a period of six months from the date of joining. It was clearly indicated in the letter of appointment that the services of the employee being on contractual basis could be terminated at any time without assigning any reason with 24 hours notice from either side. By order dated 25-3-2002 services of the employee were terminated. The same was challenged before the High Court by filing a writ petition.

3. Before the High Court it was urged by the writ petitioner that the order of termination, though in the face of it appears to be termination simpliciter, was relatable to alleged misconduct and, therefore, was penal in nature. Reference was made to a decision of this Court in A.P.

State Federation of Coop. Spg. Mills Ltd. v. P.V. Swaminathan to contend that the order of termination was founded on the alleged misconduct as stated in the order dated 25-3-2002. The formal order of termination involved adverse civil consequences. The stand of the opposite parties before the High Court (the appellants herein) was that the misconduct may have provided a motive for the order of termination but not a foundation. The High Court by the impugned judgment held that the misconduct referred to was the foundation and not the motive. As the order involved civil consequences, therefore, the same could not have been passed without complying the principles of natural justice. The order was according to the High Court stigmatic. **In the order passed by the State Government dated 25-3-2002 reference was made to the alleged misconduct of the employee and on the basis thereof the order of termination dated 11-4-2002 was passed.** It was accordingly held that the employee was entitled to all the consequential benefits along with reinstatement. Liberty was, however, given to proceed further after complying with the statutory rules governing service of the employees or the rules of natural justice as the case may be.

4. Learned counsel for the appellants submitted that the order of termination as passed did not refer to any misconduct. It was a case of termination simpliciter. **The reference to the misconduct of the employee as contained in the order dated 11-4-2002 was in relation to the allegations made against the employee, and no inquiry was conducted or finding of guilt arrived at. After perusing the appointment order and the entire record the Government took the decision to relieve the employee from suspension for termination in terms of the appointment order with immediate effect. The misconduct alleged and referred to at the most can be treated as the motive for the order of termination but it was not the foundation.**

5. Learned counsel for the respondent on the other hand submitted that though the order of termination on the face of it appeared to be termination simpliciter, in reality, it was the outcome of the deliberations made and, therefore, was the foundation for the order of termination. **It is submitted that allegations were made to the police as well as the Public Grievance Committee. Report was lodged with the police and considering the police report and without affording any opportunity to the**

employee, the proceedings were abandoned midway and the services of the respondent were terminated

7. In Gujarat Steel Tubes Ltd. v. Mazdoor Sabha it was observed as follows: (SCC pp. 617-18, paras 53-54)

“53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the Standing Order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

9. We find that the High Court did not consider the question of stigma or the effect of any enquiry held before

the order of termination was passed. The question whether the enquiry purportedly held provided the motive or the foundation was required to be considered by the High Court in detail. That has not been done. The question whether the termination of service is simpliciter or punitive has been examined in several cases e.g. Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna and Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee after referring to various decisions it was indicated as to when a simple order of termination is to be treated as “founded” on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus: (SCC pp. 71-72)

“21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service.

10. When the factual scenario of the present case is considered in the background of legal principles set out above, the inevitable conclusion is that the High Court was not justified in interfering with the order of termination.”

The ratio of this decision applies to the present case as well. Thus, there is no merit in the contention of the petitioner that the termination order is stigmatic and is liable to be quashed on that account.

The engagement of the petitioner was purely contractual. The termination of contractual engagement has been effected in terms of the letter of engagement, as per which it could be terminated during the currency of the contractual period for any reason.

Moreover, the contractual engagement was only from 08.02.2011 to 7.02.2012, which period has long since expired.

Accordingly, this petition is dismissed.

July 09, 2015

gian

**(HARINDER SINGH SIDHU)
JUDGE**