

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

LPA No.1259 of 2015(O&M)

Date of decision:3.11.2015

State of Haryana and others

....Appellants

VERSUS

Anil Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Rajesh Gaur, Additional Advocate General, Haryana
for the appellants.

Mr. Manoj Makkar, Advocate for respondent.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 20.07.2015 whereby the order of termination dated 26.02.2014 of the writ petitioner was set aside holding the same to be punitive in nature having been passed without conduct of regular inquiry.

When the present Letters Patent Appeal came up for hearing before this Court on 28.08.2015, learned State Counsel has raised an argument that the writ petitioner was appointed on contract basis, thus, the rules as are applicable to the regular employees are not available to the writ petitioner. In view of the said argument raised, operation of the impugned order was stayed.

Learned counsel for the respondent has argued that the said contention is incorrect as the petitioner should be deemed to be a regular employee. It is pointed out that writ petitioner was one of the petitioner whose writ petitions were decided on 24.01.2008, the main judgment being in CWP No.5289 of 2007 titled Ashok Kumar and others v. State of Haryana and others. In the said judgment, there was a direction issued by the Division Bench that the petitioners shall not be substituted by other contractual employees. The appeal against the said order before the Hon'ble Supreme Court was disposed of on 21.01.2013, when the following order was passed:-

“Pursuant to our order dated 13th July, 2011 a short affidavit has been filed by Mr. Vijay Singh, Joint Secretary to Government of Haryana, Industrial Training Department, wherein it is stated that the Government is prepared to accommodate the eligible respondents numbering 258 who fulfill the requisite qualification as per rules on humanitarian ground in the Industrial Training Department against the vacant posts in case a direction is issued to that effect.

Having heard learned counsel for the parties, we are of the opinion that it would be in the interest of justice if the eligible respondents who fulfill the requisite qualification are accommodated. Let the necessary action be taken by the State within a period of three months.

The special leave petitions are, accordingly, disposed of.”

It is thereafter, an order was passed by the State Government on 03.10.2013. The operative part of the order reads as under:-

“In compliance of order dated 21.01.2013 passed by Hon'ble Apex Court the matter was duly considered by the Govt. and the Govt. has decided to accommodate all the eligible respondents in SLP No.9230-31 of 2009, SLP No.16389-16415 of 2009 and SLP No.18094-18094 of 2009 on the post on which they are working.”

Learned counsel for the petitioner has pointed out the list of eligible candidates as Annexure P-5. In the said list, the name of the writ petitioner appears at Serial No.26. The petitioner is recorded as eligible for appointment. Thus the petitioner claims to be a regular employee.

It appears that thereafter there was a complaint against the petitioner by one Smt. Poonam who was working on contract basis. It is on the basis of said complaint, the order of termination was passed on 26.02.2014 (Annexure P-10) which reads as under:-

“Sub:- For Termination on Contract-Matter Shri Anil Kumar, Tool and Die Maker Instructor (Contract Basis).

On the above said subject in the reference of letter of Assistant Director (Administration-II) Industrial Training Department, Haryana, Chandigarh, Memo No.KC/TE/103/Rajender Singh/GI/Admn.-II/274 dated 21.02.2014.

You have misbehaved and abused with Smt. Poonam, COPA Instructor (Contract Basis) upto consuming the liquor. Reason being a FIR have been lodged against you in Police Chowki, Mudlana.

So as per order of Directorate, Chandigarh your services has terminated afternoon from today 26.02.2014 after cancel your contract dated 29.10.2013.

Further it is order to you that the complete charge of your trade be handed over in next within one week in any working day to Mr. Jai Bhagwan Tool and Die Maker, Instructor and charge list be submit in the office. If you don't handed over the charge within one week then for the sake of training of the students your charge would be taken over after conducting the committee as per rule. And at this situation you are itself responsible for any negligence.”

A perusal of the written statement dated 08.06.2015 shows that in terms of the order passed by Hon'ble Supreme Court, the service of 227 contractual persons were regularized vide orders dated 08.08.2014 and 11.09.2014, out of total of 257 persons. The services of 30 persons

including the writ petitioner were not regularized whereas out of those 30 persons, service of 13 persons including the petitioner was terminated as their conduct was not found suitable for retention in service.

The petitioner has filed a rejoinder dated 01.07.2015, a copy of which has been supplied by learned counsel for the writ petitioner in the Court today. However, a perusal of the said rejoinder does not show that the writ petitioner has controverted the fact that the service of the petitioner was not regularized. Since, the services of the writ petitioner were not regularized as in the case of other employees; therefore, the status of the writ petitioner continues to be that of a contractual employee. The impugned order mentions the petitioner as a contractual employee as well. Since, the writ petitioner was a contractual employee; therefore, the Rules as are applicable for taking disciplinary action against the regular employees are not available. No charge-sheet was required to be served or inquiry conducted.

The argument of the learned Counsel for the petitioner is that the services of the petitioner were terminated before the service of other contractual employees were regularized, therefore, in terms of the orders passed, the petitioner has to be treated as regular employee. We do not find any merit in the argument raised. The order of regular appointment was not passed considering the petitioner as eligible before the services of the petitioner were terminated. Therefore, he would continue to be a contractual employee till such time an order is passed to appoint the petitioner on regular basis. The order of termination has been passed by conducting summary enquiry after giving an opportunity of hearing. In respect of contractual employee, the rules as are applicable to a regular

employee cannot be extended. Therefore, the order passed by Learned Single Judge, holding the order of termination is not legally sustainable.

Consequently, the appeal is allowed. The writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 3, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE