

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

LPA No.1441 of 2015(O&M)

Date of decision:19.10.2015

Arvind Kumar Sharma

....Appellant

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Vikas Chatrath, Advocate for the appellant.

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 17.08.2015 whereby the writ petition filed by the appellant challenging his termination as Information Assistant under National Rural Health Mission on contract basis remained unsuccessful.

The appellant was initially appointed as Information Assistant for a period of 89 days on contract basis on 01.12.2005. Such appointment continued from time to time. It was on 01.04.2011 vide order Annexure P-4, the contract was extended with a stipulation that inquiry against the appellant is pending with Mission Director, National Rural Health Mission, Haryana, Panchkula, if any decision is taken against the appellant, the services of the appellant will be terminated with immediate effect. However, such stipulation was not incorporated in a subsequent communication dated 02.04.2013 (Annexure P-5) extending the contract

period. The services of the appellant were terminated on 06.09.2013 (Annexure P-22) after giving 24 hours notice.

Learned counsel for the appellant has vehemently argued that the stipulation as contained in communication dated 01.04.2011 (Annexure P-4) was not incorporated in the subsequent communication dated 02.04.2013 (Annexure P-5) extending the contract period. Therefore, the service of the appellant could not be terminated on the basis of an inquiry conducted by Dr. Jasjeet Kaur, Deputy Director (Blood Safety). In her report dated 21.01.2011 (Annexure P-8), appellant has been found to be of haughty nature, irritant to fellow staff members and misuses his political connections. The Mission Director, National Rural Health Mission in communication dated 17.12.2012 (Annexure R-3) communicated the complaints received from the Director General, Health Services, Haryana to Civil Surgeon, Haryana including the inquiry conducted by Dr. Jasjeet Kaur. It was on said basis, an order of terminating the services of the appellant was passed, which order reads as under:-

“In reference to letter No.NRHM-2013/2293 and NRHM-2013/2301 dated 06.09.2013 of Member Secretary-cum-Civil Surgeon, District Health and Family Welfare Society, Ambala on subject cited above.

In compliance to the letter no.4356 dated 22.08.2013 of Deputy Commissioner, Ambala your services are henceforth terminated from 07.09.2013 after giving you 24 hrs notice today i.e. 06.09.2013.”

Learned counsel for the appellant has argued that since the basis of order of termination of the services of the appellant is an inquiry, therefore, it is apparent that the order of termination is not simpliciter in

nature but stigmatic. Therefore, such order could not have been passed without conducting a regular inquiry.

Learned counsel for the appellant also relies upon interdepartmental communication dated 29.08.2011 (Annexure P-9) whereby Civil Surgeon, Ambala has communicated the comments from Dr. Neelam Dogra and Dr. V.K. Sharma to file the inquiry against the present appellant but still the order of termination has been passed against the appellant, thus termination is not justified.

Learned Single Judge has rightly dismissed the writ petition finding that a fact finding inquiry was conducted after giving opportunity to the appellant to produce his defence witness. Such inquiry has found that all allegations levelled against the appellant are made out. The record produced also shows the other instances of misconduct.

The argument of learned counsel for the appellant that the Civil Surgeon has communicated the filing of the inquiries, therefore, the services of the appellant could not have been terminated is not correct in law. The communication to Mission Director, National Rural Health Mission dated 29.08.2011 (Annexure P-9) is accompanied with the comments of two doctors that the inquiry should be filed against him. The said communication is inter-departmental communication wherein the comments of various officials are given to arrive at the ultimate decision which culminates with the communication to an employer.

Since, no decision was communicated to the appellant, it cannot be said that the inquiry against the appellant stood filed. Merely writing something on the file does not amount to an order and that until a formal order is drawn up, the State Government is not bound by what was

stated in the file. Reference may be made to judgment of Hon'ble Supreme Court reported as Bachhittar Singh v. State of Punjab and another, AIR 1963 SC 395. The Court held to the following effect:-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh (till the abolition of that office by the Amendment of the Constitution in 1956), is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the “order” of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh, AIR 1961 SC 493 at p.512:

“Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent.”

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

Thus, the interdepartmental communications are part of the decision making process. No right to an employee accrues on the basis of such communication, which is not the decision but the process of arriving at some decision. The appellant was working on contract basis. An employee on contract basis is not governed by Punishment and Appeal Rules, as are applicable to the regular employee. The principles of natural justice were complied with when a fact finding inquiry was conducted in which the appellant was associated. The services of the appellant have been terminated as he was working on contract basis. The appellant, a contractual employee, has no right to demand a regular departmental inquiry or to say that he is entitled to reinstatement on the basis of interdepartmental communication.

In view of the above, we do not find any merit in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

OCTOBER 19, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE