

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12663 of 2010

DATE OF DECISION: FEBRUARY 27, 2016

UNION OF INDIA & OTHERS

...PETITIONERS

VERSUS

BALJIT KUMAR

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. PUNEET GUPTA, ADVOCATE FOR THE PETITIONERS.
NONE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. The writ petitioners being the employers of respondent Baljit Kumar have challenged the order of Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') quashing the impugned order of termination of services of the respondent.

2. The respondent was part-time contingent Chowkidar since 2001 in the office of Superintendent of Post Offices, Gurdaspur Division, Gurdaspur. He was posted on duty from 5.00 p.m. to 6.00 p.m. and 9.30 p.m. to 8.30 a.m. till opening of the office. On 6.11.2004, there was an attempt to commit theft in the office of the Superintendent of Post Offices, Gurdaspur Division, Gurdaspur. In connection therewith, the respondent was taken into custody by the police. The following show cause notice dated 8.12.2004 (Annexure P-2) was issued to him by the Superintendent of Post Offices, Gurdaspur:-

“During investigation in a case of attempt of theft of important records lying in steel almirah Divisional Office Gurdaspur, it has been found that you had remained willfully absent from duty on the night of 06.11.2004 and this negligency on your part had given the easy opportunity to miscreants for making attempt of theft of important record. You have also remained in police custody w.e.f. 08-11-2004 to 11-11-2004. Therefore, this office no longer needs services of such a careless/negligent/untrustworthy Contingent worker like you.

Please show cause why your services be not dispense with being only a Contingent Paid Worker. It is a notice to you for dispensed with your services. In case, you have nothing to say against this proposal of dispensing with your service, you may prefer your representation by 18/12/2004 to the undersigned.”

3. The respondent submitted reply/representation in response to the above show cause notice on 15.12.2004. On 17.12.2004, the following order was passed by the Superintendent of Post Offices, Gurdaspur:-

“Shri Baljit Kumar was engaged, as part time paid contingent chowkidar for Office of the Sr.Suptd. Of Post Offices, Gurdaspur Division, Gurdaspur vide this office memo No.A-1/Contingent dated 01-01-2001.

During investigation in a case of attempt of theft of important records lying in the steel almirah Divisional Office

Gurdaspur, it was found that Shri Baljit Kumar had remained absent from duty on the night of 06.11.2004 and this negligency on his part had given the easy opportunity to miscreants for making attempt of theft of important record and he has also remained in police custody w.e.f. 08-11-2004 to 11-11-2004.

The said Shri Baljit Kumar was served with notice for dispensed with his services vide this office letter No.F-7/2/04-05 dated 08-12-2004 with the direction to submit his representation, if any and he has submitted his representation dated 15-12-2004. I have gone through the representation of Shri Baljit Kumar and entire case thoroughly from which it is crystal clear that the said Shri Baljit Kumar had failed to perform his duty on the night of 06-11-2004 and the misconduct on the part of part time paid worker is such, as cannot be condoned.

Keeping in view, the above noted facts, this office no longer needs services of such a careless/negligent and untrustworthy part time contingent paid worker. Therefore, I hereby order for termination the services of Shri Baljit Kumar Part Time Contingent Paid Chowkidar O/o The Suptd. of Post Offices, Gurdaspur with immediate effect.”

4. The Tribunal held that Superintendent of Post Offices has passed the impugned order terminating the services of the respondent on mere presumptions and conjectures. Further, the Tribunal held that

principles of natural justice were not adhered to by non-supply of copy of the enquiry report to the respondent to challenge the decision of the Inquiry Officer.

5. Learned counsel appearing for the writ petitioners vehemently submitted that the respondent was serving only as a part time contingent Chowkidar. If the employer is dissatisfied with the services of an employee, the employer is entitled to dispense with the services of such an employee. No enquiry need be conducted by the employer. Even if an enquiry was conducted, non-furnishing of copy of enquiry report to the employee does not *ipso facto* invalidate the enquiry conducted, unless prejudice, if any, caused to the employee was pleaded and proved.

6. None appeared for the respondent to contest the above submissions made by learned counsel appearing for the writ petitioners.

7. It is true that the respondent was serving as a part time contingent Chowkidar. The writ petitioners being employers are, of course, entitled to dispense with his services on being found not satisfactory. But even if a part time contingent Chowkidar is terminated from service on certain specific allegation touching upon his conduct, an enquiry will have to be conducted by employer before he was terminated from service. Otherwise, the employee will go out from the service with a slur or stigma, without having an opportunity to rebut it. Such a slur or stigma carried by him without any opportunity to challenge it will jeopardize his future employment. In other words, an employer may dispense with the services of such an employee simply on the ground that his services were no longer

required or that they were not satisfied with the performance. But once they come out with a concrete allegation touching upon the conduct of the employee, the employer has no right to stall the future prospects of employment of an employee by sacking him unceremoniously with such a slur or stigma without affording him an opportunity to challenge it.

8. In the instant case, a very serious charge has been made against the respondent that there was dereliction of duty facilitating an attempt to commit theft in the office. No formal enquiry was conducted by the petitioners despite a show cause notice was issued to him. It appears that the petitioners have proceeded based on the investigation report which also did not see the light of the day. Nor was it shown or furnished to the respondent who was given a clean chit by the investigating official during the course of investigation. Admittedly, he was taken into custody by the police for the purpose of interrogation. But he was not shown as an accused nor was he arrayed as an accused later in point of time during the course of trial. There was nothing on record to show that the accused who actually faced the criminal charge of attempt to commit theft while admitting the offence inviting punishment from the Court of Law attributed anything to the respondent. Therefore, the petitioners should not have acted either on the police report which was not furnished to the respondent or on the police interrogation done by the police in lock-up.

9. In *Om Parkash Goel vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla, 1991(3) SCC 291*, the Hon'ble Supreme Court held as follows:-

“4. It is well-settled that in a case of an order of termination even that of a temporary employee the Court has to see whether the order was made on the ground of misconduct if such a complaint was made and in that process the Court would examine the real circumstances as well as the basis and foundation of the order complained of and if the Court is satisfied that the termination of services is not so innocuous as claimed to be and if the circumstances further disclose that it is only a camouflage with a view to avoid an enquiry as warranted by Article 311(2) of the Constitution, then such a termination is liable to be quashed.

10. That was a case where facilitation and abetment of embezzlement were alleged against a temporary employee. But camouflaging the motive behind the decision to terminate the services of such an employee, a seemingly innocuous order was passed by the employer. The Hon'ble Supreme Court has held under such circumstances that the Court has the power to lift the veil and see the basis of foundation laid by the employer for termination. If a temporary employee was terminated on the ground of misconduct which may not be reflected in the innocuous order of termination, such an order would be a punitive one. Under such circumstances, the employer cannot avoid an enquiry to be conducted as warranted by Article 311(2) of the Constitution of India.

11. In a short judgement pronounced by the Hon'ble Supreme Court in **Hari Ram Maurya vs. Union of India and others, 2006(9) SCC 167**, it

was held as follows:-

“3. From the order of termination Annexure P-7, it appears that the same refers to the show-cause notice dated 20-8-2002 which is to be found at Annexure P-5. It is stated therein that the appellant demanded kickback with a view to help the complainant to get a favourable order in the pension matter. That being so, there was a clear charge of bribery levelled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the letter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-7 dated 30-9-2002.”

12. The employer, in the above case, terminated the services of a temporary employee on the ground that he demanded kickback, but no enquiry was conducted in accordance with law. The Hon'ble Supreme Court under such circumstances chose to set aside the order of termination.

13. Learned counsel appearing for the writ petitioners cited a decision in **Haryana Financial Corporation and another vs. Kailash Chandra Ahuja, 2008(9) SCC 31**, wherein it has been held as follows:-