

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

**CWP No.18441 of 2016 (O&M)
Date of Decision: 30.09.2016**

Umesh Kumar

... Petitioner

Versus

Haryana State Legal Services Authority and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Kiran Pal Singh, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the order dated 18.03.2016 (Annexure P-23) whereby services of the petitioner working as Junior Scale Stenographer under the aegis of Haryana State Legal Services Authority have been dispensed with. A writ of mandamus is also sought directing respondents to reinstate the petitioner on the post in question with all consequential benefits.

Pleadings on record would indicate that the petitioner initially joined as Clerk in the District and Sessions Court, Jind on 16.11.2006. He was then selected on the post of Steno Typist in District and Sessions Court, Rewari and joined on such post on 31.05.2007. Thereafter, he was selected for the post of Stenographer Grade-III in District and Sessions Court, Jhajjar and joined on 28.06.2008. While working on the post of Stenographer Grade-III, petitioner is stated to have been promoted as Stenographer Grade-II on 27.10.2010.

The Central Recruitment Agency, High Court of Punjab and

Haryana at Chandigarh issued an employment notice dated 31.05.2014 inviting applications online on behalf of the Haryana State Legal Services Authority for filling up various posts including that of Steno Typists and Junior Scale Stenographers. Petitioner applied for the post of Steno Typist as also Junior Scale Stenographer through proper channel. He was selected on the post of Steno Typist and joined such post on 13.03.2015 and was posted at Permanent Lok Adalat, Public Utility Services, Rohtak. Petitioner was even selected for the post of Junior Scale Stenographer and was issued offer for appointment vide letter dated 24.08.2015 (Annexure P-8). Petitioner accepted the offer and joined the post of Junior Scale Stenographer on 08.09.2015 in the office of District and Sessions Judge-cum-Chairman, District Legal Services Authority, Jhajjar.

Vide impugned order dated 18.03.2016 (Annexure P-23), services of the petitioner have been dispensed with and in the following terms:-

“I have been directed by the Hon'ble Executive Chairman of the Haryana State Legal Services Authority to convey to you that services of Shri Umesh Kumar, Junior Scale Stenographer posted in District Legal Services Authority, Jhajjar have been dispensed with during the period of probation, as no longer required. You are requested to relieve the official forthwith.

*Member Secretary,
Haryana State Legal Services Authority,
Panchkula.*

Endst. No.2974/2016/MS/HALSA Dated 18.03.2016.”

An appeal/representation having been preferred by the petitioner against the order of dispensing with his services also stands

declined vide order dated 29.06.2016 after having been put up for consideration before the Executive Chairman of the Haryana State Legal Services Authority.

Counsel appearing for the petitioner would vehemently contend that the action of dispensing with the services of the petitioner is illegal and arbitrary as such decision has been taken without holding a regular departmental inquiry. On the strength of averments made in para 11 of the writ petition, it is sought to be contended by counsel that services of the petitioner were regularized vide memo dated 05.11.2015 (Annexure P-13) by the Member Secretary, Haryana State Legal Services Authority, Chandigarh and w.e.f. 28.06.2008. It is argued that the services of a regular employee could not have been dispensed with in a summary manner as has been done vide impugned order dated 18.03.2016 (Annexure P-23). The next submission advanced by counsel is that the impugned order is punitive in nature. In support of such contention, counsel has made a reference to two separate incidents. He contends that on account of the Jat Agitation curfew had been imposed in various districts of the State including Rohtak and Jhajjar from 19.02.2016 to 23.02.2016. As a consequence thereof, petitioner could not attend the office on 23.02.2016 and on account of which the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Jhajjar had rebuked the petitioner and even forwarded a formal complaint dated 24.02.2016 (Annexure P-16) to the Chairman, District Legal Services Authority, Jhajjar. The second incident is stated to have occurred on 12.03.2016 when National Lok Adalat was organized. As per version of the petitioner, he had reached the venue late only by about 10 minutes and yet he was marked absent. It is submitted that in spite of the

petitioner having informed respondent No.4/Secretary, District Legal Services Authority, Jhajjar that he will not claim honorarium and will submit his short casual leave for the day in question i.e. 12.03.2016 yet the absent report was forwarded to the District Legal Services Authority, Jhajjar. It is argued that the impugned order dated 18.03.2016 is founded on these two incidents and it was incumbent upon the respondent authorities to have conducted a regular inquiry so as to find out if there was any lapse on the part of petitioner. The action is stated to be in negation of the principles of natural justice.

Counsel for the petitioner has been heard at length.

Placed on record and appended at Annexure P-8 is the appointment letter dated 24.08.2015 of the petitioner on the post of Junior Scale Stenographer in the office of District Legal Services Authority, Jhajjar. Relevant extract of such appointment letter reads as follows:-

“Subject: Appointment for the post of Junior Scale Stenographer in the office of District Legal Services Authority, Jhajjar.

You are hereby offered for appointment as Junior Scale Stenographer in the Haryana State Legal Services Authority and posted at DLSA, Jhajjar on purely temporary basis in the pay scale of Rs.5200-20200+2400 G.P.(entry level pay band of Rs.7440+2400 G.P.) plus usual allowances as may be admissible from time to time subject to the following terms and conditions:-

i) That your services will be governed by the Rules contained in Punjab Civil Services Rules applicable in Haryana and you will be bound by service rules of Haryana State Legal Services Authority Group B, C and D Employees (Recruitment and General Conditions of Service) Rules,

2013 and such instructions as may be issued by the Haryana Government from time to time.

ii) The above appointment is purely temporary basis and is likely to continue. Your services are liable to be terminated at any time without giving any prior notice.

iii) If your work and conduct is not found satisfactory your services are likely to be terminated at any time without giving notice and without assigning any reasons whatsoever.”

That apart Rule 11 of the Haryana Legal Services Authority Group B, C and D Employees (Recruitment and Conditions of Service) Rules, 2013 (hereinafter referred to '2013 Rules') reads as follows:-

Probation 11.(1) Direct recruit to the Service shall remain on probation for a period of two years, which may be so extended by the Executive Chairman in case of Group B employees of State Authority and by Member Secretary in case of Group C or D employees of State Authority and Permanent Lok Adalat; and by Member Secretary in case of employees of District Authority or Committee, on the recommendation of the Chairman of District Authority or Committee, as the case may be, as not to exceed a total period of three years.

2) On completion of period of probation of a person, the Member Secretary with the approval of Executive Chairman in case of Group B post of State Authority; Member Secretary in case of Group C and D posts of State Authority and Permanent Lok Adalat; and Member Secretary in case of employees of District Authority or Committee on the recommendation of the Chairman of District Authority or Committee, as the case may be, with the approval of Executive Chairman may,

a) if his work and conduct has, in his opinion been satisfactory;

- i) confirm such person from the date of his appointment, if appointed against a permanent vacancy.*
- ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy;*
- 3) The Executive Chairman may at any time during the period of probation or the extended probation, as the case may be, dispense with the services of a direct appointee, in case of Group B post, if the same has been found to be not satisfactory, without assigning any reason thereof.*
- 4) The Member Secretary in consultation with the Executive Chairman, may at any time during the period of probation or the extended probation, as the case may be, dispense with the services of a direct appointee in case of Group C or D in State Authority or Permanent Lok Adalat or direct the Chairman of District Authority to dispense with the services of direct appointee of District Authority or Committee, if the same has been found to be not satisfactory, without assigning any reason thereof.*
- 5) Until and unless express order of confirmation is passed, appointee shall be deemed to be under probation, even if probation period or extended period of probation has expired.”*

What clearly emerges from the conditions contained in the appointment letter issued to the petitioner as also the relevant rule is that appointment of the petitioner was on purely temporary basis and he was on probation for initial period of two years and which was extendable. It was also open for the competent authority to dispense with the services of the petitioner in case his work and conduct was not found satisfactory and without even assigning any reasons.

The contention raised by counsel that services of the petitioner

stood regularized vide memo dated 05.11.2015 at Annexure P-13 is without merit. Perusal of such memo dated 05.11.2015 (Annexure P-13) would leave no manner of doubt that the request put forth by the petitioner for counting his past service prior to joining the post of Junior Scale Stenographer had been dealt with and a decision had been conveyed that claim as regards protection of pay cannot be granted as he has been appointed on the post of Junior Scale Stenographer by way of direct recruitment. It was, however, clarified that his past service would count for purposes of benefits as earned leave, medical leave, commuted leave, gratuity etc. Such memo dated 05.11.2015 cannot be construed as an order granting to the petitioner confirmation on the post of Junior Scale Stenographer.

Rule 11 of the '2013 Rules' would crystalize the matter even further. A direct recruit to the Service is to remain on probation for a period of two years. After evaluating the work and conduct of such employee and upon forming an opinion that the same is satisfactory, it would be open for the competent authority to confirm such employee from the date of his appointment if appointed against a permanent vacancy. While on probation it is also open for the competent authority to dispense with the services of a direct appointee if the work and conduct has not been found to be satisfactory and without assigning any reason in support thereof. Under Rule 11 Clause 5 confirmation is to be accorded only upon the passing of an express order. In other words, even if the probation period has expired, such appointee would be deemed to be under probation in the absence of a specific order of confirmation.

In the facts of the present case, no order has been passed

confirming the petitioner. The impugned order has been passed during the period of probation. The impugned order is couched in plain and innocuous term i.e. ***“Services having been dispensed with during the period of probation, as no longer required.”*** Such order cannot be termed as stigmatic.

The contention raised by counsel as regards the action of dispensing with the services of the petitioner being punitive is also without merit.

In ***A. P. State Federation of Cooperation Spinning Mills Ltd. and another Vs. P. V. Swaminathan, 2001 (3) S.C.T. 128***, the Hon'ble Supreme Court has examined the extent and scope of judicial review in the case of termination of a probationer. The relevant observations are as follows:-

“The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even of tenure employee, simpliciter without casting any stigma may not be interfered with by court. But the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed.”

Applying such dictum to the present case, it may be observed

that the two incidents that have been referred to by the counsel may be taken as a motive to pass the impugned order. There is no material placed on record wherefrom this Court can draw an inference that such incidents of the petitioner having remained absent on 23.02.2016 and 12.03.2016 form the foundation of the order dispensing with the services. It is a clear case where work and conduct of a probationer has not been found to be satisfactory and an innocuous order of dispensing with the services has been passed by stating that the same are no longer required.

This Court does not find any basis that would warrant interference with the impugned order. The petition lacks merit and is dismissed.

30.09.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Whether Reportable

√
Yes/No

√
Yes/No