

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

**CWP No.23400 of 2014 (O&M)
Date of Decision: 17.08.2016**

Pramod Kumar Sharma

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present:- Mr. R.S.Randhawa, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

Mr. Arvind Seth, Advocate,
for respondent No.4.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioner was engaged by the respondent Municipal Corporation, Faridabad on the post of Junior Engineer (Contractual basis) on 11.03.2010 at a fixed remuneration of Rs.6852/- per month. The tenure of such contractual engagement was extended by the respondent Corporation from time to time.

The instant writ petition has been filed assailing the action of the respondent Corporation in terms of issuance of an order dated 23.01.2014 (Annexure P-3) whereby it was decided to engage the petitioner along with certain others through an outsourcing agency. It the case of the petitioner that he is fully qualified and eligible to hold the post of Junior Engineer as per the relevant Rules and had been initially engaged after following due procedure in consonance with Articles 14 and 16 of the Constitution of India and the respondent Corporation arbitrarily and just to

evade its obligation and responsibility towards a contractual appointee has now resorted to take recourse by way of outsourcing.

Petitioner in the instant petition is also asserting his right to be permitted to continue on such contractual engagement till such time regular appointments are not made.

Per contra, Mr. Arvind Seth, Advocate appearing for the contesting Municipal Corporation would submit that the services of the petitioner stand disengaged w.e.f. 22.07.2014 i.e. upon expiry of the term of contract entered into between the petitioner and the outsourcing agency and as such he has no right to seek further engagement on contractual basis. Counsel vehemently contends that the terms and conditions contained in a service agreement would be binding on a contractual appointee and the petitioner stands disengaged strictly in terms thereof. It has also been argued that the initial engagement/entry on the post of Junior Engineer with the Corporation was not on a regular basis and as such the services of a contractual employee are always liable to be terminated without notice.

Counsel for the parties have been heard at length.

The stand on behalf of the respondent Municipal Corporation, Faridabad as regards the petitioner not being continued on the post of Junior Engineer on contractual basis is contained in para 4 of the written statement filed and placed on record and is in the following terms:-

“That in reply to the contents of Para No.4 of the writ petition filed by the petitioner, it is submitted that as per report dated 30.09.2014 received from the Financial Controller, MCF, the petitioner had committed grave misconduct and very serious lapse on his part. On the said report, answering respondent had passed the orders for

dispense with the services of the petitioner. But since the term of contract of the petitioner through outsourcing agency had already expired on 22.07.2014 and further extension was not accorded to him, thus in pursuance of the aforesaid orders of Commissioner, MCF, the petitioner was not issued order of termination from service as he was already out from the service. A copy of the report dated 30.09.2014 is annexed herewith as Annexure R-4/3. ”

In the first instance, this Court finds that the stand taken on behalf of the respondent Corporation that the contractual engagement of the petitioner already stood expired on 22.07.2014 and as such he was already out of service with effect from such date is perverse.

Appended as Annexure P-8 along with petition is an office order dated 01.08.2014 issued by the Commissioner, Municipal Corporation, Faridabad in terms of which the present petitioner has been given an assignment i.e. ***“to look after the work of Ward No.8 and Ward No.10 part of NIT Constituency in addition to his present duties.”***

Mr. Arvind Seth, learned counsel does not dispute the issuance of the office order dated 01.08.2014 at Annexure P-8 and neither the contents thereof. This clearly demonstrate that the petitioner's services were being utilized by the respondent Corporation even after 22.07.2014 i.e. the date on which it was being claimed that his contract of service had come to an end.

The question that now arises for consideration is as to whether the decision of the Corporation to disengage the petitioner from his contractual assignment and not to accord further extension was punitive?

In A.P. State Fed. of Coop. Spinning Mills Ltd. and another

Vs. P.V. Swaminathan, 2001 (3) S.C.T. 128, the Hon'ble Supreme Court took a view that action of termination of even the contractual employment would be open to judicial review. The relevant observations were 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.”

The written statement placed on record along with the report dated 30.09.2014 from the Financial Controller, Municipal Corporation, Faridabad at Annexure R-4/3 would make it apparent that the Corporation has gone into the question of conduct of the petitioner and has concluded that the petitioner is guilty of a serious lapse and has committed grave misconduct. Perusal of the report at Annexure R-4/3 reveals that the allegations against the petitioner were with regard to a particular work i.e. execution of work i.e. P/L interlocking tiles M-35 Grade paving and construction of drain type 1st from R/0. Brahm Singh to R/o Dharambir, Nangla Enclave, Ward-9. It has been recorded in Annexure R-3 that the

detailed report for the said work was prepared by the petitioner and even measurement of the work was recorded by him. Conclusion drawn in the report is that the work was executed on a new site in place of the site which had been approved by the Commissioner but the bills were prepared in relation to the old site. The report dated 30.09.2014, (Annexure R-3) also contains the decision of the Commissioner to the effect ***“Services of Sh. Pramod Sharma be dispensed with.”***

This Court would have no hesitation in recording that the decision of the respondent Corporation not to grant extension to the petitioner as regards his contractual assignment is founded on charges of grave misconduct. Since the matter had been enquired into and a report dated 30.09.2014 (Annexure R-3) had been furnished by the Financial Controller of Municipal Corporation, Faridabad and against the petitioner, the misconduct cannot be seen merely as a motive but would have to be construed as the foundation of the decision not to continue with the services of the petitioner. The decision of the respondent Corporation was thus clearly punitive.

During the course of arguments, it has gone uncontroverted that prior to the decision contained in Annexure R-3 to dispense with the services of the petitioner, no opportunity of hearing was granted to him and even a show cause notice had not been served.

It is by now well settled that even in the case of tenure appointees/contractual employees, if the order of dispensing of the services is founded on misconduct then it is imperative upon the employer to conduct an inquiry and in which such employee has to be associated. In the facts of the present case, the decision of the respondent Corporation to

dispense with the service of the petitioner cannot sustain as the same is in clear negation of the principles of natural justice.

For the reasons recorded above, the petition is allowed. Municipal Corporation, Faridabad is directed to re-engage the petitioner to the post of Junior Engineer (Contractual basis). Such direction would not be treated as an impediment for the Corporation to make regular appointment to the post in question. Corporation would be at liberty to proceed against the petitioner but only after affording him an opportunity and after due compliance of the principles of natural justice. The issue with regard to arrears of salary for the period that the petitioner remained out of service and his further continuance as a contractual appointee would be subject to the outcome of any fresh order that may be passed by the Corporation.

Petition is allowed in the aforesaid terms.

17.08.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No