

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.4640 of 2016 (O&M)
Date of Decision: 21.07.2016

Deepti Attri

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present:- Mr. Sunil Kumar Nehra, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner who was serving on the post of Executive-I on contractual basis with the Haryana Overseas Placement Assistance Society (to be referred as “Society”) has challenged in the instant petition the order dated 19.05.2015 (Annexure P-9) whereby her services have been terminated.

Mr. Sunil Nehra, learned counsel appearing for the petitioner would contend that engagement of the petitioner on the post in question was in the year 2010 and she had completed 05 years of satisfactory service and without there being any complaint with regard to her work and conduct, services have been terminated in an arbitrary fashion. It has been contended that services of an employee who has worked for a sufficient period of time cannot be dispensed with on the ground that at the time of initial entry into service such employee did not possess the requisite qualifications. In this regard, reliance has been placed upon judgments of the Hon'ble Supreme Court of India in *Bhagwati Prasad and others Vs. Delhi State Mineral Development Corporation 1990 (1) SCC 361 and Gujarat Agricultural*

University Vs.Rathod Labhu Bechar 2001 (3) SCC 574. Counsel has also adverted to a document placed on record at Annexure P-12 to assert that in pursuance to a representation having been submitted by the petitioner seeking cancellation of the termination order, the Executive Officer of the Society had recommended that the petitioner be taken back on duty as Executive-I keeping in view her clean record and satisfactory service.

Counsel for the petitioner has been heard at length.

Brief facts that would emanate from the pleadings on record may be noticed.

The Society functions under the aegis of the Department of Employment, State of Haryana. In a meeting held by the Executive Committee of the Society, it was decided to engage the services of different categories of employees including that of Executive-I on contractual basis through an outsourcing agency. In giving effect to such decision, an advertisement dated 13.12.2006 at Annexure P-2 was issued inviting expression of interest for empanelling agencies for supplying manpower on a contractual basis to the Society.

Perusal of the advertisement at Annexure P-2 would reveal that apart from other categories one post of Executive-I was also advertised and the qualifications prescribed were B.Tech/M.Sc. Computer Science preferably with MBA and experience in HR/recruiting, fluent in English. Apparently, the petitioner was engaged as Executive-I in March 2010 and such placement was facilitated through an outsourcing agency by the name of Safeguards Security Services (Regd.).

Perusal of the impugned order dated 19.05.2015 at Annexure P-9 would reveal that the basis of the decision to terminate services of the

petitioner was that she does not possess qualifications prescribed for the post.

On a specific query having been put in such regard, Mr. Nehra would fairly concede that at the time of engagement in the year 2010, petitioner was a simple graduate. Court has been informed that during her tenure of engagement with the respondent Society the petitioner has completed her MBA (HR). Be that as it may, there is no escape from the factual position that at the time of entry into service and while securing the contractual engagement, petitioner did not possess the essential qualifications of B.Tech/M.Sc. Computer Science and as had been stipulated in the advertisement. Even till date petitioner does not possess such qualification. In the light of such situation the basis upon which the order of termination dated 19.05.2015 at Annexure P-9 has been passed is well founded.

The dictum laid down by the Hon'ble Supreme Court of India in ***Bhagwati Prasad and others Vs. Delhi State Mineral Development Corporation and Gujarat Agricultural University Vs. Rathod Labhu Bechar (supra)*** cannot enure to the benefit of the petitioner.

In the two afore-noticed judgments on which heavy reliance was placed, the Apex Court was considering the issue of confirmation with regard to daily rated workers and held that such workers having been permitted to work for a considerable length of time, it would be unjust and harsh to deny to them confirmation on such Class-IV posts. Facts of the present case are clearly distinct. Petitioner was engaged on the post of Executive-I. Qualifications prescribed for the post and at the very threshold were B.Tech/M.Sc. Computer Science. These are qualifications which are

technical in nature and mere experience of having worked on the post would not cure the infirmity of not possessing the essential qualifications at the time of initial entry into service.

Even the document placed on record at Annexure P-12 containing a recommendation made by the Executive Officer of the respondent Society to take the petitioner back in service is in the nature of an office noting. It is by now well settled that rights of an employee would be crystalized only upon the competent authority taking a decision and thereafter issuing an order in such regard. No rights can possibly vest in favour of the petitioner based solely on office notings/intra departmental correspondence.

In view of the reasons recorded above, no interference in the matter is called for.

Writ petition is dismissed.

21.07.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No