

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

1056

**CWP-2773-2009 (O&M)
Date of decision:10.05.2017**

Israil

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Malik, Advocate with
Mr. Bhupinder Malik, Advocate and
Mr. Sunil Nehra, Advocate for the petitioners.

Mr. Sushil Gautam, DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the present writ petition, the petitioner has questioned the validity of order of termination dated 29/30.12.2008 (Annexure P7). The petitioner is stated to have been selected and appointed as a Junior Engineer in the respondent department on 02.11.2006. The petitioner while working as a Junior Engineer an FIR was filed on the allegations that the petitioner had alleged to have demanded and accepted illegal gratification of Rs.2000/-. Consequently, criminal proceedings were launched against the petitioner on 29.07.2008. The official respondents taken note of the fact that

the petitioner is involved in the criminal case. There was a proposal to terminate the petitioner's services. By that time the petitioner's probation period was over which was not extended. Consequently, proposal was sent for the purpose of extending the petitioner's probation period. Accordingly, the petitioner's probation period was extended up to 28.01.2009. Simultaneously, official respondents proceeded to terminate the services of the petitioner on the allegation that the petitioner was involved in the offence under Prevention of Corruption Act, 1988. Thus, in a single file official respondents passed extending the probation period so also terminating the petitioner's service. Thus, the petitioner has questioned the validity of the termination order dated 29/30.12.2008.

2. Learned counsel for the petitioner pointed out from Annexure P2 to P4 to demonstrate that the petitioner's work is satisfactory and good during the intervening period from 02.11.2006 to 15.07.2008. In fact for these three periods i.e. 02.11.2006 to 31.03.2007, 06.06.2007 to 31.03.2008 and 01.04.2008 to 15.07.2008 over all grading on the assessment made is good/very good. Therefore, order of termination on the ground that petitioner work and conduct was not satisfactory during the probation period is untenable. It was further contended that no doubt in the order of termination it is stated that petitioner services have been terminated with reference to the work and conduct was not satisfactory. On the other hand perusal of the noting relating to extending the probation period as well as order of termination it is evident that allegations relating to demand and acceptance of the illegal gratification has been taken into consideration so

also pendency of criminal case against the petitioner. Thus, order of termination is passed on the allegations which are in stigmatic. Without holding disciplinary proceedings, the respondents cannot resort for terminating the services of the petitioner when he was on probation period. Learned counsel for the petitioner further submitted that during pendency of this litigation, the petitioner had been acquitted in the criminal case on 19.01.2012 even on this count order of termination is liable to be set aside.

3. Per contra, learned counsel for the respondents vehemently, contended that on the allegation acceptance of illegal gratification of Rs.2000/- and the fact that the petitioner is involved in criminal case the same has been taken note of to hold that the petitioner's work is not satisfactory. It was further contended that while discharging the duties of the post he has committed mis-conduct in demand and acceptance of illegal gratification which touches the petitioner's work. Therefore, rightly petitioner's services have been terminated with reference to the work and conduct. Thus, the petitioner has not made out a case so as to interfere with Annexure P7.

4. Heard learned counsel for the parties.

5. Challenge to the order of termination dated 29/30.12.2008 is perused and its contents do not stipulate any reasons except for work and conduct which was not found satisfactory. In other words, it is not a speaking order. Even assuming that order of discharge or termination need not to contain reasons for discharge or termination. The same can be looked into with reference to file. The records relating to extension of probation

period as well as termination was perused. It is evident from the records that even though the petitioner was completing his probation period of 2 years there was no proposal for confirmation or for extension of probation period. Petitioner during the probation period alleged to have committed offences under the Prevention of Corruption Act, 1988 with reference to said incident the official respondents proceeded to extend the probation period or to terminate the petitioner's service. Petitioner's work is concerned, it is satisfactory having regard to the Annexures P2 to P4 which is evident that assessment of the petitioner's work has been held to be good and very good. Therefore, reasons for termination of the petitioner that work is not found satisfactory cannot be accepted. The motive of the author of the termination order is evident from the records that just because the petitioner was involved in the criminal case for the offences under the Prevention of Corruption Act, 1988 the same has been taken into consideration. Even the higher authorities to the disciplinary authority have opined that petitioner's services are required to be terminated on the score that petitioner is involved in the demand and acceptance of illegal gratification to the extent of Rs.2000/-. Thus, order of termination is stigmatic one. Therefore, the concerned respondent should have resorted to hold a departmental inquiry if at all petitioner's services are required to be terminated or discharge as on 29/30.12.2008. In other words, the disciplinary authority has adopted shortcut method by passing order of termination on the score that petitioner's work and conduct has not been found satisfactory. Moreover, the petitioner has been acquitted in the criminal case on 29.07.2008 which

attained finality.

6. In view of these facts and circumstances, Annexure P7 dated 29/30.12.2008 is set aside. CWP stands allowed.

10.05.2017
pooja saini

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No