

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

206

CWP No.14230 of 2013 (O&M)

Date of decision: 10.11.2017

Tara Khanal

....Petitioner

Versus

Union Territory Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Gulshan Sharma, Advocate, for the petitioner.

Mr.K.K.Gupta, Advocate, for respondents No.1 to 3.

G.S. SANDHAWALIA, J. (Oral)

Petitioner has raised challenge to the order dated 01.07.2013 (Annexure P-1) whereby the services of the petitioner as Data Entry Operator in the Red Cross Society, Chandigarh, has been terminated, on the ground that the same had been done without issuing notice and no opportunity of hearing has been granted and therefore, the same is arbitrary, illegal and liable to be quashed.

It is not disputed that the petitioner was employed as Data Entry Operator on contract basis in the Department of Indian Red Cross Society, way-back in January, 2007. Initially, the contract was for a period of one year on a fixed contractual fees of Rs.4000/- per month. It is her case that from time to time the contract was extended and that she had a good work record. Eventually, the impugned order came to be passed on the ground that her services were no longer required in the office of the Registering & Licencing Authority. In the second portion of the letter, it was mentioned that the services were terminated with immediate effect, under the provisions of Clause 4 of the contract letter dated 29.01.2013 (Annexure P-8), which was the last extension of the contract from 07.02.2013 to 06.02.2014 @ Rs.7980/- per month. The same reads as under:

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

CWP No.14230 of 2013 (O&M)

-2-

“The Registering & Licensing Authority has intimated that your services are no longer required in the office of Registering & Licensing Authority. Therefore, your services as Data Entry Operator in “Sahayata Project” of Indian Red Cross Society, U.T. Branch, Chandigarh are hereby terminated with immediate effect under the provisions of clause 4, of the contract letter vide no. IRCS/UT/2013/219 dated 29-01-2013.”

It is relevant to notice that Clause 4 provides that the Society has a right to terminate the services for any willful disobedience or failure to perform or comply with instructions, without any notice. Clause 4 reads as under:

“4. The society shall have absolute discretion to assign any duty so as to suit its convenience and you shall be required to work to the satisfaction of seniors and superiors under whom your services are placed. The society can at any time during the contract period terminate your services for any willful disobedience or failure to perform or comply with instructions, without any notice.”

Thus, from the above, it would be clear that the order is stigmatic in nature and the petitioner's services have been dispensed with, without holding any proper enquiry or putting her to notice on account of her alleged misconduct. A perusal of the written statement would also go on to show that the defence remains the same, as reliance has been placed on a report received of the Project-in-charge that the petitioner was not working properly and had refused to work at the counters from time to time. Said report reads as under:

“Mrs. Tara is working as Data Entry Operator through Red Cross Society on contract basis in vehicle Registration Branch. She is not working properly. She is handling important seat i.e. approval of registration certificates and no objection certificates etc. at counter No.1. She had to deal with public in my absence. Earlier, this month as I had to sit at Licencing Branch during the

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

CWP No.14230 of 2013 (O&M)

-3-

leave period of Mr. Nanak Chand, the then Branch Incharge, Licence. But her behavior with the public during above said period was not good and public was being harassed. During this month, she had taken number of leaves instead of one leave to be obtained in a month. She has also refused to work at counters and also refused to work as being asked to do so from time to time.

The case is submitted for the information of Worthy Deputy Commissioner-cum-Chairman, Red Cross Society, Chandigarh for kind information.

Sd/- 29.06.2013

RLO

Sd/- 29.06.2013”

No doubt it is settled principle that a contractual employee, as such, is bound by the terms of the contract, however, under Clause 7, 30 days advance notice was to be issued in case the Society did not require the services for any reasons apart from Clause 4 where no notice was to required. Clause 7 reads as under:

“7. That you will be required to give 30 days advance notice or one month salary contractual amount in lieu of that, if you desire to leave the service. In case society does not require your services for any reason (apart from those mentioned in clause 4 as above where no notice is required) one month notice in writing shall be given or one month contractual amount will be paid in lieu thereof.”

From the perusal of the impugned order, it would be apparent that this procedure was not followed when it was recorded that the services were dispensed with/no longer required, on account of no need on behalf of the Registering & Licencing Authority. It is, thus, apparent that the services, as such, have been dispensed with on account of misconduct and the order is stigmatic in nature and the petitioner has, thus, been prejudiced. If she has to take employment elsewhere on the basis of her earlier experience, the same

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

CWP No.14230 of 2013 (O&M)

-4-

would stand in her way. Reliance can be placed upon the Division Bench judgment in *Union Territory of Chandigarh & others Vs. Central Administrative Tribunal, Chandigarh Bench & others 2011(2) RSJ 219* wherein in a similar case, a contractual employee who was working as a Physical Education Inspector, his services were terminated. The Division Bench, taking into account the terms of the contract, noticed that the preliminary enquiry had been conducted and eventually, the termination order was passed. Same was challenged before the Tribunal which held that it was illegal and the employee was directed to be taken back in service. Said order was subject matter of challenge before the Division Bench, which was, accordingly, dismissed by noticing the terms of the appointment whereby he could have been relieved otherwise simpliciter and accordingly, a finding was recorded that once there was an alleged misconduct, the same would debar him of future employment. The same, which reads as under, is applicable in all squares in the present case:

“12. The petitioner could have adopted the mode as stipulated in clauses 5 and 7. However, the petitioner adopted an erroneous mode of passing an order which makes the order as stigmatic because of allegations of sexual harassment and debarring of Shri Vinod Kumar, respondent no.2 from future employment. In the case of Sher Singh v. Punjab Mandi Board 1992(4) SLR 713 two employees have approached this Court. One of them was given promotion on a higher post of Assistant Engineer on probation but after six months he was reverted to his substantive post of Head Draftsman. The basis of the order reverting him to his substantive post was that he was found under the influence of liquor alongwith another probationer who was also reverted. Both of them filed CWP Nos. 15283 and 15621 of 1991 which were allowed by this Court as ex-facie the order of reversion was in the nature of penalty

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

CWP No.14230 of 2013 (O&M)

-5-

for mis-conduct. The Division Bench quashed the order. Thereafter fresh orders simpliciter were passed reverting them to their substantive post with the observation that their services were no longer required in the higher post. The aforesaid order was upheld in the case of Sher Singh (supra). In para 6 the Division Bench has placed reliance on various judgements of Hon'ble the Supreme Court and other High Courts. Therefore, quashing of order of termination dated 22.11.2006 (P-4) does not necessarily debar petitioner from passing a fresh order in accordance with law.

13. As a sequel to the aforesaid discussion, the writ petition fails and the same is dismissed with liberty to the petitioner to pass a fresh order in accordance with law. We further hold that by virtue of quashing the order, Shri Vinod Kumar, respondent no.2 shall not be entitled to any back wages although he will be entitled to wages from today till the date of passing of any other order by the petitioner.”

The judgment relied upon by Mr.Gupta in **Vikas Vs. Registrar, Punjab & Haryana High Court & others 2011 (1) SLR 305** is not applicable to the facts and circumstances of the present case, as it was a case of a probationer and therefore, the termination was without any valid reason. It was noticed that the basis, as such, was that there was dissatisfaction of the work and conduct of the official and it was, in such circumstances, held that the services of the person on probation can be dispensed with.

Similarly, the judgment of the Division Bench in **M/s Indian Railway Const. Co. Ltd. Vs. Lt. Col. A.K.Dogra (Retd.) 1993 (4) SCT 762** would be of no help, since in that case, the Learned Single Judge had directed that the services of the respondent would continue in accordance with law or until he attains the age of superannation. It was, in such circumstances, it was held that the terms of the contract could not be altered.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14230 of 2013 (O&M)

-6-

Similarly, the Division Bench judgment in *Jaya Raina Vs. Gujarat Livelihood Promotion Company Ltd. & another 2015 Labour Law Reporter 183* would also be not of much help as therein also, the Division Bench had upheld the order of the Single Bench wherein the employee, who had been on probation, had taken the plea that she would automatically become a confirmed employee, which, in principal, was not accepted.

In the present case, it is further to be noticed that the petitioner has placed on record a chart to show that after her termination on 01.07.2013, 18 Data Entry Operators had been appointed and she had also demonstrated that she was appointed in the year 2007 and there were as many as 34 of such Data Entry Operators who were junior to her and are continuing to work. The said affidavit has only been controverted by taking the defence that persons have been engaged through service provider. It is, thus, in such circumstances, apparent that similarly situated persons are continuing to replace the petitioner and there is sufficient work, as such, available with the respondents. The said action of the respondents is also thus violative of the law laid down by the Apex Court in *Hargurpratap Singh Vs. State of Punjab and others 2007 (13) SCC 292*.

In such circumstances, the present writ petition is allowed, the order of termination dated 01.07.2013 (Annexure P-1) is set aside. The petitioner will not, however, be entitled for any monetary benefits for the said period and only will be entitled for wages from today. It is, however, open to the respondents to proceed in accordance with law, in case they wish to dispense with the services of the petitioner on account of any misconduct, by following proper procedure.

10.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No