

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

205 (3 cases)

**Civil Writ Petition No.1292 of 2016 and
connected cases**

Decided on : 14.11.2017

Reena and others

... Petitioners

Versus

Mission Director, National Rural Health Mission & Others

... Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate for the petitioners
in CWP No.1292 of 2016.

Mr. Sansar Kundu, Advocate for the petitioner
in CWP No.1607 of 2016.

Mr. Vineet Dhanda, Advocate for the petitioner
in CWP No.2340 of 2016.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of 3 writ petitions i.e. **CWP
Nos.1292, 1607 & 2340 of 2016.**

The challenge in the present writ petitions has been raised to the order dated 05.01.2016 (Annexure P-22), whereby respondent No.3 has kept in mind the inquiry report submitted by the Additional Deputy Commissioner, Jind and has found that the reply submitted to the show cause notice dated 28.12.2015 was not satisfactory and resultantly the services have been dispensed with/terminated on expiry of 30 days period on 04.02.2016. The said order had been stayed by this Court on 21.01.2016.

The question that arises for consideration; firstly whether the order contains any valid reasons on the basis of which it can be supported and secondly whether the petitioners have any legal right to continue on the post in question.

Necessarily for the above adjudication the facts will have to be adverted to. Accordingly, the facts are being taken from **CWP No.1292 of 2016 'Reena and others Vs. Mission Director, National Rural Health Mission and others'**.

It is not disputed that initially the petitioners were appointed on contract basis as Multi-Purpose health Worker (Female) in pursuance of an advertisement way back in 2011/2012, which would be clear from chart in paragraph No.2 of the pleadings. Thereafter, it is the case of the petitioner that the contract was extended from 02.04.2015 to 31.03.2016, which would be clear from Annexure P-1. The terms of the contract as such are as under:-

- “1. That by giving a notice of 30 days this contract can be terminated and you also can leave this post by giving a notice of 30 days.*
- 2. This contract is till the final approval of Project Investment plan for the financial year 2015-16. If Govt. of India, Ministry of H&F Welfare decide to revised and deployed any post than it will be acceptable to you.*
- 3. If your work is not found satisfactory on you do not maintain headquarter update than disciplinary proceedings will be initiated against you.*
- 4. You while joining duty will not be paid travelling allowances.*
- 5. You cannot do private practice.*
- 6. You have to obey all the rules of the society and orders given from time to time.”*

The initial appointments were subject matter of challenge in **CWP No.7760 of 2013 'Saroj Bala and another Vs. State of Haryana and others'** in view of the inquiry report dated 18.06.2012 (Annexure P-23), which had been conducted by the Additional Deputy Commissioner, Jind and submitted to the Deputy Commissioner, Jind. Keeping in view the said report the Coordinate Bench vide interim order dated 13.10.2015 (Annexure P-3) passed in the said case had directed that action be taken on the report. A fact finding preliminary inquiry was also ordered to be conducted that as to why the matter was kept pending for 2 ½ years.

In view of the said directions, respondent No.3 vide order dated 19.10.2015 (Annexure P-5) issued a 30 days notice before terminating the petitioners, as per terms of the employment. The same came to be challenged by the petitioners in various writ petitions including **CWP No.23289 of 2015 'Reena and others Vs. Mission Director and others'**. Keeping in view the fact that the copy of the report had not even been supplied to the petitioners and the services were being terminated, on account of violation of principle of natural justice, liberty was granted to the State to take action in accordance with law after supplying copy of the report and also by following the principles of natural justice, as per order dated 27.11.2015 (Annexure P-6). The said order reads as under:-

“Notice of motion.

Ms. Shruti Jain Goyal, AAG, Haryana, who is present in Court, accepts notice on behalf of the State.

I have heard learned counsel for the parties and perused the record carefully.

Through the present petition, the petitioners who were working as Multi Purpose Health Workers (Female) in the State of Haryana, challenge their termination.

It is the admitted position that services of the petitioners are sought to be terminated on the basis of report dated 18.06.2012 submitted by the Additional Deputy Commissioner, Jind, without supplying them a copy of the same. The impugned termination of their services is also without following the principles of natural justice.

In view of the aforementioned uncontroverted facts, learned counsel for the State, on instructions from Dr. Deepa Sindhu, Civil Surgeon, Jind, states that the order terminating the petitioners' services be treated as withdrawn with liberty to the State to take action against them in accordance with law after supplying them a copy of the report dated 18.06.2012 of the Additional Deputy Commissioner, Jind, as also by following the principles of natural justice. In view of the above referred statement, the termination of the services of the petitioners is set aside with liberty to the State as prayed for.

The writ petition stands disposed of in the above terms."

Resultantly, vide show cause notice dated 10.12.2015 (Annexure P-8), copy of the report of the Additional Deputy Commissioner, Jind was furnished to the petitioners and they were asked to submit their comments as to why action should not be taken on the said report.

The petitioners filed replies Annexure P-9 to P-14. The grouse of the petitioners was that the inquiry should be conducted by the higher level agency as per recommendation of the Additional Deputy Commissioner. The second show cause notice was issued on 28.12.2015 (Annexure P-15) that on account of the earlier termination order having

been challenged before this Court and the validation of the report of the Additional Deputy Commissioner having not been struck down by this Court action was being proposed since they were appointed on contract basis. It was mentioned that though Haryana Civil Services (Punishment & Appeal) Rules, 1987 were not applicable, but again show cause notice was issued. The petitioners accordingly filed replies (Annexure P-16 to P-21). Resultantly, the termination order was passed on 05.01.2016 (Annexure P-22), which reads as under:-

“In the light of orders passed by the Hon'ble High Court you had been earlier provided with the copy of the enquiry report submitted by Worthy ADC Jind and you were given opportunity to submit your comments on said report. The comments submitted by you were not found satisfactory.

Whereas 2nd show cause notice Memo No. NHM/2015/Estd.2440-2455 dated 28.12.15 was served upon you & you were required to show cause why your services are not dispensed with. The reply submitted by you has been considered dispassionately & same has been also not found satisfactory.

This office is now left with no option but to dispense with your services.

Hence your services shall stand dispensed with/terminated on expiry of 30 days period that is on 04.02.2016 afternoon & you will stand relieved from your duties on said date.”

Apparently from the above termination order, it would be clear that the said order does not meet the standards of a speaking order as neither the defence raised in the replies has been considered and all that has been mentioned that the replies have been found not satisfactory. Accordingly, the services have been dispensed with on the expiry of 30 days period.

It is settled principle that an order affecting civil consequences should contain reasons, so that it can be appreciated at a higher level whether in appeal or if it is tested as in the present case under Article 226 of the Constitution of India. The same would only give the live link of the mind of the decision maker and what are the reasons which weighed while passing the order and whether the defence was taken into consideration or not.

In such circumstances, keeping in view the law laid down in **Harbhajan Singh Dhalla vs. Union of India, AIR 1987 SC 9; Union of India and others vs. Jai Prakash Singh and another, AIR 2007 SC 1363** and **M/s Kranti Associates Pvt. Ltd. and another Vs. Masood Ahmed Khan and others (2010) 9 SCC 496**, this Court is of the opinion that the order is not sustainable and is set aside on this ground.

Accordingly, the matter is remanded back to the Civil Surgeon, Jind with a direction to pass a speaking order within a period of 2 months, keeping in mind the defence taken by the petitioners.

However, another factor which is to be taken into consideration on the second aspect is that it is not disputed that as per the terms of the contract the petitioners were appointed on contract basis, which was to expire on 31.03.2016. By virtue of the litigation as noticed above they are continuing in service. Therefore, in case the respondents so desire, it is always open to them to take action as per the terms of the contract. Merely because the fact that their services were to be dispensed with, on account of illegality in their appointment will not bar the State as

such in case their services are not required and if similarly situated persons are no longer continuing in service.

Accordingly, the present writ petitions are disposed of with the above said directions.

NOVEMBER 14, 2017

Naveen

(G.S. SANDHAWALIA)
JUDGE

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