

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

CWP No.13752 of 2016 (O&M)

Date of Decision: 27.04.2017

Jarmanjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

The petitioner herein is aggrieved against the order dated 16.06.2016 passed by respondent No.2 and the order dated 23.06.2016 issued by respondent No.3, whereby, the services of the petitioner have been dispensed with.

2. The petitioner herein was appointed as Data Entry Operator with the respondents-State, after giving a written test conducted by C-DAC, Mohali. On the basis of his merit, the petitioner was appointed by letter dated 12.06.2012. After the initial period of appointment of the petitioner, the services of the petitioner were extended for an another period of two years. On 22.04.2016, respondent No.3 fixed duties of Date Entry

Operators, including the petitioner and the petitioner was asked to join duty on the Driving Test Track, Jalandhar, to receive the fee of the candidates and to issue forms. The petitioner joined his duties and on 29.04.2016, the petitioner applied for leave. He was served with a show cause notice on 06.05.2016 by the Member Secretary, Punjab State Transport Society-cum-State Transport Commissioner, Punjab, on the ground that he refused to do duties, as assigned to him, on the Driving Test Tract at Jalandhar. The petitioner replied to the show cause notice, stating that he had done his duties, as assigned to him continuously from 25.04.2016 and was on leave on 29.04.2016. The District Transport Officer made a recommendation to the Member Secretary, Punjab State Transport Society-cum-State Transport Commissioner, Punjab, about refusal of the petitioner to discharge his duty on 29.04.2016. However, vide order dated 23.06.2016, the petitioner was relieved from services, by holding that his contract should not be extended. The petitioner moved a representation to the District Transport Officer and the District Transport Officer, Jalandhar, in turn recommended that the representation of the petitioner is worth consideration. Since the petitioner as such relieved, the instant writ petition has been filed.

3. Notice of motion was issued in the mater and notice regarding stay as well.

4. Ms. Lavanya Paul, learned AAG Punjab appearing on behalf of the respondents-State submits that the petitioner was issued a show cause notice to the extent that he refused to discharge his duties, which amounts to negligence and dereliction from duty, which is a serious misconduct. Even though the petitioner submitted a reply to the show cause notice, the same

was considered and a decision was taken not to renew the service contract of the petitioner.

5. I have heard learned counsel for the parties and have also perused the record the case.

6. Admittedly, the petitioner was engaged on contract basis to work in the Punjab State Transport Society as Date Entry Operator. The period of appointment was initially for a period of two years, with the stipulation that the Society could dispense his services at any time, by giving notice of one month. Similarly, the employee could also leave the job, prior to the expiry of period of contract, by giving notice of one month to the Punjab State Transport Society or deposit salary in lieu thereof. The petitioner herein was assigned duties at Driving Test Tract at Jalandhar and as per the attendance register itself, his presence has been marked on 25.04.2016, 26.04.2016, 27.04.2016 and 28.04.2016 with 'L' having been shown on 29.04.2016. The show cause notice was issued by Member Secretary-cum-State Transport Commissioner, Punjab, on the basis that *“Your expression of inability to do duty at the Driving Test Tract, Jalandhar is in a way refusing to do duty, which is cross negligence and carelessness in duty, whereas, you should have remained in the duty discipline and carried out the same with honesty and zeal. By refusing to do duty, you have made yourself liable for disciplinary action”* to which a proper reply was submitted stating that he had done his duty continuously from 25.04.2016 and the record of the office could be checked in this regard. He remained absent on 29.04.2016, for which he had taken leave, while further mentioning that his past service record could be checked that

as to how many holidays, he has availed of in the last 04 years.

7. Without taking note of the reply or looking at the record, it was decided that the contract of the petitioner would not be renewed, since he had shown his inability to be present at the Driving Test Tract at Jalandhar, which amounted to refusal to perform duty. The impugned order dated 23.06.2016 is not sustainable in the eyes of law, since the same has been passed without any consideration of the plea taken by the petitioner regarding the fact that he had been discharging his duties continuously and remained absent only on 29.04.2016, for which he had submitted his leave application. It is expected of any authority that before passing orders, the basic principles of natural justice are required to be followed. Principles of natural justice would include giving a fair opportunity of hearing to a person, before passing any adverse orders. In the instant case, when the petitioner had clearly replied to the show cause notice stating that he had been discharging his duties continuously and availed of leave on 29.04.2016, this issue should have been dealt with. Even the show cause notice served upon the petitioner is against the record, since the attendance register itself shows that the petitioner had discharged his duties for the days that he had been asked to be present on the Driving Test Tract at Jalandhar. Without advertent to the reasonable explanation given, any impugned order passed is not sustainable.

8. Even though the petitioner was offered appointment for two years under the contract and the contract could be ended, if the work was not found to be satisfactory. There is nothing on the record, other than the show cause notice, which is belied from the attendance register, that the

petitioner had not performed his duties satisfactorily.

9. Normally, the courts would be loathe to interfere in the matter pertaining to a contract. However, in a recent judgment rendered in “**Gridco Limited and another vs. Sadananda Dolai and others**”, (2011) 15 SCC 16, the Apex Court has held that the writ court can examine the validity of the order passed by the public authority, while holding that it is no longer open to the authority passing the order to argue that its action being in the realm of contract, is not open to judicial review. Para 38 and 39 of the said judgment reads as follow:-

“38. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we

must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

Therefore, applying the aforesaid principles, this court feels that it is a fit case for interference under Article 226 of the Constitution of India.

10. The Transport Department being a limb of the State of Punjab is amenable to the writ jurisdiction, being State under Article 12 of the Constitution of India and the State is expected to act in a fair manner, which is wholly lacking in the instant case. The show cause notice was issued on the recommendations of the District Transport Officer, Jalandhar, dated 29.04.2016, stating that the petitioner who had been put to duty at Driving Test Tract, Jalandhar, had refused to perform his duty and the very same authority recommended for a re-consideration of the matter by letter dated 17.06.2016. Therefore, this court is of the considered opinion that the impugned orders being devoid of any consideration suffer from the vice of arbitrariness and unreasonableness and deserve to be set aside.

11. In view of the above, the impugned orders dated 16.06.2016 and 23.06.2016 are hereby set aside and petitioner's status as a contract employee is restored.

12. The writ petition stands allowed accordingly.

April 27, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No