

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 22279 of 2012 (O&M)
Judgement reserved on 21.9.2016.
Date of Decision: 26.05.2017

Kushal Sharma

--Petitioner

Versus

State of Haryana and others

--Respondents

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

Present:- Ms. Anu Chatrath Kapoor, Sr. Advocate with
Ms. Harmanpreet Kaur (Simmi), Advocate for
the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

Mr. Sushil Sharma, Advocate for
Mr. Gurcharan Dass, Advocate for respondent no.5.

TEJINDER SINGH DHINDSA.J

Petitioner, who was serving as Fitter Instructor on contractual basis under the aegis of the Industrial Training Department, State of Haryana assails the order dated 6.4.2012 (Annexure P-9), issued by the Principal, Govt. I.T.I., Bitna, Kalka and whereby his services have been terminated. Further challenge is to the order dated 10.9.2012 (Annexure P-16), passed by the Director General, Industrial Training Department, Haryana and in terms of which a representation/supplementary representation preferred by the petitioner against the action of termination has not found favour.

Brief facts that would emanate from the pleadings on record are that the petitioner having participated in a process of selection was duly selected and appointed as Craft Instructor Fitter and on which post he joined on 16.1.2009. Such appointment was on a contractual basis. Having joined on 16.1.2009 at I.T.I., Bitna, Kalka the following two days i.e. 17th

and 18th January, 2009 were holidays being Saturday and Sunday and on 19.1.2009 he was called upon to raise a demand as per syllabus for purchasing tables, chairs, benches, machines and other vocational tools and equipments. Apparently, quotations were invited and a comparative statement was prepared by the Store Keeper to facilitate the order being given to the lowest bidder. Such comparative statement was signed by Sh. Kitab Singh, D.D.O and who was holding the charge of Principal of the I.T.I concerned, Mr. Charan Singh, Machinist Instructor, Mr. Radhey Sham, Welder Instructor, Mr. Darshan Kumar, Assistant Architecture Instructor (contractual basis/D.C rate) as also the present petitioner. Mr. Charan Singh, Machinist Instructor submitted a complaint against Sh. Kitab Singh, Group Instructor and who was holding the charge of the Principal at the relevant time regarding purchase of material higher than the market price and of inferior quality. A Committee comprising of Mr. Sanjeev Sharma, Assistant Director (Technical) and Mr. R.S. Saini, Assistant Director (Training) was constituted to look into the matter. As would be discernible from the impugned order dated 6.4.2012 (Annexure P-9) the services of the petitioner have been terminated ostensibly on the basis that having signed on the comparative statement of quotations received and for having verified the purchased material, the petitioner has also been apportioned blame for purchasing material at higher rates than the prevalent market rates and such material being of sub standard quality.

Petitioner after passing of order of termination dated 6.4.2012 approached this Court by filing CWP No.16368 of 2012 taking a specific stand that he was not involved in any manner in the process of purchase of the material in question and it would be the Principal of the I.T.I being the

Chairman of the Purchase Committee, who is to be held responsible, if, sub standard material has been purchased or the goods have been purchased at higher rates. In the writ petition, petitioner specifically averred that a representation against the order of termination had been submitted to the Director, Industrial Training Department and even prior to taking a decision an advertisement dated 8.8.2012 has been issued for filling up the post which was earlier held by the petitioner.

CWP No.16368 of 2012 came to be disposed of by a Coordinate Bench of this Court in the light of order dated 24.8.2012 (Annexure P-12) with a direction to the Director, Industrial Training Department to take a decision upon the representation filed by the petitioner within a period of 10 days. Liberty was granted to the petitioner to even file a supplementary representation/appeal within a period of four days from the date of passing of the order. The appointment in pursuance to the advertisement dated 8.8.2012 in relation to the post earlier held by the petitioner was directed to be kept in abeyance till a final decision is taken on the representation/appeal of the petitioner.

The petitioner in terms of liberty having been granted submitted a supplementary representation/appeal but the same has been declined vide impugned order dated 10.9.2012 (Annexure P-16), passed by the Director General, Industrial Training Department, Haryana thereby affirming the action of termination of services.

Counsel for the parties have been heard at length and pleadings on record have been perused.

In the considered view of this Court, the action of termination of the services of the petitioner while serving on the post of Fitter Instructor

be it on contractual basis, cannot sustain.

There is no dispute as regards the factual premise that the petitioner had joined as Fitter Instructor on contractual basis on 16.1.2009. A demand having been raised on 19.1.2009 for purchase of certain material, quotations had been invited and a comparative statement was prepared. Apart from the Group Instructor Incharge Mr. Kitab Singh holding the post of Principal and other regular Instructors of different trades, the petitioner had also affixed his signatures upon the same. The categorical stand taken on behalf of the petitioner is that he was not in any manner involved in the purchase process. In paragraph 5 of the preliminary submissions contained in the written statement filed and placed on record on behalf of respondents no.1 to 4, it stands conceded that the petitioner was **not a Member of the Purchase Committee**. It has also not been denied that memo dated 21.7.2011 (Annexure P-6) had been issued by the Director General, Industrial Training Department, Haryana and circulated to all the Principals/Group Instructors/Incharge/Head Mistresses of the Industrial Training Institutes and Industrial Training Institutes (Women) in the State on the subject of purchasing of tools, equipments and raw material at the institute level and which contained a conscious decision that inspection of the items purchased should be got done from Instructors/Group Instructors and for the purchase of sub standard items the Principal would be solely responsible.

In the facts of the present case a freshly appointed contractual Instructor has been made to bear the brunt as regards certain material having been procured at higher rates and of sub standard quality inspite of not being a Member of the Purchase Committee. No material/document has

been adverted to by the State to demonstrate that the petitioner was a part of the decision making process as regards purchase of the equipments in question. Rather it stands admitted in the written statement that petitioner was not a member of the Purchase Committee. This Court would have no hesitation in holding that the very basis for passing the impugned order of termination dated 6.4.2012 (Annexure P-9) does not exist.

Petitioner has also successfully established the plea of discrimination. Counsel appearing for the petitioner adverted to the document appended and placed on record at Annexure P-5 i.e. memo dated 7.9.2011 from the Principal, I.T.I, Kalka at Bitna and addressed to the Director, Industrial Training Department, Haryana on the subject regarding irregularities in the purchase of material at I.T.I Kalka at Bitna. The contents of memo dated 7.9.2011 at Annexure P-5 are not disputed. Such memo contains the list of employees, who were found guilty while making the purchase of the material for I.T.I Kalka at Bitna. Apart from the name of the petitioner figuring at Sr. No.3, the name of Sh. Darshan Kumar, Assistant Architecture Instructor (D.C rate) is at Sr. No.6 and the remarks against such official have been recorded as follows:-

6	Sh. Darshan Kumar, Assistant Architecture Instructor (D.C rate)	The comparative statement for the purchase for ITI has been signed by this employee and he has okayed the material relating to his trade and taken into his charge which was of inferior quality. This employee is also found to be guilty.
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The original record of the case had been summoned by this Court and was duly produced. The same has been perused with the able assistance of Mr. Ravi Pratap Singh, learned A.A.G., Haryana. Even the original record reveals that the comparative statement for the purchase of material/equipment for I.T.I Kalka at Bitna had been signed even by Sh.

Darshan Kumar, Assistant Architecture Instructor (D.C rate) and he had even okayed the material relating to his trade and had taken into his charge such material. As per record, Sh. Darshan Kumar was also found guilty with regard to purchase of material/equipment along with the present petitioner amongst others. Learned State counsel during the course of arguments has conceded that the services of Sh. Darshan Kumar have since been regularized. No justification whatsoever is coming forth at the hands of the State as regards resorting to passing of an order of termination of services qua the petitioner and on the other hand rewarding Sh. Darshan Kumar, who was identically situated with an order of regularization in service. The action of termination of the services of the petitioner is clearly arbitrary and is violative of Articles 14 and 16 of the Constitution of India.

This Court finds that the impugned action apart from being arbitrary and illegal has also been taken with a predetermined mind. In the light of order dated 24.8.2012, passed by this Court while disposing of CWP No. 16368 of 2012 filed by the petitioner, directions had been issued to the respondent authorities to consider the representation/supplementary representation preferred against the order of termination. As per information supplied to the petitioner under the R.T.I Act and appended along with the petition at Annexure P-14, Sh. R.P. Sheokand, Deputy Director had examined the supplementary representation preferred by the petitioner against the order of termination. In the noting supplied to the petitioner there is a reference to the inquiry report of Sh. Narender Kumar and it has been noticed that the present petitioner had not been shown as an accused. The stand taken on behalf of the petitioner that he had joined the institute only on 16.1.2009 on contractual basis and the demand for the

Fitter trade material having been taken from him on 19.1.2009, has been noticed. It has also been noticed that when the quotations were received the petitioner had no knowledge about the same and thereafter he had been called in the office on 28.1.2009 and was asked to sign on the comparative statement. Having examined and considered the supplementary representation the recommendation by the senior official i.e. Sh. R.P. Sheokand, Deputy Director was to the following effect:-

H	Therefore, it is clear from the above facts that representation of Shri Kushal Sharma, Ex-Contractual employee carries some weight. Therefore proposal to withdraw letter issued by the Department dated 23.01.2012 and by the Principal I.T.I. Kalka at Bitna vide memo order No.597 dated 9.4.2012 is put up before the worthy Director. The orders got issued with malafide intention are also proposed to be enquired into. For further orders.

The impugned order dated 10.9.2012 at Annexure P-16, passed by the Director General, Industrial Training Department, Haryana does not even advert to much less deal with the recommendation noticed herein above. It would be apposite at this stage to take note that on a previous date of hearing i.e. on 29.5.2014 it had been noticed by this Court that information had been supplied under the R.T.I Act dated 10.10.2012 (Annexure P-14) and as per which the representation submitted by the petitioner was looked into by Sh. R.P. Sheokand, Deputy Director, Sh. R.C. Verma, Director and Sh. Arun Kumar, Director General and who in turn had come to a conclusion that the petitioner was not involved in the matter of purchase or with regard to the allegations made in the impugned order of termination. Accordingly, clarification was sought by way of directing the filing of a specific affidavit explaining the stand of the State as to how such information had been supplied under the R.T.I Act if the same was not part of the record.

In response, an affidavit dated 25.8.2014 of the Joint Director (Admn.), Department of Industrial Training, Haryana was filed and in which it was deposed in the following terms:-

“On the other hand Annexure P-14 contains the noting part of the case which was submitted/written by the Dy. Director i.e. Branch Officer for giving favour to the petitioner. But the competent authority ignored the noting part of the Dy. Director being devoid of merit and passed a well reasoned speaking order dated 7.9.2012 in compliance of Hon'ble High Court order. It is pertinent to mention here that noting part of Dy. Director/Branch Officer has no weight since it has already been ignored by the competent authority vide order dated 7.9.2012. No enquiry was held by Sh. R.P. Sheokand, Dy. Director, Sh. R.C. Verma, Director and Sh. Arun Kumar, Director General. The petitioner was involved in illegal purchase of tools & equipments for which an enquiry was conducted and he was found guilty. Later on the petitioner was awarded punishment by the competent authority.”

The narration of the facts and circumstances herein above clearly demonstrate that the respondent authorities had already made up the mind to dispense with the services of the petitioner and the passing of the order dated 10.9.2012 (Annexure P-16) declining the representation/supplementary representation filed by the petitioner was a mere eye wash and to justify compliance of the order dated 24.8.2012, passed by this Court while disposing of CWP No.16368 of 2012, filed by the petitioner.

In ***E.P. Royappa Vs. State of Tamil Nadu, 1974(1) S.L.R, 497*** a Constitution Bench of the Hon'ble Supreme Court considered the scope of Articles 14 and 16 of the Constitution of India and observed that the ambit and right of Articles 14 and 16 are not limited to cases where the public

servant effected has a right to a post. It was held that even if a public servant is in an officiating position he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to malafide exercise of power by the State machinery.

In ***Manager, Govt. Printing Press and another Vs. D.B.Belliappa, AIR 1979, S.C 429*** a three Judges Bench of the Hon'ble Supreme Court held that protection of Articles 14 and 16(1) of the Constitution would be available even to a temporary govt. servant if the action of the employer is found to be arbitrary or discriminatory. Such principle of law has been reiterated even by a Division Bench of this Court in ***State of Punjab Vs. Amar Singh, 1998(2) S.C.T, 806.***

The tone and tenor of the written statement filed in the present case while justifying the passing of the impugned orders is that the petitioner was merely on a contractual assignment and his services have been dispensed with as per terms and conditions of engagement. In this regard suffice it to observe that it would be no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner has no right to the post.

For the reasons recorded above and in the light of the dictum laid in ***E.P. Royappa Vs. State of Tamil Nadu, 1974(1) S.L.R, 497, Manager, Govt. Printing Press and another Vs. D.B.Belliappa, AIR 1979, S.C 429*** and ***State of Punjab Vs. Amar Singh, 1998(2) S.C.T, 806*** (supra), the action of the State Govt. in terminating the services of the petitioner is held to be bad in law. Impugned orders dated 6.4.2012 (Annexure P-9) and 10.9.2012 (Annexure P-16) are quashed. Petitioner is directed to be reinstated on the post of Fitter Instructor on contractual basis with

continuity in service. He would however be not entitled to the arrears of salary for the period he has remained out of service.

There is one more aspect of the matter which requires to be dealt with. Court has been informed that respondent no.5 Sh. Ravinder Singh son of Sh. Gurbachan Singh has since been engaged as Fitter Instructor at I.T.I Kalka at Bitna on the post against which the petitioner had been serving. Learned State counsel submits that respondent no.5 has been engaged after the post having been advertised and a selection process having been followed. The present petitioner, at the stage of filing CWP No.16368 of 2012 had very fairly brought to the notice of this Court that the post that he had held already stood advertised. Accordingly, while disposing of the petition on 24.8.2012, it had been directed that till a decision is taken on the representation/supplementary representation, appointment in pursuance to the advertisement dated 8.8.2012 shall not be given effect to. This Court has already recorded a finding that the respondent department thereafter proceeded with a foreclosed mind and rejected the supplementary representation preferred by the petitioner and to ensure that he is denied his contractual assignment. It is the respondent Industrial Training Department, State of Haryana, which is the author of such piquant situation and circumstance. Clearly, respondent no.5 cannot be visited with an adverse consequence and as a direct fall out of the instant petition being allowed and the termination order of the services of the petitioner having been set aside. In the totality of circumstances and in the considered view of this Court, ends of justice would be met in terms of issuing directions to the respondent authorities to ensure that while complying with this order and reinstating the petitioner to his contractual

assignment, even respondent no.5 is adjusted against the post of Fitter Instructor at any of the Industrial Training Institutes under the Industrial Training Department, State of Haryana or on any other equivalent post.

Writ petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

26.05.2017

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Whether speaking/reasoned: Yes
Whether Reportable: Yes