

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

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**CWP-24425-2013 (O&M)
Date of decision:02.08.2017**

Amit Kumar (since deceased) now representating through LRs.

....Petitioner

Versus

District & Sessions Judge, Panipat

.... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr.Mahavir Sandhu, Advocate for the petitioner.

Ms. Deepali Puri, Advocate for the respondent.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has questioned the validity of the order dated 26.07.2013 (Annexure P6) by which petitioner's services have been dispensed on the score that he remained continuously absent since 23.05.2013.

Petitioner was appointed to the post of Peon on probation vide order dated 28.02.2013. As on the date of dispensing petitioner's services on 26.07.2013 petitioner was very much probationer. Therefore, Rule 8 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for short "Rules, 1997") are applicable. Learned counsel for the petitioner submitted that before passing the order of dispensing his services on probation he was entitled to notice. Without being heard in the matter, respondent proceeded to pass the impugned

order. Therefore, orders dated 26.07.2013 (Annexure P6) is liable to be set aside.

Per contra, learned counsel for the respondent submitted that while passing order dated 26.07.2013 (Annexure P6) they have complied Rule 8(2) of Rules, 1997 to the extent that appointing authority has expressed his opinion with reference to petitioner's conduct to the extent that he remained absent w.e.f. 23.05.2013. Therefore, question of providing any opportunity or principle of natural justice do not arise so also Rule 8 of Rules, 1997 do not provide to the extent before invoking sub Rule 2 of Rule 8 of Rules, 1997.

Heard learned counsel for the parties.

Crux of the matter is whether petitioner is entitled for notice before dispensing his services while he was on probation or not. Employees services could be dispensed while he was on probation under sub-Rule 2 of Rule 8 of Rules 1997. Rule 8 do not provide for giving any opportunity like issuance of notice before invoking sub rule 2 of Rule 8 of Rules, 1997. Thus, petitioner has not made out a case so as to interfere with the order dated 26.07.2013 (Annexure P6).

Learned counsel for the petitioner relied on Supreme Court decision reported in 2013(2) RSJ115 titled as ***State Bank of India and others versus Palak Modi and another*** in which it is held that before order of termination of a probationer in that event notice is mandatory. The Supreme court while considering the relevant provision of the State Bank of India (Officers Service) Rules, 1992 has held that notice is required to be

provided to probationer before ordering his termination. Whereas, in the present case, sub Rule 8 of Rules 1997 do not provide for such an opportunity of giving notice. Thus, decision cited is distinguishable with reference to relevant provision of law. Supreme court in the case of *Nair Service Society versus Dr. T. Beermasthan* reported in (2009)5 SCC 545 in para 48 held that before considering any decision relevant rules are required to be taken into consideration.

In view of these factual and legal aspects, petitioner has not made out a case so as to interfere with the impugned orders dated 26.07.2013 (Annexure P6).

Accordingly, CWP stands dismissed.

02.08.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No