

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 223 of 2015
Date of decision: 22.11.2017

Charanjeet Singh

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Mr. Vikas Lochab, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 223 and 522 of 2015, since common questions of facts and law are involved in both the writ petitions. Facts are being taken from ***CWP No. 223 of 2015, Charanjeet Singh vs. State of Haryana and another.***

The petitioner challenges the advertisement dated 30.12.2014 (Annexure P-1) whereby, the respondents had advertised the post of Accountant on contract basis. The challenge is based mainly on the ground that a contractual employee cannot be replaced by another contractual employee.

The case of the petitioner is that he was appointed as Accountant on contractual basis at D.C. Rates on 24.12.2013 (Annexure P-2). A perusal of the letter of appointment would go on to show that it was for a period of six months or till the date of filling of regular vacancies, whichever was earlier. As per clause 2, the appointment was terminable at any point without any notice period on either side. The contract was

thereafter renewed on 20.06.2014 (Annexure P-3) for a further period of six months or till regular appointments are made, whichever was earlier w.e.f. 24.07.2014. Resultantly, it was in force till 23.01.2015. It is, thus, his grouse that the advertisement on 30.12.2014 (Annexure P-1) was not justifiable as a contractual employee was being replaced by another contractual employee and on account of the availability of work as such, the action of the respondents was not justified. Accordingly, reliance was placed upon the Division Bench judgment in ***CWP No. 5289 of 2007, Ashok Kumar and others vs. State of Haryana and others***, decided on 24.01.2008 (Annexure P-6) for the said proposition to submit that the petitioner's services were satisfactory and, therefore, the dispensing was not justified by referring to the certificate dated 21.10.2014 (Annexure P-4) and certificate dated 05.01.2015 (Annexure P-7 colly) which has been brought on record with the replication.

The respondents, on the other hand, submitted that in pursuance of the condition no. 7 in the appointment letter, a contract had been signed with the institution on 24.01.2014 (Annexure R-1) and as per the terms of the contract, services could be dispensed with. The said contract provided that the appointment was to be for a period of six months and it was a purely temporary arrangement on contract basis which could be terminated at any time without assigning any reason whatsoever and without any notice period. It is further mentioned that the petitioner had been relieved from his duties on 24.12.2014 after completion of approximately 11 months, which was in consonance with the appointment letter and the contract. The Chief Accounts Officer had, vide letter dated 24.12.2014 (Annexure R-3) reported that the work and conduct of both the petitioners was not as per the level

and good and their services were no longer required. Certain irregularities in respect of pay bills/TA/DA bills and facts of overpayment and financial loss to the State had been found. Reliance was placed upon communication dated 14.03.2015 (Annexure R-5) to submit that the petitioner had been found responsible for gross negligence, high irregularities, dereliction of duties, non-maintenance of essential financial records in respect of over payment of Rs.1,49,750/- on account of arrears of pay/salary from October 2013 to February, 2014 of Smt. Sajjni, Staff Nurse alongwith the other writ petitioner Satish Kumar. It is further submitted that the fact of being relieved from his duties had been concealed from this Court and, therefore, the Division Bench judgment in *Ashok Kumar's case (supra)* as such cited by the petitioners was also sought to be distinguished.

In replication, it is the case of the petitioner that there was a proposal for extension of the contract and, therefore, the respondents were not justified in saying that the work and conduct of the petitioners was not good and the experience certificate dated 21.10.2017 was relied upon. Similarly, it was averred that the amount had been recovered from the employee namely Sajjni as per Annexure P-8 and, therefore, the petitioner was not at fault.

After hearing counsel for the parties, this Court is of the opinion that the petitioners are guilty of concealment of the fact that their services had already been terminated on 24.12.2014 before they approached this Court. The fact would be clear from Annexure P-7 (colly) which has now been itself placed on record by the petitioner alongwith the replication wherein, the experience was mentioned till 24.12.2014 as per the certificate dated 05.01.2015. The said certificate reads thus:-

“This is to certify that Shri Charanjeet Singh S/O Shri Manjit Singh has worked in B.P.S. Govt. Medical College for Women, Khanpur Kalan (Sonepat) on the post of Accountant on contract basis at DC rates from 24.1.2014 to 24.12.2014.

His work and conduct during the above period remained satisfactory.”

It is the categorical case of the respondents that in view of the adverse report received from the Chief Accounts Officer on 24.12.2014, the petitioners were relieved on the same day even while noticing that the contract period was expiring on 23.01.2015. The terms of the appointment, as per the appointment letter, were also that it could be terminated without any notice period on either side and thereafter as per clause 4 of the contract also entered into, no reasoning as such was to be given. Clause 4 reads thus:-

“4. That the engagement of the person in the Medical College as above is a purely temporary arrangement on contract basis at D.C. Rate and the contract can be terminated at any time without assigning any reason whatsoever and without any notice period whatsoever in this regard.”

The order, thus, is of plain simple discharge and not punitive in any manner and as per the terms of the contract inter se the parties. The reasoning for their work and conduct having not been found upto the mark does not find mention in the order dispensing with their services on 24.12.2014 (Annexure R-2). In such circumstances, no fault can be found if an advertisement was issued on a subsequent basis on 30.12.2014 calling for fresh persons for appointment. As noticed, while approaching this Court on 08.01.2015 in one case and on 13.01.2015 in another case, the

impression given at that stage was that the respondents were seeking to replace the petitioners by another employees. The fact that their services had already been dispensed with on 24.12.2014 was, thus, kept back and the petitioners were well aware of the fact since certificate of experience dated 05.01.2015 in the present case and 05.05.2015 in the other case is also in their possession. The pleadings in para no. 6 are that they are being illegally relieved which was against the record. Therefore, on account of the said concealment of facts from this Court, the petitioners have also continued in service for more than 2-1/2 years and, therefore, this Court is loath to grant any relief to them on this account also. The Division Bench judgment is, thus, distinguishable in the facts and circumstances, as in the said case, there was no issue as such as to the fact that the petitioners' service had not been found not upto the mark.

Accordingly, finding no merit, the present writ petitions are dismissed.

22.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No