

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

CWP No.25781 of 2016 (O&M)

Date of Decision: 21.05.2018

ASHOK KUMAR VIRDI

..... Petitioner

Versus

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION,
CHANDIGARH AND ANOTHER**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Petitioner-in-person.

Mr. Ashwani Kumar Chopra, Senior Advocate assisted by
Mr. Akshit Chaudhary, Advocate
for the respondents.

JASWANT SINGH, J. (ORAL)

The petitioner was appointed as Sub Divisional Officer on regular basis on 09.04.1981 with the erstwhile Haryana state Electricity Board and subsequently, promoted to the rank of XEN, Superintending Engineer and finally retired as Chief Engineer from the successor/Dakshin Haryana Bijli Vitran, on attaining the age of superannuation of 58 years on 31.10.2013. The petitioner during his service period had acquired the additional qualifications of LL.B (03 years course) from Punjab University, Chandigarh. After retirement, petitioner claims to have done legal practice at Bar of the Punjab and Haryana High Court.

The Punjab State Electricity Regulatory Commission, Chandigarh, issued an advertisement dated 01.03.2016, *inter alia*, advertising the post of Registrar to be filled up on deputation/contract basis. The petitioner was selected for appointment on contract basis, by way of direct recruitment, and issued an appointment letter dated 20.04.2016 (**Annexure P-3**). The petitioner joined as Registrar on 21.04.2016 and his services have been terminated vide impugned order dated 09.12.2016 (**Annexure P-8**). The petitioner stood relieved on the same day i.e. the afternoon of 09.12.2016.

This Court vide order dated 13.12.2016 issued notice of motion with an interim direction to the respondents not to fill up the post of Registrar.

Upon notice, a reply on behalf of the respondents stands filed.

The petitioner has argued that the respondents could neither impose the six months period as probation period nor could they extend it, vide memo dated 20.10.2016 (**Annexure P-6**), during which extended period, the impugned order of termination due to unsatisfactory work has been passed. Secondly, it is argued that the impugned order has not passed by the Appointing Authority i.e. the Chairperson of the Regulatory Commission and lastly it is submitted that the petitioner has been condemned unheard.

On the other hand, learned Senior Counsel submits that keeping in view Regulation 11 of the Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees)

Regulations, 2015 (in short “*Regulations 2015*”) read with Rule 7 of the *Punjab Civil Services (General and Common Conditions) of Service Rules, 1994*, the clause of probation period in the appointment letter is fully justified. That apart, it is submitted that the petitioner had accepted the terms & conditions of probation and, therefore, cannot turn around and challenge the same. It is next submitted that the Chairman, PSERC is the competent authority and the order of termination has been passed upon consideration of the material on record by the Chairperson and the orders have been issued under the Authority of the Secretary after seeking the approval from the Chairperson i.e. the Competent Authority.

After scrutinizing the arguments raised by the parties and the pleadings, this Court finds that the present writ petition is devoid of any merits.

It is not in dispute that the post of Registrar, to which the petitioner was appointed, is governed by the statutory framed Regulations 2015 (**Annexure P-5**) and as per Regulation 4 (**P-5**), the direct recruitment can only be made on contract basis. As per Regulation 6 (**P-5**), such appointments can only be made initially for one year, which can be extended from time to time by the appointing authority. The services of the employees appointed on contract basis can be terminated with the notice of three months or salary in lieu thereof on either side. The relevant Regulation 4 and Regulation 6 specifying the terms & conditions of the appointment read as under:-

“ 4. Mode of appointment to service

Appointment to the post (s) in the Commission shall be made by any one of the following methods:-

- (a) *Direct appointment.*
- (b) *Promotion.*
- (c) *Deputation.*

Provided that direct appointments shall be only on contract or service can be outsourced.

6. *Terms & Conditions of appointment*

- (a) *The appointment on deputation basis to any post shall initially be for three years which may extend upto for a maximum period of five years. The Commission may consider extension beyond this period with the approval of the State Government. The employees taken on deputation will be governed by such terms and conditions of deputation as are prescribed by their respective parent departments and in consonance with their service rules. The Commission may however, repatriate any employee taken on deputation to his/her parent organization even before the expiry of his/her deputation period.*
- (b) *The Commission may consider suitable persons having requisite qualifications and experience for appointment on contract basis. Applications will be invited through advertisement in the press and through Commission's website. Such appointment shall be made initially for one year which can be extended from time to time by appointing authority.*
- (c) *The Services of employee appointed on Contract basis shall be terminable with a notice of three months or salary in lieu thereof on either side.*
- (d) *The maximum duration of service will be up to 65 years of age for the employee taken on contract basis. ”*

Emphasis Supplied.

During the course of hearing, learned counsel for the respondents has fairly stated that without going into the question as to whether any probation period could be imposed or not for a direct employee, the respondents are ready and willing to offer three months

salary in lieu of three months notice period as envisaged under Clause 'C' of Regulation 6 of Regulations 2015.

Every employer has right to appoint its employees on probation so that work and conduct of employee may be monitored and if he is found unfit, may be terminated. As per aforestated clause (b) of Regulation 6, an employee who has been appointed on contract basis, shall be initially appointed for one year. The Petitioner was appointed on contract basis and at the most his initial appointment could be for one year whereas he was appointed on probation of six months which was extended to one year. It was a contractual appointment which he accepted and joined. He worked from 21.04.2016 to 09.12.2016 which means he virtually got appointment of one year though he was terminated prior to one year. In any case, this Court finds that employer has right to put appointment of any employee on probation and one year period cannot be called unreasonable. Nevertheless, the Respondent has agreed to pay salary of three months in lieu of termination of service which is paid to an employee whose appointment is not on probation but contractual.

The Petitioner was appointed on contract basis so his services could be terminated with 3 months prior notice or three months salary. This could be maximum safeguard to any employee whose appointment is contractual. The Respondent has agreed to pay three months salary in lieu of notice of termination, therefore, the Petitioner cannot raise any more grievance *qua* probation or its extension or termination. The Respondent shall pay to Petitioner three months salary

within 6 weeks from the receipt of copy of this order.

The Petition is accordingly **disposed of**.

May 21, 2018
'rajneesh'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No