

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

Date of decision: 24.07.2018

CWP No.2792 of 2015 (O&M)

1.

Smt. Sharmila

.....Petitioner

Versus

The Mission Director, National Rural Health Mission and others

.....Respondents

2.

CWP No.3798 of 2015 (O&M)

Mrs. Sevan and another

.....Petitioners

Versus

The Mission Director, National Rural Health Mission and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Raman Sharma, Advocate,
for the petitioner(s).**

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J.

This judgment shall dispose of two petitions i.e. CWP No.2792 of 2015 and CWP No.3798 of 2015 together as common questions of law and facts are involved in both the petitions. For reference, facts are taken from CWP No.2792 of 2015.

Petitioner(s) are seeking quashing of order dated 06.02.2015 (Annexure P-1), whereby their services have been terminated on the ground of alleged misconduct of exchange of newly born babies.

Petitioner-Sharmila was engaged as Staff Nurse pursuant to advertisement No.22/2013-14 on contract basis under NRHM Mission at

fixed salary of Rs.10,340/- upto 31.03.2014. Appointment letter dated 23.12.2013 and medical of the petitioner have been annexed as Annexure P-5 (Colly.). Later on, her contract was renewed w.e.f. 02.04.2014 (Annexure P-6) for the financial year 2014-15. On 10.02.2014, a complaint (Annexure P-7) was made by one Sh. Parkash son of Sh. Bhundu Ram, resident of Sajarwans, District Bhiwani alleging that he had taken his wife Smt. Manju for delivery from PHC, Ranila to General Hospita, Bhiwani on 09.02.2014, where she delivered a baby (boy) and after delivery, the said baby was taken by Staff Nurses Sewan and Sharmila. On the next day, it was found that the baby was female. During enquiry of this complaint, police obtained blood samples of both the women (Manju and Parveen) and as per DNA report, it was established that male baby was of Smt. Manju and female baby was of Smt. Parveen. After obtaining orders from the concerned Illaqa Magistrate, the male baby of Smt. Manju was handed over by police to her and female baby to Smt. Parveen. Petitioner gave her statement (Annexure P-10). Subsequently, her services were terminated. Against the said termination order, she had made a representation dated 12.02.2015 (Annexure P-15) to the Deputy Commissioner, Bhiwani, who is the Chairperson of District Health and Family Welfare Society, Bhiwani as well. The petitioner came to know that pursuant to the enquiry conducted, she was terminated.

Precise grievance of the petitioner is that if, she is a contractual employee and the termination was based on the ground of some misconduct, it would create a stigma on future employment. Hence, a regular enquiry was required to be followed in view of the judgment passed by Division Bench of this Court in **U.T. Chandigarh vs. CAT**, 2011 (1) SCT 777.

Learned counsel for the petitioner has referred to another judgment passed

by Andhra Pradesh High Court in A.P. Tourism Dev. Corpn. Ltd. vs. B. Nandeswar Rao, 2014 (4) ALT 211 to contend that regular enquiry should have been conducted even if, the employee was appointed on contractual basis.

Learned State counsel, on the other hand, has argued that initially, the petitioner was appointed as Staff Nurse in Nutrition Rehabilitation Centre (NRC) on contractual basis vide letter dated 24.12.2013. Her contract was renewed annually. Later on, she was shifted to maternity ward of the General Hospital, Bhiwani. On 09.02.2014, when she was on duty in the maternity ward, newly born baby of Smt. Manju w/o Sh. Parkash was got exchanged with the baby of Smt. Praveen w/o Sh. Manoj. Vide order dated 28.02.2014 (Annexure R-3/1) passed by respondent No.3, an Inquiry Committee was constituted consisting of Dr. Meena, Deputy Civil Surgeon, Bhiwani and Dr. Raghubir Singh, Senior Medical Officer, General Hospital, Bhiwani. Petitioner participated in the inquiry and gave her statement on 14.03.2014. Thereafter, vide report dated 19.03.2014 (Annexure R-3/2), petitioner was held guilty of negligence while performing her duty. Inquiry Committee had recommended to take disciplinary action against the petitioner. At the same time, one social activist namely Rakesh Verma made a complaint to the National Human Rights Commission with regard to exchange of two babies. Vide order dated 29.08.2014 (Annexure R-3/3), National Human Rights Commission gave direction to the DGHS, Haryana to submit action taken report against the delinquent Dr. Sudha Garg and the staff of Labour Room of General Hospital, Bhiwani. Statement made by the petitioner before the Inquiry Committee has been attached as Annexure R-3/5. Learned State counsel further stated that the petitioner has been given

due opportunity to defend herself during the inquiry proceedings and she has been rightly terminated vide order dated 06.02.2015 (Annexure P-1).

After hearing learned counsel for the parties, facts not in dispute are that the petitioner-Sharmila was appointed a Staff Nurse on contract basis and thereafter, her services have been terminated on 06.02.2015 (Annexure P-1). A Division Bench of this Court in **Union Territory of Chandigarh's** case (supra) had an occasion to examine a case of ad hoc Govt. employee, who on the charge of sexual harassment, had been terminated from service. It was held that even in the case of contractual employee, if termination is found to be on misconduct, then it has to be regarded as a punishment. Order of termination was set aside and liberty was granted to the department to initiate a fresh departmental inquiry. Subsequently, the employee was reinstated without back wages. In that case, reference was made to the judgments passed by Hon'ble the Supreme Court in **A.P. State Federation of Co-op. Spinning Mills Ltd. and another vs. P.V. Swaminathan**, 2001 (3) SCT 128 and **State of U.P. vs. Kaushal Kishore Shukla**, 1991 (1) SCT 760, wherein it has been consistently held that a temporary Government servant has no right to hold the post and whenever the competent authority is satisfied that work and conduct of a temporary Government servant is not satisfactory or that his continuation in service is not in public interest on account of his inability, misconduct or inefficiency, it may either terminate the service in accordance with the terms and conditions of service or the relevant rules or it may decide punitive action against the Government servant. It was further held that once a contractual employee has been working on the basis of terms and conditions of contract, then those terms and conditions can be invoked to terminate his

services. But at the time of relieving or terminating their services, if, a stigmatic order is passed, especially with the allegations of sexual harassment, it would debar their future employment as well. Vide aforesaid judgment, writ petition challenging the order passed by the Central Administrative Tribunal was dismissed. However, liberty was granted to them to pass a fresh order in accordance with law after holding regular departmental inquiry. In that judgment, it was observed as under:-

“A perusal of the aforesaid para would show that even in a case of contract of service if the termination is founded on a misconduct then it has to be regarded as a punishment because it is manifest in the order itself. The aforesaid judgement holds the field even today which is evident from the perusal of judgements of Hon'ble the Supreme Court in the cases of State of U.P. v. Kaushal Kishore Shukla 1991(1) SCC 691 and P. V.Swaminathan's case (supra). However, in the aforesaid judgements it has been observed that a temporary government servant has no right to hold the post and whenever the competent authority is satisfied that work and conduct of a temporary government servant is not satisfactory or that his continuation in service is not in public interest on account of his inability, mis-conduct or inefficiency it may either terminate the service in accordance with the terms and conditions of service or the relevant rules or it may decide punitive action against the government servant. The observations made in para 7 of the judgement in the case of Kaushal Kishore Shukla's case (supra) reads thus:

“7. A temporary Govt. servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. [Union of India AIR 1958 SC](#)

36 a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Govt. servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and Anr. v. [Ram Narayan Das](#) AIR 1961 SC 177; R.C. Lacy v. The State of Bihar and Ors. C.A. No. 590/62 decided on 23.10.1963; Champaklal Chimanlal Shah v. [The Union of India](#) AIR 1964 SC 1854; Jagdish Miner v. [The Union of India](#) AIR 1964 SC 449; A.G. Benjamin v. Union of India C.A. No. 1341/66 decided on 13.12.1966 and Shamsher Singh and Anr. v. [State of Punjab \(1974\)2 SCC 831](#) , These decisions have been discussed and followed by a three Judge Bench in State of Punjab and Anr. v. [Shri Sukh Raj Bahadur AIR 1968 SC 1089](#)”

In **B. Nandeswar Rao's** case (supra), Andhra Pradesh High Court held that termination of contractual employee on account of misconduct and inefficiency attaches stigma to his career. In that case, the termination order was set aside and the employee was held to be under suspension from the date of termination. He was to be paid 50% of the emoluments. It was further held that if the appellants intended to initiate penal proceedings against the employee-respondent, they would appoint an Enquiry Officer and conclude proceedings within a period of six weeks.

judgments. Accordingly, the impugned orders dated 06.02.2015 (Annexure P-1) in both the petitions are set aside. Since the petitioner(s) are continuing to be in service, the respondents are at liberty to proceed in accordance with law after serving charge-sheet and holding regular departmental inquiry against them as envisaged under Article 311 (2) of Constitution of India.

Both the petitions i.e. CWP No.2792 of 2015 and CWP No.3798 of 2015 stand allowed accordingly.

24.07.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No