

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

CWP No. 6627 of 2016

Date of decision : 29.08.2018

Sadhna Mittal

..Petitioner

versus

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Kiran Pal Singh, A.A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner has sought quashing of order dated 23.10.2015 (Annexure P-5) whereby the services of the petitioner were terminated.

Pursuant to advertisement for the post of Protection Officer-cum- Child Marriage Prohibition Officer, the petitioner was given appointment letter on 11.11.2008 (P-1) and the petitioner joined on 17.11.2018. The petitioner was also given appreciation letter for his excellent work and conduct (P-2). Vide letter dated 16.11.2011 (P-3), the Government has approved the extension of the contracts for further period of three years. The Government of Haryana has granted extension for three years i.e up to 16.11.2017, vide letter dated 16.12.2014 (P-4). However, vide order dated 23.10.2015 (P-5), the services of the petitioner were ordered to be terminated on the ground that the petitioner was involved in a

criminal case registered vide F.I.R No 604 dated 5.8.2015

Learned counsel contends that the petitioner was appointed on 11.11.2008 as Protection Officer-cum-Child Marriage Prohibition Officer (Female) on contract basis. After registration of FIR No.604 dated 05.08.2015, her services has been terminated vide order dated 23.10.2015 (Annexure P-5). Before registration of said FIR, there was no complaint against her. Thereafter, she approached this Court by filing CWP No.23961 of 2014 with a prayer that she should be allowed to continue her services, as she had served the department for more than three year without any complaint. In the said petition, an interim order was passed on 09.03.2015, whereby she was allowed to continue till regularly selected candidate is available to replace her. Despite the above said order, her services have been terminated vide order dated 23.10.2015. Moreover, after investigation in criminal case, challan (Annexure P-6) has already been presented against one Yogesh, who was a clerk in the office and the petitioner has been found to be innocent as nothing was found against her.

Learned counsel *inter alia* contends that the impugned order is liable to be set aside as the petitioner was working since 2008 and has also been awarded appreciation letter. Further, challan was present against one Yogesh, who was clerk in the office and the petitioner has been found innocent.

Reference has been made to a judgment of Kerala High Court in a case of ***Prince George v. Government of Kerala, 1993 (3) SCT 296*** wherein petitioner was appointed as Public Prosecutor for a period of three years. However, his services were terminated before expiry of the term of the appointment. The petition was allowed and the impugned order was set

aside and it was held that though the services of the petitioner were contractual but still could not be terminated in violation to Article 14 of the Constitution of India and principles of Natural Justice. Mere fact that the name of the petitioner is included in an F.I.R is not sufficient enough to terminate the service unless he is proved guilty and unfit to hold the post. In para No. 13, 15, 17, 20 and 21, it has been observed as under:-

"13. The question therefore is whether it is open to the Government to terminate the services of the petitioner on the basis of the above mentioned materials without conducting any enquiry into the allegation and without giving the petitioner an opportunity to put forward his case. In the light of the decision of the Supreme Court in AIR 1972 SC 283 : (1975) 3 SCC 851 : 1971 (II) SCWR 446 : AIR 1973 SC 491 and 1964 (1) CrL. LJ. 224 (supra), it has to be taken that a mere inclusion of petitioner's name in the FIR cannot be a reason to terminate his services. This is not even a case where any criminal charge has been framed against the petitioner and he is facing a trial. It is open to the Government to enquire into the allegation made against the petitioner without waiting for the culmination of the criminal investigation and further proceedings. If in the enquiry it is found that the petitioner was responsible for any action which would make him unfit to hold the office of Addl. Government Pleader and Public Prosecutor his services can be terminated. Even if R. 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules are not directly applicable to the petitioner as contended in the counter-affidavit, the respondent could have even kept the petitioner out of office till such time an enquiry was conducted. The petitioner himself admits justifiability of such an action on the part of the respondent.

*15. Even though Ext. P 3 would come within the realm of administrative action it is no longer open to the respondent to contend that the petitioner is not entitled to such an opportunity: In **Mohinder Singh v. Chief Election***

Commissioner, (1978 SC 851), a Constitutional Bench of the Supreme Court had occasion to consider the relevance of doctrine of natural justice in the matter of administrative decisions. In para 72, V.R. Krishna Iyer (J), who wrote the main judgment observed as follows :

"We consider it a valid point to insist on observance of natural justice in the area of administrative decision-making so as to avoid devaluation of this principle by 'administrators already, alarmingly insensitive to the rationale of **audi alteram partem**'.
"In his lecture on 'The Mission of the Law' Professor H.W.R. Wade takes the principle that no man should suffer without being given a hearing as a cardinal example of a principle recognised as being indispensable to justice, but which (has) not yet won complete recognition in the world of administration...
The goal of administrative sporadic and ex post facto judicial review. The essential mission of the law in this field is to win acceptance by administrators of the principle that to hear a man before he is penalised is an integral part of the decision making process. A measure of the importance of resisting the incipient abnegation by the courts of the firm rule that breach of **audi alteram partem** invalidates, is that if it gains ground the mission of the law is doomed to fail to the detriment of all."

(P. 60 Public Law Spring 1975 Stevens Natural Justice: Substance and shadow)"

The necessity of fairness or fair procedure in administrative action has been further emphasised in a later decision in **Neelima Misra v. Harinder Kaur Paintal (AIR 1990 SC 1402)**. It was observed by the Supreme court as follows, in paragraph 22 and 23 of the judgment.:

"22. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim **audi alteram partem**. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. **Ridge v. Baldwin (1963 (2) All England Reporter 66)** (supra); **State of Orissa v. Dr. Binapani Dei, (1967 2 SCR 625)**.

23. The shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. The administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative setting are not necessary, not it is necessary to have **lites inter parties**. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration..."

17. The file leading to Ext. P 3 shows that the necessity to conform to the principles of natural justice never bothered those who processed the same making nothings as usual from bottom to top and top to bottom. The file is not seen placed before the Minister for Law before the decision to terminate the service of the petitioner was taken. Discussion with the Minister which the Law Secretary had, was over the telephone. Later, the order was issued on

27.5.1992 and it was ratified by the Minister on 27.5.1992. Whether the Minister was at any time apprised of the fact that no notice was given to the petitioner before issuing the order of termination of his service on the finding that he is wanting in integrity, reliability and reputation, befitting a Govt. Pleader, is not discernible from the file. I am constrained to observe that a perusal of the file could give the feeling that an anxiety to act fairly was unfortunately absent in the decision making process which led to issue of Ext. P 3. What the Constitutional Bench observed in Mohinder Singh's case, 'administrators are already alarmingly insensitive to the rationale of **audi alteram partem**' stands good even after a decade.

20. In **Maneka Gandhi v. Union of India, AIR 1978 SC 597**, Bhagavathi (J) observed:

"Natural justice is a great humanising principle intended to invest law with fairness and secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action."

In the facts of the present case, I have no hesitation to hold that the order of termination of the service of the petitioner was issued in clear violation of principles of natural justice and therefore unfair, unreasonable and arbitrary. In **E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555**, it was pointed out by the majority, "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and it is therefore violative of Article 14". This statement has been quoted in Maneka Gandhi's case also.

21. "In India once again the Supreme Court has stretched the broad umbrella of Article 14 so as to include natural justice as a component part of the right to equality and

equal protection. Fairness goes hand in hand with reasonableness." (Public Law in Britain and India, The Nambyar Lectures, Second Series by Prof. Sir William Wade).

Reference can further be made to a judgment of Telangana and Andhra Pradesh High Court in a case of ***S. Zabeda Parveen v. A.P. Women's Co-op Finance Corporation, Hyderabad and another, 2015 (6) Andh LD 675*** wherein also the services of the petitioner who was contractual employee was terminated on the ground that the petitioner connived with M/s Ram Computer and other and created documents as if the software were received without actually receiving the same and was held responsible for a loss of Rs.84760/-. The impugned order was set aside by imposing a cost of Rs.20,000/-and the petitioner was held entitled to reinstatement into service with continuity of service and all consequential benefits including full salary during the period of her suspension and the revision of pay scales taken place during the pendency of the writ petition. In para 39 to 42,it has been observed as under:-

39. In S.C. Girotra v. United Commercial Bank the employer bank obtained certain reports and on the basis of the reports and some certificates issued by the officers of the bank, charges were framed against the employee and on the basis of the enquiry report the employee was dismissed. The Supreme Court held that there was violation of principles of natural justice as the employee was not allowed to cross- examine the officers who gave the certificates and reports, before the enquiry officer.

40. In State of Mysore v. Sivabasappa , the Supreme Court while holding that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor they are bound by strict rules of evidence. It has however held that the obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is fair opportunity must depend on

the facts and circumstances of each case. Dealing with recording of evidence in the enquiry, the Supreme Court held as under:

In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them.

I do not intend to multiply the judgments on this aspect.

41. Tested on the anvil of the law laid down by the Courts on the fair procedure to be followed in the enquiry, one would have no qualm of conscience to hold that every step taken by the enquiry officer in the present case is blatantly contrary to the settled legal principles. The enquiry officer has reduced the enquiry to a mockery. He has acted both as prosecutor and Judge, which is forbidden by law. He has not insisted on the DA to appoint a Presenting Officer. He has not called upon the DA to produce evidence from its side. He has not fixed dates of enquiry for recording evidence. Not only that he has recorded the statements of four witnesses behind the back of the petitioner, but also he has not supplied those statements to the petitioner, much less summoning the persons who gave those statements for being cross-examined by the petitioner. Therefore, it would be a travesty of truth for anyone to claim that an enquiry in law was conducted by the enquiry officer. Thus I have no hesitation to hold that the purported enquiry is highly farcical and nothing but a faade.

(v) Whether the impugned order is legally sustainable on merits?

42. In order to find an employee guilty of misconduct, the burden lies on the department to prove that the employee is guilty of such misconduct based on legal evidence. Unlike in a criminal case where proof beyond reasonable doubt is sine qua non for conviction of an accused, in departmental proceedings preponderance of probabilities is sufficient to find an employee guilty of

misconduct. As discussed above, no formal charge memo was issued in this case. Therefore, it is not possible to find out with certainty as to what precisely the charge is. However, if one looks into Memo dt.7.1.2010, whereunder show cause notice was issued to the petitioner, proceedings dt.3.7.2010, by which the petitioner was suspended, proceedings dt.4.8.2010, under which enquiry officer was appointed, and order dt.27.9.2010 terminating the petitioners services, they will give some idea as to the nature of the accusation against the petitioner. It can be summarized as under.

Software was installed on 6.6.2006 and 18.7.2006, when five systems each were supplied; based on the software, training classes were commenced and therefore the endorsement dt.9.8.2006; that the software was installed on that day by the supplier, was fraudulently made by the petitioner in collusion with the supplier and thereby the petitioner was responsible for loss of Rs.84,760/- paid based on her endorsement.”

On the other hand, learned State counsel while referring to the reply dated 16.09.2016 filed on behalf of State of Haryana submits that the petitioner was only a contractual employee and was engaged for a specific period, which is clearly mentioned in her appointment letter dated 11.11.2008. Keeping in view the doubtful conduct and involvement in the petitioner in the corruption case, her services along with Yogesh Kumar was terminated, as per condition No. 7 of the appointment letter, which reads as under:-

“7. “If your work and conduct is not found satisfactory or in case you are found guilty of insubordination, intemperance or any other misconduct, your services can be terminated without any previous notice.”

Heard learned counsel for the parties.

In the present case as well, as per challan nothing has been found against the petitioner and the allegations are against only Yogesh Kumar and even challan has been presented against him . The petitioner has been found innocent. But the department by taking into consideration

condition No.7 of the appointment letter, terminated the petitioner from service. The petitioner has not been issued any notice. In the termination letter, it has been written that due to the above said irregularities having bad and criminal character and carelessness in her duty, the contract of the petitioner was terminated. However, earlier the petitioner was given appreciation letter for his excellent work and conduct (P-2). She is working on the above post since 2008. Even if the services of the petitioner were to be terminated, a notice was required to be given to her to explain her version as well.

Apply the ratio of law laid down in ***Prince George's case (supra)*** and ***S. Zabeda Parveen's case (supra)***, the present writ petition is allowed. Order dated 23.10.2015 (Annexure P-5) is set aside. The petitioner be reinstated in service along with all consequential benefits, subject to the condition that no regular candidate has been appointed on the post of Protection Officer-cum- Child Marriage Prohibition Officer after her termination order were passed on 23.10.2015.

A cost of Rs.30,000/- is also imposed upon State of Haryana which shall be deposited within a period of two weeks, before the Registrar of this Court and this amount shall be utilised for constructing the house of Ms. Balwant Kaur (widow) by the respondent-State of Punjab through P.W.D (B&R), Mohali, as per orders passed by this Court on **24.08.2018 in CRM-M-39750-2016 (O&M) titled as Jugraj Singh v. State of Punjab.**

29.08.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No