

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

**LPA No.2369 of 2017 (O&M) in  
CWP No.522 of 2015  
Date of decision : 16.01.2018**

**Satish Kumar**

**....Appellant**

**versus**

**State of Haryana & another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL  
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. P.R. Yadav, Advocate for the appellant(s).

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**B.S. WALIA, J.**

1. This order will dispose of two appeals bearing LPA Nos.2369 and 2372 of 2017 against the decision dated 22.11.2017 passed in CWP Nos.522 and 223 of 2015. For brevity, facts are being taken from LPA No.2369 of 2017. Learned Writ Court dismissed the writ petition challenging advertisement dated 30.12.2014 for the post of Accountant on contract basis on the ground that a contractual employee could not be replaced by another contractual employee.

2. Brief facts of the case leading to the filing of the instant appeal are that the writ petitioner was appointed as Accountant on contractual basis on D.C. Rates w.e.f. 24.12.2013 for a period of six months or till the date of filling up of regular vacancies whichever was earlier. As per Clause-2 of the appointment letter, the appointment was terminable at any time without any notice on either

side. Initially, contractual appointment of the petitioner was renewed on 20.6.2014, w.e.f 24.7.2014 for a further period of six months or till regular appointments were made whichever was earlier. In terms of renewal, the appointment of the writ petitioner was to continue till 23.1.2015. However, prior to said date, advertisement dated 30.12.2014 was issued for the post of Accountant on contractual basis leading to the filing of the writ petition out of which this intra-court appeal arises. Apart from challenge to the advertisement on the ground that contractual employee could not be replaced by another contractual employee particularly when the services of the petitioners were satisfactory, other grievance was that dispensing with the services of the petitioner keeping in view the certificates dated 21.10.2014 and 05.05.2015 was not justified.

3. The respondents, on the other hand, took up the stand that contract had been signed with the institution on 24.1.2014 in terms of condition No.7 in the appointment letter and as per the terms of the contract, services of the petitioner could be dispensed with at any time without assigning any reason whatsoever and without any notice. The petitioner had been relieved from duty w.e.f. 24.12.2014 on completion of approximately 11 months and that the same was in consonance with the terms and conditions of the appointment letter and the contract. Besides, Chief Accounts Officer had, vide letter dated 24.12.2014 reported that the work and conduct of the petitioner was not upto the mark/good, therefore, the writ petitioner services were no longer required. Certain irregularities in respect of pay bills/TA/DA/as well as overpayment and financial loss to the State had been found. Reliance was placed upon communication dated 14.03.2015 in support of the plea that the petitioner had been found responsible for gross negligence, serious irregularities, dereliction of duties, non-maintenance of essential financial

records in respect of over payment of ₹1,49,750/- on account of arrears of pay/salary from October 2013 to February 2014 to Smt. Sajjni, Staff Nurse along with other writ petitioner. Besides, the fact that both the petitioners had been relieved from duty, had been concealed from the Court. Hence, decision of the Division Bench in CWP No.5289 of 2007 (**Ashok Kumar and others versus State of Haryana and others**), decided on 24.01.2008 relied upon by the petitioners was distinguishable.

4. Replication was filed by the petitioner stating therein that there was a proposal for extension of the contract, therefore the stand of the respondents that his work and conduct was not satisfactory was unjustified. Reliance was placed upon experience certificate dated 21.10.2014 in support of the work and conduct of the petitioner being good. It was also averred that amount had been recovered from the employee concerned, namely, Smt. Sajjni, therefore, the petitioner was not at fault.

5. After hearing learned counsel for the parties, the learned Writ Court held that the petitioners were guilty of concealment of the fact that their services had already been terminated on 24.12.2014 prior to their approaching the Court in view of Annexure P-7 (colly) which had subsequently been placed on record by the petitioners along with replication where their experience was mentioned till 24.12.2014 as per certificate dated 05.05.2015.

6. The learned Writ Court also noticed the stand of the respondents that the writ petitioners were relieved on 24.12.2014 in view of the adverse report received from the Chief Accounts Officer on the same day even while noticing that the contract period was expiring on 23.01.2015 and that the termination was in accordance with the terms of the appointment.

7. In the aforementioned circumstances, the learned Writ Court concluded that the order of discharge was plain and simple and not punitive in nature besides, was in accordance with the terms and conditions agreed upon in the contract between the parties. The learned Writ Court further recorded that while approaching this Court on 8.1.2015 in one case and on 13.1.2015 in another case, the impression given by the petitioners was that the respondents were seeking to replace the petitioners by other contractual employees but the fact that their services had already been dispensed with w.e.f. 24.12.2014 was withheld whereas the petitioners were well aware of the aforesaid fact since the certificate of experience dated 05.05.2015 in both the cases was also in their possession whereas the pleading in paragraph No.6 was that they were being illegally relieved. The learned Writ Court concluded that on account of aforesaid concealment, the petitioners had continued in service for more than 2½ years, therefore, this Court was loath to grant any relief to them on said account also. The learned Writ Court also distinguished the Division Bench judgment in **Ashok Kumar's** case (supra) relied upon, on the ground that there was no issue in the said case as was in the instant case, namely, of the petitioners' services were not found up to the mark.

8. Learned counsel for the appellant/petitioner contended that order Annexure R-6 whereby the petitioner was informed that his services were no longer required after 24.12.2014 had not been served upon the petitioner as there was no mention in the said order to the above effect. The Writ Court had relied upon a few lines from paragraph No.6 of the writ petition to conclude that the petitioner had withheld the fact of dispensing with his services on 24.12.2014 whereas the averments made in paragraph No.6 were very clear that the

respondents were in process of removing the services of the petitioner and that the learned Writ Court had failed to notice the averments.

9. However, the aforementioned stand of the writ petitioner stands belied from the pleadings. In paragraph No.2 of the writ petition, it is clearly revealed that the petitioner was in service when the writ petition was filed. Relevant extract of paragraph No.6 of the writ petition is reproduced as under:

*“That the petitioner is having experience and requisite qualification for the post of Office Accountant with the Respondents from the last around two years. Now the Respondents are removing the petitioner from the post of contractual Office Accountant in illegal manner.”*

10. Likewise, relevant extract of paragraph No.3 of the grounds of appeal is reproduced as under:

*“The above averments made in the Writ Petition clearly show that the appellant was not working when the Writ Petition was filed and the prayer was made in the writ petition for continuing the services of the appellant.*

*Therefore, the Ld.Single Judge ought not to have non-suited the appellant on the ground that the appellant had concealed material facts from this Hon'ble Court.”*

11. That the experience certificate dated 05.05.2015 relied upon by the learned Writ Court for non-suiting the appellants was admittedly of a date later than the date of filing of the writ petition therefore, the appellants could not be imputed with the knowledge of relieving order dated 24.12.2014 on said basis. Although the learned Writ Court observed that the order of discharge was not punitive and was as per the terms of the contract inter-se the parties but while distinguishing the Single Bench judgment in CWP No.3526 of 2010 (**Rajiv**

**Kumar and others versus State of Haryana and others**) decided on 26.02.2010, the learned Writ Court observed that in the said case there was no issue as such to the effect that the petitioners' service had not been found upto the mark and that it was well settled in view of the decision of Hon'ble the Supreme Court in **Hargupartal Singh versus State of Punjab and others 2007(13) SCC 292** contractual employees ought to be allowed to work on contract basis till regular selection made on minimum pay scale. Besides, in **Rattan Lal and others versus State of Haryana and others 1985 (4) SCC 43**, the practice of discontinuing the services of contractual employees during summer vacations and re-employing them after summer vacations had been deprecated.

12. We have considered the submissions of learned counsel for the appellants and are of the view that no case as such has been made out warranting interference with the well reasoned order passed by the learned Writ Court.

13. Challenge in the writ petition was to the advertisement for the post of Accountant on contract basis on the ground that the contractual employee could not be replaced by another contractual employee. The Writ Court non-suited the writ petitioners on the ground of concealment of they not being in service while filing the writ petition and getting an interim order. A perusal of the extract of paragraph No.6 of the writ petition reveals the stand of the petitioners was that the respondents were removing them from the post of contractual Office Accountant in an illegal manner. On the basis of the same, it is evident in paragraph No.3 of the grounds of appeal that it was clear that the respondents were in the process of removing the services of the appellants whereas in the very same breath, in the same paragraph in the grounds of appeal, the appellants by relying upon the averments in paragraph No.2 of the writ petition that "petitioner was working on

the post of Accountant from last one year and his work and conduct was quite satisfactory with utmost regard to the respondents” contended that the said averments clearly show that the appellant was not working when the writ petition was filed and the prayer was made in the writ petition for continuing the service of the appellant, therefore, the learned Writ Court ought not to have non-suited the appellant on the ground of concealment of material facts.

14. We are afraid that the plea of non-concealment is misconceived as is evident from the following concluded lines (highlighted by us) which go to show the plea therein is that the petitioner was working as a contractual employee:

“(a) issue a writ in the nature of Certiorari for setting aside the Advt. No.12/2014 dated 30.12.2014 (Annexure P-1), whereby the respondents are advertising the post of Accountant on contract basis, on which petitioner is working as contractual employee.”

15. It is therefore, clear that the petitioners had taken up the stand that they were working on the date of filing of the writ petition i.e 07.01.2015. The contradictory stand of the writ petitioners is also evident from paragraph No.3 of the grounds of appeal. Be that as it may, we are satisfied that the writ petitioners concealed the fact of not being in service at the time of filing of the writ petition in view of prayer 'A' in the writ petition, as has been referred to above, as also the averments in paragraph No.3 of the grounds of appeal wherein the petitioners themselves have admitted that they were not working when the writ petitions were filed. The aforementioned averments negate the averments in the preceding part of paragraph No.3 of the grounds of appeal wherein the petitioners have mentioned that from the averments in paragraph No.6 of the writ petition, it was clear that the respondents were in the process of removing the

petitioners/appellants from the services.

16. We are of the view that a litigant who is guilty of concealment of material facts is not entitled to be heard on merits and is liable to be ousted at the threshold on the said ground alone. We are fortified in our view by the decision of Hon'ble the Supreme Court in **Dalip Singh versus State of U.P, 2010 (2) SCC 114** wherein while taking note of the fall from the high standards of morality cherished earlier in society with litigants now not hesitating from suppressing factual position in order to prevent truth from coming to light and of the requirement of such class of litigants who attempted to pollute the stream of justice to be dealt with appropriately, Hon'ble the Supreme Court observed as under:

“For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.”

17. Even otherwise, the writ petitioners had no right to continue in service in accordance with the terms and conditions of their appointment. As per Clause-2 of the letter of appointment, services of the petitioners could be terminated without any notice period on either side. Besides, as per Clause-7 of

the appointment letter, the contract was entered into between the petitioners and the institution on 24.1.2014. Clause-4 of the contract entered into between the parties which is relevant is reproduced as under:

“4. That the engagement of the person in the Medical College as above is a purely temporary arrangement on contract basis on 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.”

18. The order of discharge dated 24.12.2014 as has been placed on record of the learned Writ Court as Annexure R-6, reads as under:

“You were appointed for the post of Accountant on contract basis at DC rates for six months on which you had joined on 01.10.2013 (FN). Your contract period was extended for another six months which has also being expired on 30.09.2014. You are hereby informed that your services are no longer required after 24.12.2014 (AN).”

19. A perusal thereof reveals that the order of discharge is a discharge simplicitor and not punitive in any manner. Besides, as per the terms of contract inter-se the parties, no doubt the services of the petitioners were dispensed with as their work and conduct had not been found upto the mark but the same does not find mention in the order dispensing with their services vide order Annexure R-6 dated 24.12.2014. Reference in this context is made to the decision of Hon'ble the Supreme Court in **State of Uttar Pradesh and another versus Kaushal Kishore Shukla (1991) 1 Supreme Court Cases 691**. Relevant extract of the same is reproduced as under:

“The High Court held that the termination of respondent's services on the basis of adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportionate. it is unfortunate that the High Court has not recorded any reasons for this conclusion. The respondent had earned an adverse entry and

complaints were made against him with regard to the unauthorised audit of the Boys Fund in an educational institution, in respect of which a preliminary inquiry was held and thereupon, the competent authority was satisfied that the respondent was not suitable for the service. The adverse entry as well as the preliminary inquiry report with regard to the complaint of unauthorised audit constituted adequate material to enable to competent authority to form the requisite opinion regarding the respondents suitability for service. Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.”

20. The petitioners while approaching this Court on 8.1.2015 in one case and on 13.1.2015 in the other case gave the impression to the learned Writ Court that the respondents were seeking to replace them by another set of contractual employees whereas their services had already been dispensed with on 24.12.2014. However, aforementioned aspect of the matter was withheld from the learned Writ Court and incorrect averments were made in the writ petitions with a view to mislead the learned Writ Court and thereby to obtain interim orders favourable to the petitioners. Prayer 'A' in the writ petition as well as the averments in paragraph No.3 of the grounds of appeal go to show beyond an iota of doubt the concealment of the petitioners having been relieved from service and of the same not having been mentioned in the writ petition. The petitioners have thereby continued in service for more than 2½ years after having obtained an interim order by concealment and suppression of material facts. The Division Bench judgement

relied upon is not applicable in the facts and circumstances of the case in view of the fact that the action was taken against the petitioners in accordance with the terms and conditions of the appointment.

21. Resultantly, finding no merit, the appeals are dismissed in limine.

**(RAJESH BINDAL)**  
**JUDGE**

**(B.S. WALIA)**  
**JUDGE**

**January 16, 2018**

**ps**

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