

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

LPA No. 884 of 2018 (O&M)

Date of Decision: 09.07.2018

State of Haryana and others

.....Appellants

versus

Kushal Sharma and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the appellants.
Mr. Rajneesh Chadwal, Advocate, for respondent No.1.

KRISHNA MURARI, C.J.(oral)

CM Nos. 2414-LPA of 2018 and 2416-LPA of 2018

Heard. For the reasons mentioned in the applications duly supported with affidavit, delay of 57 days in filing and 130 days in re-filing the appeal is condoned. Both the applications stand disposed of.

LPA No. 884 of 2018 (O&M)

This intra-court appeal has been filed under clause X of the Letters Patent by the State of Haryana challenging the judgment and order dated 26.05.2017 passed by the learned Single Judge allowing the writ petition filed by the respondent No.1 challenging the order dated 10.09.2012 terminating his services.

2. Admittedly, the respondent-petitioner was appointed on the post of Craft Instructor Fitter on contractual basis after having participated successfully in the process of selection. He joined the services on 16.01.2009 at I.T.I. Bitna, Kalka. Just after two days of his joining on

19.01.2009 he was required to raise his demand for purchasing tables, chairs, benches and other equipments. The quotations were invited and a comparative statement was prepared by the store keeper for the purpose of issuing purchase order for the lowest bidder. Admittedly, the comparative statement was counter signed by one Mr. Kitab Singh, DDO, who was also holding the charge of Principal of ITI concerned, Mr. Charan Singh, Mechanist Instructor, Mr. Radhey Sham, Welder Instructor, Mr. Darshan Kumar, Assistant Architecture and the present petitioner/respondent No.1. Subsequently, a complaint was made by Mr. Charan Singh, Mechanist Instructor against Mr. Kitab Singh, Incharge, Principal of the ITI concerned leveling allegations regarding purchase of material of inferior quality at a price higher than the market price. A committee of Assistant Director (Technical) and Assistant Director (Training) was constituted to look into the complaint and accordingly the committee submitted its report that it was the respondent-petitioner who verified the purchased material and was responsible for purchasing the substandard quality material at higher rate and accordingly his services were terminated vide order dated 06.04.2012.

3. The aforesaid order was challenged by the respondent-petitioner by filing Civil Writ Petition No.16368 of 2012 alleging that he was not involved in any manner in the process of purchase of the material in question and it was the Principal of the ITI in his capacity as Chairman of the Purchase Committee who was responsible. It was also pleaded that without adverting to the representation submitted by him to the Director, Industrial Training Department, an advertisement for making fresh appointment on the post held by him has been issued. The said writ petition was disposed of by this Court vide order dated 24.08.2012 commanding the Director, Industrial Training Department, to take a decision upon the

representation made by the respondent-petitioner within 10 days. Liberty was given to the respondent-petitioner to make supplementary representation/appeal and the proceedings for making fresh appointment were directed to be kept in abeyance.

4. In pursuance to the liberty given by this Court, the petitioner-respondent made a supplementary representation. However, vide order dated 10.09.2012 passed by the Director General, Industrial Training Department, Haryana, the representation was rejected and the order terminating the services passed on 06.04.2012 was affirmed.

5. Learned Single Judge summoned the original record and on perusal thereof has recorded a finding that the comparative statement for the purchase of material/equipment was signed by Mr. Darshan Kumar, Assistant Architecture, and he had even okayed the material relating to his trade and has taken into his charge such material. Said Mr. Darshan Kumar, was also found guilty with regard to purchase of material/equipment along with present petitioner amongst others but his services were thereafter regularized for which there was no justification available with the State. Learned Single Judge found that the petitioner-respondent was not even member of the Purchase Committee.

6. On analysis of the original record, the learned Single Judge has also found that the impugned action has been taken with a pre-determined mind inasmuch as while considering the representation made by the respondent-petitioner. In the inquiry report of Shri Narender Kumar the present respondent-petitioner has not been shown as an accused. The stand taken by the respondent-petitioner that he joined the institute only on 16.01.2009 on contractual basis and demand for the material was obtained by him on 19.01.2009 and thereafter the petitioner had no knowledge about

when the quotations were received and the purchase order was issued and it was only on 28.01.2009 he was required to sign the comparative statement. All the aforesaid facts have not been adverted to by the authority while passing the impugned order dated 10.09.2012 rejecting the representation.

7. Relying upon the pronouncements of the Hon'ble Apex Court in the cases of *E.P.Royappa v. State of Tamilnadu 1974(1) S.L.R. 497*, and *Manager, Government Printing Press and another v. D.B.Belliappa AIR 1979 SC 429* holding that protection of Articles 14 and 16 of the Constitution is equally available to a temporary government servant if the action of the employer is found to be arbitrary or discriminatory, since in the case in hand, even though the engagement of the respondent-petitioner was contractual in nature, the order of dispensing his services was illegal, arbitrary and purely discriminatory in nature and taken with pre-determined mind and hence was in violative of articles 14 and 16 of the Constitution of India. On the basis of the record produced before him, the findings have been recorded by the learned Single Judge and the writ petition was allowed.

8. The arguments raised before us are the same as urged before the learned Single Judge that since the petitioner-respondent was a contractual employee, his services were terminated in accordance with the terms of the agreement, hence no interference was required.

9. The argument raised before us has been considered in detail by the learned Single Judge and based on the settled legal propositions as well as after analysis of the factual aspect of the matter, the impugned termination order has been set aside holding to be violative of Articles 14 and 16 of the Constitution of India.

10. In the facts and circumstances we are also of the considered view that the action taken against the petitioner-respondent is purely arbitrary and discriminatory. In view of the above facts and discussion we do not find any infirmity or illegality in the impugned judgment of the learned Single Judge which may require interference.
11. Appeal thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.07.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√