

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

**CWP No.14647 of 2019 (O&M)
Date of decision:27.09.2019**

Mohit ... Petitioner
Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Puneet Jindal, Senior Advocate with
Mr. Tajinder Singh, Advocate
for respondent no.4.

AMIT RAWAL J. (Oral)

Grievance of the petitioner in present writ petition is that without holding any enquiry or being charge-sheeted, dehor of the fact that he had been appointed on contract basis as a Civil Engineer through outsourcing agency, his services vide impugned order dated 20.05.2019 (Annexure P-6) have been terminated, .

The facts culminating into filing of writ petition are that since 2016 petitioner holder of Diploma from Kurukshetra University was working as Junior Engineer through outsourcing agency in Municipal Council, Kaithal, on contractual basis on monthly salary of Rs.19,500/- per month. His services were extended from 03.10.2016 to 02.10.2017, vide letter dated 15.09.2017 and thereafter, vide letter dated 03.10.2018, was

informed that his period of one year service is going to expire on 03.10.2018. Apprehending replacement by another set of contractual employees, the petitioner approached this Court by filing CWP No.25417 of 2018 and this Court while issuing notice of motion protected the petitioner of not being relieved until and unless the regularly selected candidate is appointed or the work and conduct of petitioner is not found to be satisfactory. The order reads as under:-

“Notice of motion for 18.03.2019.

In the meantime, the petitioners shall not be relieved unless regularly selected candidate is appointed or the work and conduct of the petitioners is not satisfactory and if they have to be replaced, the principle of 'last come first go' will be applied.

03.10.2018

*(Ritu Bahri)
Judge”*

Mr. S.K.Garg Narwana, learned Senior Counsel assisted by Mr. Naveen Gupta, Advocate appearing on behalf of the petitioner submitted that petitioner alongwith 10 (ten) other officials have falsely been implicated in FIR No.128 dated 25.03.2019 under Sections 409, 420, 120-B of Indian Penal Code and Sections 7 and 13 of Prevention of Corruption Act, 1988 registered at Police Station Kaithal City, District Kaithal.

On the basis of aforementioned FIR, Deputy Commissioner/respondent No.3 directed respondent no.4-Executive Officer to send proposal within two days for conducting departmental action. On the basis of information, respondent no.4 vide letter dated 20.05.2019

(Annexure P-6) informed the petitioner that his services have been terminated on the ground of registration of FIR. The aforementioned action is totally punitive in nature, for, neither he was afforded any opportunity nor any charge-sheet has been served.

It is settled law that both departmental and criminal proceedings can go side by side. The investigation (Annexure P-10) was conducted by the Committee consisting of Account Officer, Executive Engineer and Additional Deputy Commissioner, opining that only procedural lapse was found on the part of employees but there is no financial loss. On the basis of recommendation of enquiry (Annexure P-16) conducted by Committee consisting of Chief Engineer, Deputy Commissioner, Municipal Corporation, Karnal and Account Officer, Director General, ULB Department, Haryana Panchkula, there is no financial loss except some procedural lapse and thus, submitted that impugned order is not sustainable and liable to be set aside.

Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. Tajinder Singh, Advocate appearing on behalf of respondent no.4 submitted that report, Annexure P-16 has not been accepted by the Government and sanction vide order dated 13.09.2019 for prosecuting Mohit Kumar and other employees in respect of FIR, aforementioned has been granted. The writ petition is not maintainable against private contractor, for, at the best, petitioner, could have vindicated the grievance in the pending writ petition, if any. The petitioner is not a direct employee nor could have any grievance against Municipal Council and remedy lies

elsewhere and thus, urged this Court for dismissal of writ petition.

I have heard learned counsel for parties and appraised the paper book. The argument of Mr. Jindal with regard to indirect relationship between employer and employee cannot be accepted in view of provisions of Contract Labour (Regulation and Abolition) Act, 1970 wherein it has been held that dehor of employment through contractor the relationship of employer and employee would not cease to exist. Dehor of the fact that petitioner was on contractual basis and his services were extended from time to time i.e. till 03.10.2018 when this Court protected the petitioner in view of the law laid down by the Hon'ble Supreme Court in **Hargurpratap Singh Vs. State of Punjab and others 2007(13) SCC 292** but once it was found to be involved in FIR, the manner and mode in which impugned order dated 20.05.2019 (Annexure P-6) which is extracted herein below, has been passed cannot be sustained as he was required to be confronted, i.e. the cause which could be defended in the alleged enquiry conducted by two Committees:-

“In this matter, District Attorney, Kaithal has opined that an appropriate action which is required against Sh. Mohit Kumar, JE (Outsourcing) after lodging the presently FIR may kindly be taken accordingly. Deputy Commissioner, Kaithal, has passed an order that “Sh. Mohit Kumar, JE. (Outsourcing) Municipal Council Kaithal to be removed from service in view of FIR lodged against him in present case as recommended by District

Attorney.”

So, in compliance of the above orders, the services of Sh. Mohit Kumar, Junior Engineer (Outsourcing), Municipal Council, Kaithal, are terminated with immediate effect.

*Sd/-
Executive Officer,
Municipal Council, Kaithal
Dated 20.05.2019”*

Neither principle of last opportunity has been complied with nor action has been taken against other regular employees regarding suspension etc.

In these circumstances, I am of the view that impugned order is not sustainable in the eyes of law and same is hereby set aside with a rider that respondents are at liberty to take action against the petitioner in accordance with law. The respondents are directed to allow the petitioner to join the services on usual terms and conditions on which he was already working and payment of wages would be subject to the outcome of disciplinary proceedings contemplated, if any.

Writ petition stands allowed.

**(AMIT RAWAL)
JUDGE**

September 27, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No