

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

212

Civil Writ Petition No.20361 of 2014
Date of Decision: July 17th, 2019

Dayanand Arya and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Verma, Advocate
for the petitioners.

Mr. Manish Dadwal, Assistant Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the termination of their services by respondent No.3-Deputy Director, ESI Health Care, Haryana, vide order dated 12.09.2014 (Annexure P-5), whereby their services as Assistant on contractual basis were not continued and they were ordered to be relieved with immediate effect.

2. It is the contention of learned counsel for the petitioners that as per the terms of agreement dated 21.04.2014 (Annexure P-4) between the petitioners, who are retired employees of the department and the respondent-department, the term of appointment was upto 30.09.2014. There is nothing mentioned in the agreement which would indicate that their services could be terminated prior to the said period of engagement. His further contention is that persons, who were engaged subsequent to the petitioners, have been retained in service while terminating the services of the petitioners. He, thus, contends that the order of termination cannot sustain and deserves to be set aside and petitioners be allowed to continue in service, especially when persons who were engaged subsequent to them have been allowed to continue with the respondent.

3. On the other hand, learned counsel for the respondents has stated that the engagement of the petitioners is as per policy dated 16.02.2009 (Annexure R-7) of the Government for outsourcing and contractual employment. According to the said policy, in Part-II clause 2, which deals with engagement of persons on contractual basis where regular posts exists, clause 2 states that the services of such contractual employees can be terminated at any time without assigning any reason or prior notice. He, thus, contends that the termination of the petitioners being in consonance with the policy of the Government, under which they have been engaged, cannot be said to be unjustified and illegal. That apart, he asserts that there is no concept of any seniority in the contractual employment as the employees are engaged on contractual basis and continue for the period for which they have been appointed subject to the conditions of the policy which gives unfettered powers to the respondent department to terminate the services of any contractual employee. Assertion has thus been made that the writ petition deserves dismissal.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings as well as documents on record.

5. It is not in dispute and rather admitted by both the parties that appointment of the petitioners was purely contractual in nature and based upon the agreement, which the petitioners had entered into with the respondent department. Identical contracts have been entered into by the petitioners with the respondents which is dated 21.04.2014 (Annexure P-4).

The terms and conditions of the agreement read as follows:-

*“NOW, THEREFORE, THIS AGREEMENT WITNESSTH
AND IT IS HEREBY AGREED BY AND BETWEEN THE*

PARTIES AS UNDER:-

- 1. The services of a person engaged by the Department shall be upto 30-09-2014;*
- 2. The persons shall be engaged for fixed monthly remuneration not less than as prescribed in the minimum Wages Act, 1948(Act XI of 1948) or as may be fixed by the Deputy Commissioner under the said Act;*
- 3. The services of the person so engaged shall hereafter cease on the expiry of the terms without providing her any claim for the regularization of services or any other consequential benefit; and also services would cease as soon as the regular incumbent joins.*
- 4. The person so engaged shall not have any legal right claiming regularization of his services etc. in the Department where he has been engaged.*
- 5. The Department shall issue Identity Card on its own name to the person engaged for rendering services. The Department may refuse the entry into its premises of the person not bearing the said identity card and not being properly dressed;*
- 6. The services rendered by the person engaged by the Department shall be under the close supervision of the Department;*
- 7. It is understood between the parties hereto that only the Department shall have the right to take disciplinary action against the person so engaged;*
- 8. The Department shall under no circumstances be deemed or treated as the employer of the person engaged for any purpose, whatsoever, nor Deptt. would be liable for any claim(s) whatsoever of any such person;*
- 9. In case of the death of a person, his remuneration shall be paid to his legal heirs.”*

6. Perusal of the above conditions of the contract would indicate various conditions mentioned therein, one of which is that the services of the person engaged by the department shall be upto 30.09.2014. In the said

termination of the services in between i.e. prior to the expiry of the term of the engaged employee. The stand of the State that the engagement of the petitioners was as per the policy dated 16.02.2009 (Annexure R-1) and reliance for support of terminating the services of the petitioners prior to the expiry of the term has been placed upon Part II clause 2 of the said policy, which reads as follows:-

“2. In doing so, it should, however, be clearly stipulated in the advertisement and the requisition to the Employment Exchange as well as the offer letter that such engagement will be purely contractual in nature and can be terminated at any time without assigning any reason or prior notice and the persons so engaged shall have no right to claim either regularization or any other benefit of such engagement for any purpose in the office in which they are so engaged or in any other office of the State Government.”

7. Perusal of the above clause would show that it was the requirement as per the policy to clearly stipulate in the advertisement and the requisition to the employment exchange including that of the appointment letter that the said employment is purely contractual in nature and can be terminated without assigning any reason or prior notice. Although it is mentioned that it is purely contractual engagement but there is nothing mentioned either in the offer letter or the contract dated 21-04-2014 (P-4) that the engagement can be terminated at any time without assigning any reason or prior notice. In the absence of this clause being there in the agreement terms which have been reproduced above while engaging the petitioners, the said clause could not have been relied upon by the respondents or enforced against the petitioners. The termination of the petitioners, therefore, being not in consonance with the terms of the

the expiry of the period i.e. upto 30.09.2014. The order of termination is dated 12.09.2014, which according to the petitioners, has been served on them on 15.09.2014, petitioners would be entitled to the benefits of the agreement dated 21.04.2014 (Annexure P-4) till 30.09.2014. The consequential benefits be released to the petitioners within a period of four weeks from today.

8. Since the termination of the services of the petitioners is not as per the provision of their contract, they are held entitled to the grant of interest at the rate of 7% per annum from the date it became due i.e. 30.09.2014 till the date of disbursement.

9. As regards the stand of the counsel for the petitioners that the persons, who were engaged subsequent to the petitioners, have been retained in service and, therefore, would be junior to them, suffice it to say in contractual appointment, especially of the nature where the petitioners have been engaged and that too after retirement, such a plea cannot be accepted as there is no seniority maintained by the department qua retired employees. The said plea, therefore, stands rejected.

10. The writ petition is partly allowed with above observations.

July 17th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No