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

**CWP-19281-2018 (O&M)
Date of decision : 14.10.2019**

Rashmi Sharma

... Petitioner

Versus

Mewat Development Agency and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagbir Malik, Advocate
for the petitioner.

Ms. Samridhi Sareen, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

CM-6941-2019

For the reasons stated in the application, which is supported by an affidavit, written statement along with annexures are taken on record, subject to all just exceptions.

CM stands disposed of.

MAIN CASE

Challenge in present writ petition is to the impugned order dated 22.12.2015 (Annexure P-8) passed by respondent No.2, whereby services of the petitioner have been terminated and order dated 10.07.2018 (Annexure P-17), whereby appeal preferred by petitioner against termination order, has been dismissed, with a further prayer for appropriate

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direction to respondents to reinstate him with continuity of service, back wages and all other consequential benefits, also for regularization w.e.f. 10.04.2017, having completed five years of service, in view of resolution dated 05.07.2010 (Annexure P-11).

The facts, which are borne out form the pleadings of parties, are that the respondent-Mewat Model Schools Society, Nuh, (A Society registered under Societies Act, 1860), runs eight Model Schools in Mewat, funded by the Government of Haryana through Mewat Development Agency to the extent of deficit. In pursuance to advertisement, caused in the year 2012 by the Society, for filling up number of posts including the post of Trained Graduate Teacher (TGT) Music, on contractual basis, with a consolidated salary, the Selection Committee was constituted consisting of Education Officer of the Mewat Model Schools Society, Principals of 2 or 3 Schools and representative of Mewat Development Agency. About 150-200 candidates including the petitioner were interviewed. Petitioner came out with a flying colour and was appointed vide appointment letter dated 09.04.2012 (Annexure P-2), for the academic year 2012-13, on consolidated salary of ₹15840 per month. Accordingly, she joined and continued for further academic years, as new appointment letter, at the end of the session, was issued after giving a break of one or two days. Reliance has been laid to Annexure P-3 to P-5. Petitioner was flabbergasted to receive show cause notice dated 23.10.2015 (Annexure P-6), on the allegation, that Principal, Punhana, reported that the petitioner had not been taking the interest in work, rather obtained medical leave to rebut show cause notice envisaging opportunity of 3 (three) days to file reply, which was duly replied, vide Annexure P-7, dated 03.11.2015, wherein it was clarified that she had been

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taking full interest in her job nor tampered with any medical certificate. Without issuing any charge-sheet and holding of enquiry by the authority, her services, vide order dated 22.12.2015 (Annexure P-8), have been dispensed with.

Mr. Jagbir Malik, learned counsel appearing on behalf of the petitioner submitted that petitioner, regarding contents of letter (A to F) attached to the termination letter, never received any communication, prior to issuance of show cause notice dated 23.10.2015. Termination order reveals that reliance was on some reports submitted by the Principal, Mewat Model School, but was never confronted with. Respondents, in such circumstance, were required to find veracity and genuinity of the alleged complaint/allegations, referred to above. In fact, husband of the petitioner is posted as Sub-Divisional Officer (Electrical), Dakshin Haryana Bijli Vitran Nigam, Nuh and had inspected the house of respondent No.4 and since then, had been nursing rancour against the petitioner, even threatened petitioner of dire consequences, thus, was instrumental. However, petitioner against termination order, approached this Court, vide CWP No.1952 of 2016. It was disposed of, on the basis of preliminary objection of alternative remedy of appeal. Accordingly, appeal was filed before Educational Tribunal. The Tribunal, while dismissing the appeal, has not taken into consideration all these facts. Reliance has been laid to the judgment dated 31.01.2001 (Annexure P-14) to say that where termination, even of contractual employee, attributed on the basis of misconduct, the regular enquiry is required mandatorily and in the absence of the same, the impugned orders i.e. one passed by the respondent No.2 as well as Tribunal, cannot be said to be sustainable and liable to be set aside.

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Ms. Samridhi Sareen, Advocate for Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of the respondents opposed the prayer of Mr. Malik, by submitting that terms and conditions of the appointment, which was totally contractual, do not reveal any provision for holding of enquiry, though principles of natural justice have been complied with. At the best, entitled to one month's salary, in lieu of one month's notice, but not compensation or any wages for unexpired period of contract or fixed period of employment. Respondents, in such circumstances, were within the power to terminate the services. Petitioner could not be served with the charge-sheet or holding of enquiry, on account of her contractual employment, thus, urges this Court for dismissal of present writ petition.

I have heard learned counsel for parties, appraised the paper book and of the view that there is force and merit in submissions of Mr. Malik, for, the law with regard to initiation of enquiry proceedings against the contractual employee, having attributed of misconduct, is no longer *res integra*, in view of *ratio decidendi* culled out by Hon'ble the Supreme Court in **"A.P. State Fed. of Coop. Spinning Mills Ltd. V/s P.V. Swaminathan" 2001 (10) SCC 83** and by the Division Bench of this Court in **"Union Territory of Chandigarh and others V/s Central Administrative Tribunal, Chandigarh Bench and others" 2011 (1) SCT 777.** For the sake of brevity, relevant findings of the judgments read as under:-

"Para No.3 of A.P. State Fed. of Coop. Spinning Mills Ltd.'s case (supra)

3. The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by court. But the court is not debarred

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from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. The decision of this Court relied upon by Mr. K. Ram Kumar also stipulates that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive of passing the order of termination, and it is in that sense in the counter-affidavit. It can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining the assertions made in paragraphs 13 and 14 of the counter- affidavit, in the present case it would be difficult for us to hold that in the case in hand, the employer appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.

Para No.10 of Union Territory of Chandigarh's case (supra)

A perusal of the aforesaid para would show that even in a case of contract of service if the termination is founded on a misconduct then it has to be regarded as a punishment because it is manifest in the order itself. The aforesaid judgement holds the field even today which is evident from the perusal of judgements of Hon'ble the Supreme Court in the cases of State of U.P. v. Kaushal Kishore Shukla 1991(1) SCC 691 and P.

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V.Swaminathan's case (supra). However, in the aforesaid judgements it has been observed that a temporary government servant has no right to hold the post and whenever the competent authority is satisfied that work and conduct of a temporary government servant is not satisfactory or that his continuation in service is not in public interest on account of his inability, mis-conduct or inefficiency it may either terminate the service in accordance with the terms and conditions of service or the relevant rules or it may decide punitive action against the government servant. The observations made in para 7 of the judgement in the case of Kaushal Kishore Shukla's case (supra) reads thus:

“7. A temporary Govt. servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it 'is by way of punishment. It is now wellsettled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36 a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant is punitive in nature. The Court further held that

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in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Govt. servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and Anr. v. Ram Narayan Das AIR 1961 SC 177; R.C. Lacy v. The State of Bihar and Ors. C.A. No. 590/62 decided on 23.10.1963; Champaklal Chimanlal Shah v. The Union of India AIR 1964 SC 1854; Jagdish Miner v. The Union of India AIR 1964 SC 449; A.G. Benjamin v. Union of India C.A. No. 1341/66 decided on 13.12.1966 and Shamsher Singh and Anr. v. State of Punjab (1974)2 SCC 831 , These decisions have been discussed and followed by a three Judge Bench in State of Punjab and Anr. v. Shri Sukh Raj Bahadur AIR 1968 SC 1089. ”

If at all, the Department/respondent was so concerned about the conduct of petitioner, nothing prevented, to hold an appropriate enquiry after confronting the petitioner with all allegation, if any and prove. It would be very convenient for the employer to do away with enquiry by taking the aid of the terms and conditions of the appointment letter. The act

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of partiality or biasness cannot be ruled out. There were allegations and cross-allegations, which, in my view, were required to be gone in detail and that can be done only by examining the witnesses and proof of the documents. All these facts have not been taken into consideration by the Tribunal. Accordingly, order of the Tribunal as well as termination order , being un-sustainable, illegal and fallacious, are hereby set aside. The respondents/Department are directed to allow the petitioner to continue to work and grant all permissible benefits. However, this will not prevent the respondents/Department to hold appropriate enquiry, in accordance with law, if they chose so.

With the aforesaid observations, the present writ petition stands allowed.

14.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No