

(230) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28492 of 2017 (O&M)
Date of decision: 10.04.2019.

Poonam Siwach Petitioner
Versus

State of Haryana and others. Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. D.S. Nalwa, Addl. AG, Haryana.

B.S. WALIA, J.,

1. Learned counsel for the petitioner states that he does not press the writ petition qua respondent No. 4 therefore his name be deleted from the array of respondents. In view of the statement of learned counsel for the petitioner, respondent No. 4 is deleted from the array of respondents.
2. Prayer in the writ petition is for quashing of order Annexure P/3 dated 08.12.2017 passed by respondent No.3 terminating the service of the petitioner from the post of Staff Nurse and for directing the respondents to reinstate her in service along with all consequential benefits.
4. Brief facts of the case are that the petitioner was appointed as Staff Nurse on contractual basis vide appointment letter Annexure P/1 dated 06.12.2011, on consolidated honorarium of ₹10,340/- per month, with the condition that her performance would be reviewed after two months and if her work and conduct was not found satisfactory, her contract would not be extended. However, the petitioner was continued in service vide orders passed from time to time and collectively attached along with the writ petition as Annexure P/2.

5. Grievance of the petitioner is that her services were terminated by respondent No. 3 vide order Annexure P/3 dated 08.12.2017 on the directions of respondent No.4 on the basis of allegations dated 29.11.2017 without conducting an inquiry and granting her opportunity of hearing.

6. Reply has been filed by respondent No.3 on behalf of respondent Nos.1 to 3, admitting the petitioner to be working as Staff Nurse on contractual basis in Community Health Centre, Uklana, with the contract to expire on 31.03.2018 that pregnant lady levelled allegations against the petitioner that on visiting Community Health Centre, Uklana (hereinafter referred to as CHC, Uklana) on 29.11.2017 she approached the petitioner for help for admission in CHC Uklana for her medical examination and delivery as she was known to her but, the petitioner, for extraneous considerations, convinced her to get her delivery done from Nav Jiwan Hospital by stating that the facilities at CHC, Uklana were not satisfactory. On her going to said hospital, the petitioner and doctors of said private hospital at the time of admission, convinced her that total expenses for her treatment/delivery would be between Rs.3,000/- to Rs.4,000/-, but on her medical examination detecting her to be HIV positive, she was charged Rs.17,000/- besides leaking out information of her being HIV positive as a result of which she faced great harassment.

7. The reply also mentions about a video clip qua the incident uploaded on 'YouTube' for which explanation was sought by respondent No. 3 from the petitioner within two days of receipt of Show Cause Notice Annexure R-3/1 dated 04.12.2017 as to why disciplinary action be not taken against her for misleading and referring a patient to a private hospital for her vested interest.

8. The petitioner submitted reply to the Show Cause Notice vide Annexure R3/2 dated 05.12.2017, but the same was found to be unsatisfactory and vide order Annexure R3/3 dated 08.12.2017, respondent No.2 i.e. Civil Surgeon, Hisar constituted a three members committee to conduct an inquiry into the allegations leveled against the petitioner.

9. That the reply further mentions that the committee conducted a comprehensive inquiry, recorded statement of the complainant attending Dr. Seema, other staff of Nav Jiwan Hospital, perused medical examination record of the complainant and thereafter arrived at a finding that the petitioner had miserably failed to discharge her duties. Reply also mentions that the inquiry established that the petitioner had deliberately advised the patient to get her delivery done from a private hospital and of the same demonstrating her irresponsible behaviour for vested interest i.e. claiming a commission and in view of misconduct attributed to the petitioner having been duly established in the enquiry, respondent No.2 directed respondent No.3 to immediately terminate the contract of the petitioner in public interest and in compliance of communication Annexure R-3/5 dated 08.12.2017, respondent No.3 terminated the contract of the petitioner vide order Annexure P/3 dated 08.12.2017.

10. Learned counsel for the petitioner contended that in the aforementioned background, the impugned order of termination was stigmatic and liable to be set aside on account of having been passed without conducting a regular inquiry or associating the petitioner with the inquiry or giving her opportunity of hearing in respect thereto.

11. Per contra, learned Addl. Advocate General, Haryana contended that the impugned order was passed on the basis of inquiry conducted by a committee and its recommendations to terminate the contract

as the allegations leveled against the petitioner had been found to have been established before the Committee. Learned Additional Advocate General further contended that the petitioner was afforded an opportunity to furnish clarification regarding the incident, but, she deliberately mislead the authorities. Moreover, there was a specific condition in the appointment letter of the petitioner, that her services could be terminated, if her act and conduct was found to be unsatisfactory and further that the petitioner had tried to mislead by taking up the plea that the action of discontinuation of her contract was on the recommendations of respondent No.4, whereas the petitioner's services were terminated by respondent No. 3 on the advice of respondent No. 2 based on the recommendations of the Committee which had found the petitioner guilty in the inquiry.

12. I have considered the submissions of learned counsel for the parties.

13. Relevant extract of the order of termination of services of the petitioner is reproduced as under:-

“In reference to video clip uploaded at you tube in which Smt. Poonam wife of Shri Pardeep Staff Nurse CHC, Uklana was involved in advising patient to go to private hospital for delivery purpose instead of rendering services at CHC, Uklana. It has been decided in public interest to terminate the contract of Smt. Poonam wife of Padeep Staff Nurse immediately due to her alleged involvement in malpractice.

Sd/-

08.12.2017.

SMO-cum-Chairman, CHC, Uklana.”

14. A perusal of the impugned order reveals that it was in the context of video clip uploaded on ‘YouTube’ qua the petitioner indulging in malpractice of advising a patient to go to a private hospital for delivery

instead of availing service at CHC, Uklana that it was decided in public interest to terminate the contract of the petitioner as Staff Nurse. Perusal of details given above further reveals that the impugned order was passed by respondent No. 3 on the directions of respondent No.2 on the basis of misconduct alleged against the petitioner having been established in the enquiry conducted by the Committee. Reply filed by respondent No. 3 on behalf of respondent Nos.1 to 3 categorically mentions that a show cause notice was issued to the petitioner and her explanation sought vide Annexure R3/1 dated 04.12.2017, with regard to the video clip uploaded on 'YouTube' in which the petitioner is alleged to have advised the patient to get treatment from a private hospital instead of CHC, Uklana, to which the petitioner filed a reply vide Annexure R3/2 on 05.12.2017, but the Civil Surgeon, Hisar, not finding the reply satisfactory constituted a three members committee vide memo dated 08.12.2017 where after detailed and comprehensive inquiry was conducted by the committee and during the course of inquiry, statement of the patient as well as doctor who conducted the delivery besides staff of the private hospital was recorded, Medical record pertaining to examination of the patient was perused and a finding was recorded on same day that the petitioner had miserably failed to discharge her duties as per prescribed procedure as despite the patient remaining in the hospital for 30/40 minutes, she did not get the patient admitted in CHC, Uklana nor consulted any doctor or any other staff member on duty, instead deliberately advised the patient to get her delivery done from a private hospital on the pretext of inadequate and insufficient facilities and poor infrastructure in CHC, Uklana. Contents of paragraph Nos.7 to 9 of the reply further categorically mention that the committee found the misconduct attributed to the petitioner duly established leading to

respondent No.2 directing respondent No.3 to terminate the contract of the petitioner due to her alleged involvement in malpractice. Categorical stand has been taken in paragraph No. 8 of the reply that it was in compliance of communication Annexure R3/5 that respondent No.3 terminated the service of the petitioner vide Annexure P/1 dated 08.12.2017.

15. In **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, 1999 (3) SCC 60**, Hon'ble the Supreme Court was pleased to hold that that in case of findings arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental inquiry, simple order of termination would be treated as founded on allegations, consequentially, bad. Relevant extract of the aforementioned decision is reproduced as under:-

“18. On the basis of the above contentions, the following points arise for consideration :

- (1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive ?
- (2) When can an order of termination of a probationer be said to contain an express stigma ?
- (3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination ?
- (4) To what relief ?

Point No.1

21. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the inquiry was not held, no

findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

In the light of the above principles, laid down in R.S. Gupta's case we do not think anything more is to be added. Point 1 is decided accordingly.”

16. In view of the order of termination having been passed on account of the alleged involvement of the petitioner in malpractice as per video clip uploaded on ‘YouTube’ advising a patient to go to a private hospital instead of getting her admitted in CHC, Uklana, as also of the stand in paragraph Nos.7 to 9 of the reply that the committee found the misconduct attributed to the petitioner duly established, consequentially respondent No.2 directed respondent No.3 to terminate the contract of the petitioner and order Annexure P/1 dated 08.12.2017 terminating the contract of service of the petitioner was passed by respondent No. 3 in compliance of orders of respondent No. 2 i.e. Annexure R3/5 on account of the misconduct alleged against the petitioner having been established in the enquiry and the petitioner not having been associated with the enquiry except for giving of show cause notice Annexure R-3/1 dated 04.012.2017 while the enquiry was conducted on 08.12.2017 where statements of complainant, attending doctor

as well as staff of the private hospital were examined and medical record of the complainant perused, it is clear beyond an iota of doubt that the order of termination of services (contract) of the petitioner is founded on allegations of misconduct. Admittedly, the same was passed without conducting a regular inquiry and giving the petitioner the evidence collected against her during the course of inquiry and which was relied against the petitioner without giving her an opportunity to rebut the same, leading evidence in defence besides cross-examining the complainant as well as Dr. Seema and other staff of the private hospital. Reference in this connection can also be made to the decision of a Hon'ble Division Bench of this Court in case titled as **Satvir and another vs State of Haryana and others 2016 (1) SCT 506** wherein a contract awarded in favour of contractors was terminated on allegations of irregularities committed by the contractors but without conducting an enquiry in accordance with law i.e. by associating the contractors, supplying them copies of the complaints, statements of complainant and witnesses recorded during the enquiry and without affording them a chance to confront the complainant and other witnesses etc. The Hon'ble Division Bench held that the inquiry conducted was in violation of the principles of natural justice. Consequentially, the impugned orders were set aside and the matter remanded to the Director General, Health Services, Haryana for conducting a fresh inquiry against the contractors in accordance with the principles of natural justice and till finalization of the enquiry, the contractors were permitted to continue with the work allotted to them.

17. In the light of the position as noted above, the writ petition is allowed. The impugned stigmatic order curtailing the contractual appointment of the petitioner is legally unsustainable and is accordingly set

aside and the petitioner reinstated in service. However, in view of the decision of a Hon'ble Division Bench of this Court in **Union Territory of Chandigarh and others vs. Central Administrative Tribunal, Chandigarh Bench and others 2011 (1) SCT 777**, liberty is granted to the respondents to pass a fresh order in accordance with law. The petitioner would be entitled to wages w.e.f. date of setting aside of the impugned order. However, entitlement to back wages would be dependent on the fresh orders passed by the competent authority in accordance with law.

18. Writ petition is allowed in aforementioned terms.

(B.S. Walia)
Judge

10.04.2019

rajesh.k.khurana

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.