

CWP-27538-2018 (O&M)

102

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

**CWP-27538-2018 (O&M)
Date of decision : 15.10.2019**

Harish Kumar and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dinesh Singh Rawat, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

Petitioners, two in number, have sought indulgence of this Court under Article 226 of the Constitution of India for quashing the orders dated 19.09.2018 (Annexures P-3 and P-4), whereby their services have been terminated.

Facts which emanate from the pleadings of parties, are that petitioners, vide appointment letter dated 08.03.2013 and 12.04.2013 (Annexures P-1 and P-2), were appointed as Operation Theater Assistant (OTA) by Civil Surgeon, Panchkula and they had been discharging their duties with utmost respect and to the satisfaction of the seniors for many years, much less, there had not been any complaint against them. However, they were flabbergasted to receive the termination orders. The aforementioned termination orders have been passed without compliance of principles of natural justice, therefore, are not sustainable in the eyes of law.

Mr. Dinesh Singh Rawat, learned counsel appearing on behalf of the petitioners, in support of the aforesaid averments, submitted that there

CWP-27538-2018 (O&M)

are ten sanctioned posts, which are lying vacant. Direction Admin, National Health Mission, Haryana, vide letter dated 31.05.2018 (Annexure P-15), intimated all the Civil Surgeons, Haryana, to adjust retrenched staff against vacant position under National Health Mission. The aforementioned letter would reveal that there is need of employment, but the respondents have been adopting pick and choose policy. The termination orders are totally against the judgment of Hon'ble the Supreme Court in Hargurpratap Singh vs. State of Punjab and others 2007(13) SCC 292.

Per contra, Mr. Hitesh Pandit, Addl. A.G., Haryana, submitted that the petitioners were not appointed under National Health Mission, promulgated by the Central Government of India, but their earlier appointment was under Surgical Package Programme (SPP), which was financed by Swasthya Kalyan Samiti (SKS) and later on, Health Department, Haryana, launched a scheme called Mukhyamantri Muft Ilaaj Yojana (MMIY) w.e.f. 01.01.2014. The Surgical Package Programme Scheme merged into MMIY, vide order dated 30.12.2013. The reason for termination of services of petitioners was as per terms and conditions of appointment letters, for, the Department had undertaken the exercise of recruitment of regular staff, which was done by following due process by sending requisition to Haryana Staff Selection Commission, vide letter dated 16.08.2018.

As regards the various vacant sanctioned post, he submitted that Director General Health Services, Haryana, has already send the requisition to Haryana Staff Selection Commission for filling up 100 posts of Operation Theater Assistant, vide letter dated 11.07.2019 and the process is under way, thus, urges this Court for dismissal of present writ petition.

CWP-27538-2018 (O&M)

I have heard learned counsel for parties and appraised the paper book.

There would have been any force in the submissions of Mr. Rawat, had the Department decided to replace the petitioners through another set of contractual employees by terminating their services. There is no iota of evidence or pleadings, much less, any document to bring the case within the parameters of ratio decidendi culled out in Hargurpratap Singh's case (supra). The terms and conditions of appointment letters are sacrosanct, which included termination of services of petitioners without adherence to the advance notice as the appointments were totally contractual. The emphatic stand of the respondents/State has not been rebutted by any documents regarding filling up the two posts of Operation Theater Assistant as well as requisition of remaining 100 posts in various Districts including that of the petitioners. In such circumstances, petitioners cannot be permitted to work on contract basis as recruitment on contractual basis is as per exigency of services, so that, work may not be affected.

Keeping in view the aforementioned facts, the termination orders of petitioners does not call for interference, much less, cannot be said to be illegal and fallacious. No ground is made out. Accordingly, present writ petition is dismissed.

15.10.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**