IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CM No.5364-CWP of 2019 and
Civil Writ Petition No.3221 of 2015

Date of Decision: February 11th, 2020

Sandeep Kumar Markan

...Petitioner

Versus

The State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gitesh Sharma, Advocate
for Ms. Kusum Chopra, Advocate
for the applicant-petitioner.

Ms. Devaki Anand Sullar, Assistant Advocate General, Punjab.

Mr. Vikram Singh Chahal, Advocate
for Mr. Ravi Inder Singh, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the order dated 05.02.2015 (Annexure P-7) passed by the State Project Director-cum-Director General, School Education, Punjab, vide which the services of the petitioner have been terminated on the ground that a criminal case under the Narcotics Drugs and Psychotropic Substances Act, 1985, has been registered against the petitioner and he was in police custody from 06.08.2014 to 28.08.2014, for which a show cause notice dated 12.12.2014 was served upon him, to which a reply has been filed by the petitioner on 18.12.2014, which has been found to be not satisfactory leading to the passing of the order of termination.

2. It is the contention of learned counsel for the petitioner that the petitioner was appointed vide order dated 26.01.2011 (Annexure P-1)

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against the post of Math Master on contract basis under the Sarva Shiksha Abhiyan Authority, Punjab. The consolidated salary of ₹16,500/- per month was paid to him. Initially the period of contract was for one year extendable each year with the work and the conduct of the petitioner being found to be satisfactory. As per the terms and conditions of appointment, the services of the petitioner could be terminated upon giving him notice of one month or salary of the said period and if the petitioner wanted to leave the said job, three months' notice or deposit of three months' salary was mandated. For misbehaviour, order of termination of services could be issued after giving a chance of hearing and the condition of one month notice would not be applicable under such circumstances.

3. Counsel contends that merely because an FIR has been registered against the petitioner, where he was arrested and has been in custody, petitioner has been terminated. He contends that in the trial which ensued against the petitioner and his co-accused, petitioner and the co-accused have been acquitted by the Special Judge, Sangrur, vide judgment dated 02.03.2019 (Annexure P-11). Referring to the findings recorded by the trial Court, it is contended by the counsel for the petitioner that nothing has been found against the petitioner, which would connect him with the intoxicating material which is alleged to have been recovered from him or with the co-accused. In the absence of any connection with the intoxicating material, the allegations made against the petitioner were found to be not sustainable and the prosecution has miserably failed to prove the connection between the petitioner and the recovered intoxicating material as

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also with the co-accused. He, thus contends that the very basis which led to the termination of the services of the petitioner having been found to be not substantiated, the termination order cannot sustain. Prayer has thus been made for setting aside the impugned order and reinstatement of the petitioner in service.

4. On the other hand, learned counsel for respondent No.2, the contesting respondent, submits that the services of the petitioner have been terminated as per the terms and conditions of appointment. Referring to the appointment letter (Annexure P-1), he contends that as per clause 6 of the appointment letter, in case of misconduct on the part of the petitioner having been found, his services could have been terminated after giving him a show cause notice. It is an admitted position that the show cause notice was served upon the petitioner to which he responded and the said reply has been considered and having found to be not satisfactory, order of termination has been passed. He contends that the termination of the services of the petitioner being in consonance with the contract under which he has been appointed, the impugned order cannot be said to be illegal. His further contention is that there is no question of violation of Article 311 of the Constitution of India as the petitioner is not a regular employee, rather he is appointed on contract basis and, thus, his services having been terminated on the basis of the contract and as per the terms of contract, the order of termination cannot be said to be illegal. He further contends that the departmental proceedings are qualitatively different when seen in the context of the criminal proceedings, where strict measures with regard to the

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proving of the evidence are adhered to, whereas in the case of departmental proceedings, it is only preponderance of such aspect with regard to the charges levelled against the petitioner had to be seen which the competent authority was satisfied that there was a connection between the petitioner and the FIR registered against him, especially in the light of the fact that he had been in police custody for a reasonable long period of time from 06.08.2014 to 28.08.2014. He, therefore, contends that the writ petition deserves dismissal.

5. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the records of the case.

6. The order of termination dated 05.02.2015 (Annexure P-7) which is impugned is based upon the registration of an FIR against the petitioner and that he has been in police custody with effect from 06.08.2014 to 28.08.2014. No doubt a show cause notice has been served upon the petitioner and his reply has also been considered by the competent authority but the only reason why the services of the petitioner have been terminated is that an FIR has been registered and he has been in police custody for the period i.e. 06.08.2014 to 28.08.2014. This reason, which had weighed in the mind of the appointing authority, cannot now hold the field in the light of the findings which have been recorded by the trial Court i.e. the Special Judge, Sangrur, while passing the judgment dated 02.03.2019 (Annexure P-11), where no connection whatsoever with the petitioner to the alleged charges, which were framed against the petitioner in the trial, has

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been found. In the absence of the connection between the petitioner and the recovered intoxicating material, petitioner cannot be said to have been involved in the commission of the offence alleged to have been so committed. The very foundation for which the termination of the services had been ordered having been found to be without any basis, the order of termination cannot sustain.

7. The contention of the counsel for respondent No.2 that the services of the petitioner have been terminated as per the terms of the contract would be correct when seen in the context when the termination order was passed, however, in the present facts and circumstances of the case where the very basis for which the termination has been ordered have been found to be not sustainable, the order of termination cannot hold the field. Another aspect which needs to be highlighted is that as per clause 6 of the appointment letter, there should have been a misconduct on the part of the petitioner. The basis for the misconduct was the registration of the FIR, which has been found to be not proved in trial where the allegations made in the said FIR have not been substantiated by the prosecution. The termination order, therefore, cannot sustain and cannot be now said to be in accordance with the terms of appointment of the petitioner.

8. In view of the above, the writ petition is allowed. Impugned order dated 05.02.2015 (Annexure P-7) is hereby quashed.

9. Petitioner is ordered to be reinstated in service. However, he will not be entitled to the monetary benefits for the period he remained out of service because of the pendency of the trial. He shall, however, be

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entitled to the monetary benefits with effect from the date of his acquittal i.e. 02.03.2019 by the Special Judge, Sangrur.

10. In the light of the decision of the writ petition, no orders are required to be passed in CM No.5364-CWP of 2019.

February 11th, 2020 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No

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