

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5477 of 2018
Date of Decision : 14.02.2020

Dharmender Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Dharmender Singh Rawat, Advocate
for the petitioner.

B.S. Walia, J. (VC)

[1] Petition under Article 226 of the Constitution of India, is for the issuance of a writ of Certiorari to quash order of termination (Annexure P-6) dated 09.01.2018, one sided ex-parte enquiry report (Annexure P-4) dated 29.12.2016 and to issue a writ in the nature of Mandamus, directing the respondents to reinstate the petitioner in service along with consequential benefits etc.

[2] Brief facts of the case, leading to the filing of the writ petition are that in March, 2006, the petitioner was appointed as Data Entry Operator with the Red Cross Society, Faridabad on contract basis under HARIS Project against advertisement. In August, 2010, the work of HARIS Project was transferred to the District Information Technology Society along with staff, including the petitioner and although initially the petitioner and other Data Entry Operators were permitted to join but immediately thereafter vide order dated 10.08.2010, services of the petitioner, as well as other computer operators were terminated on the

[3] Aggrieved, the petitioner filed CWP No.15381 of 2010 titled as 'Jagan Singh and others versus State of Haryana and others' and vide judgment dated 09.07.2015, respondent Nos.2 & 3 were directed to appoint the petitioner afresh till the project was in operation. Accordingly, in compliance of judgment (Annexure P-1) dated 09.07.2015 in CWP No.15381 of 2010, the petitioner was appointed as Computer Operator in HARIS Project on contract basis by respondent No.3 i.e. the Secretary, District Information Technology Society, Palwal i.e. respondent No.2 vide order (Annexure P-2). Pursuant to his appointment, the petitioner started doing work but some anonymous person by fictitious name Kumar Pal son of Lala Ram of Village Kondal made a false complaint (Annexure P-3) dated 09.09.2016 against the petitioner in the office of the Deputy Commissioner, Palwal of the petitioner having sought bribe for doing work assigned to him. As per the petitioner, there is no person by the name of Kumar Pal son of Lala Ram of Village Kondal and further that the copy of the complaint was supplied to the petitioner only after a lot of efforts and that too after termination of his services.

[4] That on receipt of complaint (Annexure P-3) dated 09.09.2016, SDO (C), Palwal was asked to make an enquiry and the SDO (C), Palwal, without giving any opportunity to the petitioner to give his comments on the complaint, give an ex-parte enquiry report dated 29.12.2016, holding the petitioner guilty on the ground that the petitioner had been found to be involved in making entries in Registers without issuance of token particularly, in reference of entries made in Vasika Nos.1403, 1404 and 1423. Relevant extract of the enquiry report is reproduced as under :-

"It is intimated that complaint against Shri Dharmender Computer Operator was considered. On consideration, it was

found that Sh. Dharmender while working as Computer Operator in the office of Tehsildar Hathin, he was involved to make entries of Registries without taking token at his own. From the proof of Vasika No.1403, 1404, 1423, it is proved that the Computer Operator is guilty of dereliction in his official duties.

Hence on the basis of the complaint given by the complainant, it will be appropriate to take action against the above said Computer Operator. Report is submitted for further necessary action”.

[5] On the basis of aforesaid enquiry report (Annexure P-4) dated 29.12.2016, permission was sought by the Accountant of respondent No.2-Society for terminating the services of the petitioner on the basis of the petitioner having been found guilty of dereliction of his duties by the SDO(C), Palwal (Annexure P-5). Thereafter, vide order (Annexure P-6) dated 09.01.2018, respondent No.3 i.e. Secretary of respondent No.2-Society, terminated the services of the petitioner as per the orders of the Deputy Commissioner, Palwal with immediate effect.

[6] Grievance of the petitioner is that the services of the petitioner were terminated by relying upon ex-parte enquiry report, while noticing that the petitioner while posted in the office of Tehsildar, Hathin had failed to make entries in Registries of Vasika Nos.1403, 1404 & 1423 as per rules and without issuing proper tokens to the applicants whereas, as per information received under the RTI from the SPIO, office of Tehsildar Hathin, (Annexure P-7) entries in Vasika Nos.1403, 1404 and 1423 in the office of Tehsildar, Hathin had been made as per rules/regulations of the Government and due tokens were issued to the applicants by the petitioner

while making the said entries. Relevant extract of RTI reply is reproduced as under :-

“Point No.4- Vasika No.1403, 1404 dated 22.07.2016 and Vasika No.1423 dated 26.07.2016 has been registered as per rules and regulations of the Government.

Point No.5- Vasika No.1403 dated 22.07.2016 Token No.52 and Appointment No.01922072016010608000, Vasika No.1404 dated 22.07.2016 Token No.56 and Appointment No.01922072016011626000 and Vasika No.1423 dated 26.07.2016 Token No.3 Appointment No.01926072016093547000 has been registered.”

[7] Learned counsel contends that not only were the services of the petitioner terminated by conducting an ex-parte enquiry report without issuance of charge sheet or calling the petitioner for enquiry but the same was also for an action which had never been committed at all and in violation of well settled law that even in the case of termination of a contractual employee, termination order on account of misconduct must be preceded by a regular departmental enquiry and the delinquent employee given a chance to present his case.

[8] As per the reply filed by CTM-cum-Secretary District Information Technology Society, Palwal on behalf of the respondents, stand is that the petitioner was appointed as Computer Operator purely on contract basis for 01 year effective from 09.09.2016 to 08.09.2017 and that in the event of unsatisfactory work of performance, the agreement could be terminated after giving appropriate opportunity for explanation of non-performance and that the services of the petitioner had rightly been terminated by respondent No.2 on account of unsatisfactory work as the termination order was issued after due enquiry made by the SDO(C),

Palwal dated 29.12.2016, i.e. Annexure R-2, after the Chairman-cum-Deputy Commissioner, DITS, Palwal, entrusted enquiry to the SDO(C), Palwal vide order (Annexure R-5) dated 09.08.2016, that the dispute was referable to arbitration.

[9] A perusal of Annexure P-5 reveals that Enquiry Committee, comprising the Sub Divisional Officer (C), Hathin, Naib Tehsildar, Hathin, was proposed to be set up to examine the matter and to write to the Placement Agency for termination of services of amongst others the petitioner. On the said proposal, the DC-cum-Chairman, DITS appointed the SDO(C), Palwal to enquiry into the complaints amongst others, the petitioner. Thereupon, vide order (Annexure R-6) dated 11.08.2016, respondent No.3 while informing the petitioner of his transfer from HARIS Project, Hathin to Land Records Department, directed the petitioner to appear before the SDO (C), Palwal to explain his position.

[10] Pursuant thereto, SDO (C), Palwal submitted report (Annexure R-2) dated 29.12.2016, holding the petitioner guilty of dereliction in the performance of his official duties and recommending appropriate action. No record has been referred to by learned counsel for the respondent of any charge sheet having been issued or any intimation having been given by the SDO (C), Palwal to the petitioner to appear before him in connection with the enquiry.

[11] Apart from the above, the copy of report (Annexure R-2) was not supplied to the petitioner to give him an opportunity to submit objections to the findings recorded in the report (Annexure R-2) before passing of orders on the same by the competent authority after consideration of the report as well as the objections to the same. The same

petitioner under the RTI by the SPIO and Tehsildar, Hathin vide Annexure P-7 dated 12.02.2018 that Vasika Nos.1403 and 1404 dated 22.07.2016 and Vasika No.1423 dated 26.07.2016 were registered as per rules and regulations of the Government against token number and appointment number.

[12] It is the categorical stand of the respondent that allegations levelled against the petitioner were enquired by the SDO (C), Palwal and during the course of enquiry, the petitioner was found guilty of the said offence, consequentially, his services were terminated by the Chairman, DITS, Palwal-cum-DC, Palwal and the same was after giving notice (Annexure R-6) to join the enquiry but the petitioner did not join the enquiry. As regards, the application under RTI, it has been mentioned that the same was a matter of record. It has also been mentioned that Vasika No.1403, 1404 and 1423 were wrongly entered without following proper procedure but were not deleted from the revenue record in the interest of the general public.

[13] A perusal of Annexure R-5, appointing SDO(C), Palwal to enquire into the complaints against the Operators, including the petitioner reveals that the same was not marked to the petitioner. The petitioner only received a communication (Annexure R-6) from respondent No.3 of his transfer from HARIS Project, Hathinto Land Records Department, Palwal and for appearing before the SDO(C), Palwal to explain his position, without any charge sheet having been issued or for that matter, giving any date for appearing before the SDO (C), Palwal. It is also not the stand of the respondents that the SDO (C), Palwal issued any notice to the petitioner for appearing before him in connection with the enquiry.

[14] In the aforementioned background, learned counsel for the petitioner contends that the impugned order of termination is founded on allegations of misconduct, as is also evident from the stand of the respondents in the written statement, therefore, stigmatic and liable to be set aside on account of having been passed, without holding a regular enquiry or for that matter, the enquiry officer having associated the petitioner with the enquiry and further without supplying a copy of the report (Annexure R-2) and giving him opportunity to submit objections in respect thereto before the report on the basis of ex-parte enquiry was placed before the competent authority for consideration and passing of orders.

[15] Learned counsel for the respondents on the other hand has contended that the order terminating the services of the petitioner was passed, in accordance with the letter of appointment (Annexure R-1) and on the basis of enquiry and finding the petitioner guilty of dereliction of duties. Accordingly, the termination of the petitioner was in accordance with the terms and conditions agreed upon in the letter of appointment.

[16] I have considered the submissions of learned counsel.

[17] Admittedly, a complaint alleging corruption in the discharge of official duties was received against the petitioner, whereupon the DC, Palwal-cum-Chairman of respondent No.2-Society appointed the SDO (C), Palwal to enquire into the matter and the SDO (C), Palwal gave a report (Annexure R-2), holding the petitioner guilty of dereliction of duties in the performance of his official duties and recommending taking of appropriate action against the petitioner. Admittedly, no charge sheet was served on the petitioner and except for intimation by the Secretary of the Society, informing the petitioner vide Annexure R-6 of his transfer from HARIS

appear before the SDO(C), Palwal to explain his position regarding the complaint of corruption, no intimation was given by the SDO (C), Palwal with regard to date for holding of enquiry or requiring the petitioner to appear before him for the enquiry. The enquiry report (Annexure P-4) submitted by the SDO (C), Palwal to the DC, Palwal is as sketchy as it could be and holds the petitioner guilty of dereliction in the performance of his official duties, while making entries of Registries, without taking token and at his own level in respect of Vasika Nos.1403, 1404 and 1423 whereas the information received by the petitioner under the RTI from the SPIO and Tehsilder, Hathin vide Annexure P-7 dated 12.02.2018, is that Vasika Nos.1403 and 1404 dated 22.07.2016 and Vasika No.1423 dated 26.07.2016 had been registered as per rules and regulations of the Government and as per tokens issued and appointment given.

[18] A perusal of paragraph No.6 of the parawise reply on merits reveals that enquiry was conducted into the complaints of corruption against the petitioner, during which the petitioner was found guilty and therefore his services had been terminated.

[19] In **Dipti Prakash Banerjee** versus **Satyendra Nath Bose** **National Centre for Basic Sciences, Calcutta**, 1999 (3) SCC 60, Hon'ble the Supreme Court was pleased to hold 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 in the eyes of law. Relevant extract of the aforesaid 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."

[20] The order of termination (Annexure P-6) dated 09.01.2018 was passed on account of the petitioner having been found guilty of dereliction in the performance of his official duties without conducting a regular enquiry. Accordingly, it is clear that the order of termination of services (contract) of the petitioner is founded on allegations of misconduct. Admittedly, the same was passed without giving a charge sheet, conducting a regular enquiry, or giving the petitioner opportunity to rebut the evidence collected against him during the course of the enquiry and which was relied against him. Reference in this connection can be made to the decision of a

Division Bench of this Court in case titled as ‘**Satvir and others**versus**State of Haryana and others**’ 2016(1) SCT 506, wherein a contract awarded in favour of the 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 other witnesses recorded during the enquiry and without affording them a chance of cross-examining the complainant and other witnesses etc. The Hon’ble Division Bench held that the enquiry conducted was in violations of principles of natural justice. Consequently, the impugned order was set aside and the matter remanded to the Director General, Health Services, Haryana, for conducting a fresh enquiry against the contractors in accordance with the principles of natural justice and till the finalization of the enquiry, the contractors were permitted to continue with the work allotted to them.

[21] In the light of the position noted above, the writ petition is **allowed**, the impugned orders are legally unsustainable and are accordingly *set aside* and the petitioner reinstated in service. However, in view of the decision in Satvirs case (Supra) the matter is remanded to the competent authority for conducting a fresh enquiry against the petitioner in accordance with law. However, the question of entitlement to back wages would be dependent on the fresh order to be passed.

[22] Writ petition **allowed** in the aforementioned terms.

(B.S. Walia)
Judge

February 14, 2020
'Rajneesh'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No