

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

**C.W.P No 27378 of 2018
Date of decision : 09.01.2020**

Dinesh KumarPetitioner

versus

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Sahu, Advocate
for the petitioner.

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

RITU BAHRI, J.

C.M. No. 18699-2018

Application is allowed as prayed for.

Accordingly, instruction dated 08.12.2016 (Annexure A-1) is taken
on record.

C.W.P No. 27378-2018

The present petition has been filed by the petitioner seeking setting
aside of order dated 11.10.2018 (P-5) passed by respondent No. 3 whereby the
service of the petitioner has been terminated.

On notice of the petition, a reply has been filed on behalf of
respondent Nos. 1 to 4 stating therein that on 07.10.2018, on the basis of some
secret information with regard to some suspicious activities in the Duty Room,
General Hospital, Fatehabad, a team consisting of Dr. Sunita Sokhi, Deputy Civil
Surgeon Fatehabad, Dr. Girish Kumar, Deputy Civil Surgeon Fatehabad and Dr.

Narender Kharb, District Asha Coordinator was constituted by Civil Surgeon,

Fatehabad (R-1/T). The team was directed to conduct raid in the Duty Room of Ambulance Services in General Hospital, Fatehabad. The room was raided and it was found that two drivers, one EMT and one unknown person in the room were found to be taking alcohol. Video recording was shot. On seeing the team, all the members got up and started collected the things. The unknown persons frisked away from the spot with all the material along with liquor bottle. On enquiry, the names of the staff members were disclosed as Veer Singh (driver), Dinesh Sharma (driver-petitioner) and Surender Kumar-EMT. The spot memo report, CD and report of fleet manager was prepared (R-3/T to R-5/T). On 08.10.2018, Civil Surgeon, Fatehabad summoned the staff members, namely Veer Singh Driver, Dinesh Sharma (petitioner) driver and Surender Kumar EMT and all the three admitted before the Civil Surgeon Fatehabad with regard to consumption of alcohol in the Duty Room along with Police Official Tara Chand and did not deny the factum of raid by the team.

Learned counsel for the petitioner has referred to Division Bench judgment of this Court in a case of *U.T. Chandigarh and others vs. CAT, Chandigarh Bench and others, 2011 (1) S.C.T 777* wherein the services of adhoc government employee was terminated on the charge of sexual harassment without holding departmental enquiry as envisaged by Article 311 (2) of the Constitution of India. This Court set aside the termination and held that even in a case of contractual employee if the termination is founded on a misconduct then it has to be regarded as a punishment. The termination order was held to be stigmatic and the respondents were granted liberty to pass fresh order in accordance with law. The delinquent official was further held not to be entitled to any back-wages. In para 10, it has been observed as under:-

*“10. 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. 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 well settled 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 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**".*

This judgment is directly applicable to the facts of the present case, as in the present case as well, the department has not conducted any departmental

Accordingly, the writ petition is allowed and order dated 11.10.2018 (P-5) is set aside. However, the respondent-department is at liberty to pass fresh order in accordance with law. The petitioner is not entitled to any back-wages and he shall be allowed to join within a period of one week from the date of receipt of certified copy of this order.

January 09, 2020
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>