

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

Sr. No.102

CWP-2793-2020 (O&M)
Date of decision : 26.2.2021

Dr. Richa Budhiraja

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate and
Mr. Sandeep Dhull, Advocate, for the petitioner.

Mr. Sanjay Mittal, Addl. AG, Haryana.

SUDHIR MITTAL, J. (Oral)

The petitioner was appointed as District Child Protection Officer on contract basis vide appointment letter dated 4.4.2012. The contract was extended from time to time as was the contract of other employees appointed under the Haryana Integrated Child Protection Scheme. In February 2019, she proceeded on medical leave from 4.2.2019 till 25.2.2019 and re-joined duty on 26.2.2019. However, she was not given charge of District Child Protection Officer. A number of representations were made by her, but to no avail. Thus, she approached this Court through this writ petition challenging the action of denial of charge of the post of District Child Protection Officer. During the pendency of the writ petition, order dated 7.10.2020 (Annexure P-35) was passed, whereby, contract of all other employees was extended except that

of the petitioner. Thus, the writ petition was amended for including the challenge to the said letter.

Learned senior counsel for the petitioner has argued that the last appraisal report of the petitioner is for the period 2018-19, in which, she has been graded fit for extension. The said report is upto 31.3.2019. Further, reply dated 6.9.2019 received under the Right to Information Act, 2005, shows that there was no public complaint against the petitioner during the period July-2018 to July-2019. Another information was provided in the said reply and that was regarding issuance of warning vide letter dated 22.2.2019. It is submitted that explanation was sought from the petitioner vide communication dated 13.2.2019 for being absent from a meeting and reply thereto was submitted that she had no knowledge of the said meeting. The explanation was accepted and yet, a warning note was issued. Thus, non-extension of the contract of the petitioner is arbitrary. The scheme is in existence and thus, there is no good ground not to extend the contract of the petitioner. Reliance is placed upon judgment dated 22.4.2009 passed by Supreme Court in Civil Appeal No.7922 of 2002 titled as Md. Abdul Kadir and another Vs. Director General of Police, Assam and others, wherein, it has been held that so long as a scheme is in-force, appointment should continue on ad hoc or temporary basis and the process of termination and re-appointment every now and then should be avoided.

Learned State counsel submits that a perusal of condition No.2 and condition No.5 of appointment letter shows that an employee was not entitled to any medical leave and that in case of work and conduct

was not found satisfactory, the contract could be terminated at any time. By placing reliance upon Annexures R-1 to R-15, it has been argued that starting from 15.5.2015, a number of letters seeking explanation from the petitioner had to be issued. A complaint dated 22.12.2015, regarding attitude of non-cooperation with seniors was also received, a copy of which is on record as Annexure R-6. On three separate occasions, the petitioner was warned/counseled. The last explanation sought was vide letter dated 6.5.2019, a copy of which is on record as Annexure R-15. This correspondence shows that the work and conduct of the petitioner was not satisfactory. The period from 4.2.2019 to 25.2.2019 was treated as unauthorized absence as the petitioner was not entitled to any medical leave. Thus, upon re-joining on 26.2.2019, she was not handed over charge of post of District Child Protection Officer. Finally, when contracts of other employees were extended vide letter dated 7.10.2020, the contract of the petitioner was not extended and non-extension of her contract was because of un-satisfactory work and conduct. For the said reason her services could have been terminated earlier, yet, a sympathetic attitude was adopted. The impugned order is legal and valid and deserves to be upheld.

In rebuttal, learned senior counsel for the petitioner submits that the period for which, it has been alleged that the work and conduct of the petitioner was not satisfactory extended from 15.5.2015 till 6.5.2019. In between, the contract of the petitioner was extended on 12.12.2017, 25.7.2018, 29.11.2018 and 5.3.2019. Thus, the respondents

cannot submit that the work and conduct of the petitioner was not satisfactory.

It is not in dispute that the petitioner was initially appointed vide appointment letter dated 4.4.2012. One of the conditions of her appointment was that in case of work and conduct being not satisfactory, the services could be terminated at any time. For the same reason, an employer was entitled not to renew the contract. Thus, the core question that arises in this writ petition is, whether, in the facts and circumstances of this case, it can be said that the work and conduct of the petitioner was not up to mark ?

The communications placed on record by learned State counsel as Annexures R-1 to R-15 have not been denied. It is also not denied that the petitioner was not entitled to grant of medical leave. Thus, the respondents were justified in withdrawing the charge from her when she re-joined duty on 26.2.2019. She remained absent without authorized leave for a continuous period of 20 days and under the circumstances, the past conduct of the petitioner became relevant, even though, her contract had been extended after seeking various explanations from her and issuing her warnings. The appraisal report for the year 2018-19 also cannot come to her aid as although, she was found fit for extension in the said report, her subsequent conduct coupled with her past conduct would justify taking the view that her work and conduct was not satisfactory. Extension of contract from time to time and a favourable appraisal report cannot lead to the conclusion that the past behavior of the petitioner was wiped off from the record. This is not a case, where, punishment had

been imposed for past mis-conduct and thus it has to be inferred that the same cannot be taken into consideration while imposing a fresh punishment. Thus, the impugned order dated 7.10.2020 (Annexure P-35) deserves to be upheld.

The judgment in Md. Abdul Kadir (supra) is distinguishable as this is not a case of frequent termination and re-appointment nor is it a case, where, the contract has not been extended without any valid reason despite the continuation of the scheme.

In view of the above, the writ petition has no merit and is dismissed.

The petitioner shall, however, be entitled to be paid salary for the period 26.2.2019 till 6.10.2020 when she remained in service and was made to work though not on the post of District Child Protection Officer.

(SUDHIR MITTAL)
JUDGE

26.2.2021
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No