

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

LPA-878-2021

Date of Decision:-29.09.2021

Dr. Richa Budhiraja

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate
for the appellant.

Ms. Palika Monga, DAG, Haryana.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellant has filed this appeal against the order dated
26.2.2021 passed by learned Single Judge, whereby CWP No.2793 of 2020
filed by the appellant was dismissed.

The brief facts of the case of petitioner are that she was
appointed as District Child Protection Officer on contract basis vide

appointment letter dated 4.4.2012 (Annexure P-1). The period of contract was extended from time to time. In February, 2019, the appellant proceeded on medical leave from 4th February, 2019 till 25.2.2019 and she rejoined duty on 26.2.2019. However on rejoining, she was not given charge of the post of District Child Protection Officer. The appellant gave number of representations, but authorities failed to take any action. On this, she approached this Court through writ petition challenging the action of the authorities whereby she was denied charge of the post of District Child Protection Officer. During the pendency of the writ petition, the authorities passed order dated 7.10.2020 (Annexure P-35), whereby contract of all other employees was extended except that of the appellant. Accordingly, the writ petition was amended and order dated 7.10.2020 (Annexure P-35) was also impugned.

The respondents filed joint written statement refuting the claim of the appellant (petitioner therein).

After hearing the counsel for the parties, the learned Single Judge dismissed the writ petition vide impugned order dated 26.2.2021 with the following observations:-

“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 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 explanation 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 misconduct 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.”

The appellant being not satisfied, has filed the present appeal.

We have heard the learned counsel for the appellant as well the State counsel who was having advance notice of the instant appeal.

The counsel for the appellant while assailing the impugned orders, submitted that the work and conduct of the appellant was good, throughout. The learned counsel further submitted that work and conduct of all the contractual employees was assessed every year by the authorities. As per the appraisal report for the year 2018-19, the appellant was found suitable for extension in employment.

The learned counsel further contended that the appellant fell sick in February, 2019 and as such she took medical leave from 4.2.2019 to 25.2.2019 and she resumed her duty on 26.2.2019. Despite this, the authorities sought explanation from the appellant as to why she remained absent and did not attend the meeting. The learned counsel further submitted that appellant was having no information regarding any such meeting and accordingly she explained her position, in writing. The authorities accepted her explanation but at the same time also issued warning to the appellant. It is further contended that with the issuance of warning, the issue regarding alleged absence of the appellant was resolved.

The learned counsel for the appellant next contended that the appellant and some other persons were engaged on contract basis by the authorities as District Child Protection Officer for a particular project/scheme. It is further contended that the said scheme is still in existence. It being so, the authorities were having no ground to disengage the appellant vide order dated 7.10.2020 (Annexure P-35), while extending contract of employment of the other similarly situated contractual employees. It is further contended that while passing impugned order (Annexure P-35) no reason was assigned by the authorities as to why the contract of employment of the appellant was not extended for further period. The counsel for the appellant further urged that the impugned act of the authorities was totally illegal and cannot be sustained in the eyes of law. To substantiate his contentions, the counsel for the appellant placed reliance upon the decision of the Hon'ble Apex Court in **Civil Appeal No.7922 of 2002** titled as **Md. Abdul Kadir & Anr. vs. Director General of Police, Assam & Ors.** decided on **22.4.2009** wherein it has been held that the process of termination and re-appointment of *ad-hoc* employees every year should be avoided and they should be continued as long as the scheme continues, but purely on *ad-hoc* and temporary basis, co-terminus with the scheme.

On the other hand, the State counsel has submitted that the appellant was governed by terms and conditions of the contract. As per appointment letter (Annexure P-1), the appellant was appointed on contractual basis for a period of 3 years and she was not entitled to medical leave etc. The State counsel while referring to Annexure R-1 to Annexure

R-15, contended that that the work and conduct of the appellant was not found satisfactory. Vide (Annexure R-6) member of Child Welfare Committee complained about the improper behaviour of the appellant to the authorities in 2015. The State counsel further contended that the appellant remained absent from duty from 4.2.2019 to 25.2.2019 on the pretext that she was ill. Subsequently, she rejoined on 26.2.2019 and was issued warning and finally the contract of the appellant was terminated vide Annexure P-35. The State counsel submitted that there was no illegality or impropriety in the said order dated 7.10.2020, as has been rightly observed by the learned Single Judge.

We have considered the submissions made by the counsel for the parties.

Admittedly, the appellant was engaged as District Child Protection Officer purely on contract basis for three years vide letter of intent dated 4.4.2012 (Annexure P-1). Even after the expiry of aforesaid period of 3 years, the period of her contract was extended from time to time and finally the appellant was disengaged on 7.10.2020 vide Annexure P-35. It being contractual employment, the appellant was bound by the terms of her appointment as are detailed in Annexure P-1. As per the said letter of intent the appointment is to stand automatically terminated on 2.4.2015 and the contract would have to cease automatically on lapse of contract period. It appears that after 2.4.2015, period of contract of employment was renewed from time to time till 7.10.2020 (Annexure P-35). It is settled law that termination of the contractual employment in accordance with the terms of contract was permissible and the employee could claim no protection against

such termination even when one of the contracting parties happened to be the State. In this context reliance be placed on the judgments of the Hon'ble Supreme Court of India in **Civil Appeal No.11303 of 2011** titled as **Gridco Limited & Another vs. Sri Sadananda Doloi & Ors** decided on **16.12.2011** and **Civil Appeal Nos.6132-33 of 2016** titled as **State of Maharashtra & Ors. vs. Anita & Anr.** Decided on **12.7.2016**.

Furthermore, as per letter of intent (Annexure P-1), the services of the appellant could be terminated if her work and conduct was found to be unsatisfactory. As per Annexure P-12, which has been relied upon by the appellant, a show cause notice was issued to the appellant for not attending the monthly meeting which was held on 28.1.2019. The reply submitted by the appellant to the said show cause notice is Annexure P-13. From the perusal of Annexure P-14, it is evident that the aforesaid reply submitted by the appellant to the show cause notice was not found satisfactory and she was given warning to be careful in future, vide communication dated 22.2.2019. It being so, the learned Single Judge rightly observed that the appraisal report of 2018-19 whereby the appellant was found fit for extension, is not of any help as subsequent to that her work and conduct was found not satisfactory by the authorities.

Further, we are of the view that the contractual employee has got no right to have his/her contract renewed from time to time. In this context, we are supported by the decision of the Hon'ble Supreme Court in **Yogesh Mahajan vs. R.C. Deka, Director, All India Institute of Medical Sciences, 2018(1) SCT 690**, wherein the petitioner was engaged on contract basis as a technical assistant and the initial contract was renewed from time

to time till 30.6.2010 but thereafter no further extension was given and he challenged the same, unsuccessfully till the Hon'ble Apex Court.

In the light of the settled position of law as discussed above, we are of the view that the authorities were not obligated to give any reason, while disengaging any contractual employee, on completion of the period of contract of employment.

The ratio in **Md. Abdul Kadir's** case (supra), was considered and analyzed in right perspective by the learned Single Judge. In the aforesaid case, the services of the contractual employees used to be terminated and they were being re-appointed every year and that being so, the Hon'ble Apex Court held that such type of action on behalf of the Government authorities should be avoided and the contractual employees were ordered to be continued as long as the scheme continues. The aforesaid case law referred by the counsel for the appellant is distinguishable as in the case at hand there was no such frequent termination of services of the contractual employees. In the instant case, it apparently appears that the contract of employment was terminated as the work and conduct of the appellant was not found upto the mark by the authorities. We are also of the view that the learned Single Judge rightly held that the appellant be paid salary for the period from 26.2.2019 till 6.10.2020, when she remained in service, though was not given the charge of the post of District Child Protection Officer.

In the light of the above discussion, we are of the considered view that the appeal deserves to be dismissed being devoid of merits. Consequently, the appeal is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

29.09.2021
Gaurav Sorot

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No