

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

CWP-14077-2020(O&M)

Date of decision:-02.11.2021

Mandeep

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Vinod S.Bhardwaj, Sr.Advocate with
Ms.Priyanka Chaudhary, Advocate
for the petitioner.

Mr.Puneet Jindal, Sr.Advocate with
Mr.Kunal Mittal, Advocate
for respondents No.3 and 4.

Mr.Rajinder Goyal, Advocate
for respondent No.5.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated case of the petitioner, as can be gathered from the record is that Municipal Committee, Kalayat, District Kaithal had decided to engage a Junior Engineer against a sanctioned post under outsourcing policy Part-II. Accordingly, an advertisement was issued in

the Newspaper; a selection committee interviewed prospective candidates; petitioner Mandeep was selected against the said post; he was issued appointment letter dated 11.1.2018 for a period of one year or till appointment of a regular employee; petitioner joined duties on 12.1.2018; he was granted extension for another year; the petitioner was being paid salary of Rs.22,048/- per month as per D.C. Rates, which is lower than regularly selected Junior Engineer, who gets Rs.35,400/- per month; although there is no difference in duties and responsibilities; on 28.8.2020, President of Municipal Committee, Kalayat – respondent No.5 wrote a letter to District Municipal Commissioner, Kaithal with a request to remove the petitioner from the post of Junior Engineer and start the process of appointing regular Junior Engineer at the earliest. According to the petitioner this was so done by respondent No.5 to adjust her own person. Respondent No.3 vide letter dated 29.8.2020 had issued show-cause notice to the petitioner regarding not taking action against illegal construction/illegal occupation in connivance with the people living there. The petitioner submitted reply to the show cause notice on 31.8.2020 denying the allegations. However, vide order dated 4.9.2020, the petitioner was removed from service without issuing any charge-sheet against him and without holding any regular enquiry. In the present case, the enquiry was conducted on the back of the petitioner and he was not allowed to participate in such proceedings. Therefore, according to the petitioner, the impugned order dispensing with his services is not sustainable and is liable to be set aside. For redressal of his grievances, petitioner has filed the present writ petition.

2. This petition is being opposed by the respondents justifying the impugned order.

3. I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the writ petition and it is doomed for failure.

4. The fact cannot be lost sight of that the petitioner had not been working on regular basis but as a contractual employee by way of outsourcing policy Part II. Initially, he was taken in for a period of one year though subsequently his contract stood extended. Now the question arises as to whether the employer is bound to retain the services of a contractual employee till the completion of the term even if the work and conduct of such employee is not satisfactory, the answer cannot be in affirmative. Every employee, may be working on regular basis or ad hoc or contractual basis, is supposed to work with full devotion and dedication and if he indulges in any misconduct or wrongful conduct, then the employer can certainly curtail the terms of such employee and dispense with his services. The employer cannot be compelled to retain in service a contractual employee though not satisfied with his work and conduct. In the present case, the employer of the petitioner is said to have received several complaints against the petitioner for not taking action against the land grabbers. Therefore, it served a show cause notice upon the petitioner, got his reply and then passed the impugned order dispensing with his services. The petitioner can certainly not complain that he has been condemned unheard. A probe in the matter had been got conducted by District Municipal Commissioner, Kaithal, who found merit in the

allegations against the petitioner. The grouse of the petitioner that he was not joined with the inquiry does not make any sense since the probe was conducted basically to find out whether there was any merit in the allegations against the petitioner and it was found to be so. Though it would have been better if the petitioner was associated in the probe but his non-joining does not vitiate the proceedings in any manner or cause prejudice to him since he had separately been issued a show-cause notice to which he had submitted reply and thereafter his services had been dispensed with. This Court is not to sit in appeal against the order. This Court can though subject the impugned order to judicial scrutiny but cannot act as an Appellate Authority so as to go into the merits of the case and form its own opinion.

5. The arguments advanced by learned Senior counsel for the petitioner are that a regular inquiry in the matter should have been conducted since there were allegations against the petitioner, which were stigmatic in nature; the respondents having neither conducted any regular inquiry nor allowing the petitioner to join probe conducted by respondent No.3, the impugned order cannot stand and is liable to be set aside and petitioner be directed to be taken back in service. In support of his contentions, learned counsel for the petitioner has referred to judgments i.e. **Pramod Kumar Sharma Versus State of Haryana and others, 2017(1) SCT 79, Mohit Versus State of Haryana and others** by this Court in CWP No.14647 of 2019 decided on 27.9.2019.

6. Whereas vehemently controverting the contentions raised by learned Senior Counsel for the petitioner, learned Senior counsel

representing respondents No.3 and 4 states that no reinstatement can be ordered after declaring the order as null and void and there was no necessity of holding any regular inquiry in the matter. In support of that contentions following judgments have been relied upon:

1. ***State of Uttar Pradesh and anr. Versus Kaushal Kishore Shukla, 1991(1) S.C.T. 760.***
2. ***Sunil Kumar and others Versus State of Punjab and others, 2019(3) S.C.T. 310.***
3. ***Anant Kumar Gupta Versus Principal Secretary The State of M.P., 2011(28)S.C.T. 817.***
4. ***Municipal Council, Samrala Versus Raj Kumar, 2006(3) SCC 81.***
5. ***Yogesh Mahajan Versus Professor R.C. Deka, Director, All India Institute of Medical Sciences (2018) 3 Supreme Court Cases 218.***
6. ***Union of India & Ors Versus Sukhen Chandra Das (2008) 17 SCC 125.***

7. In the instant case, there are no clear and specific allegations of any malafide attributed to any of the respondents, which might have prompted them to pass a wrong order dispensing with services of the petitioner. Only a vague reference has been made contending that respondent No.4 wants to appoint a person of her own choice in place of the petitioner when a perusal of the record goes to show that there is no material available on the file to point out towards such allegation. The order appears to have been passed during the course of administrative work and does not come out to be tainted with any element of malafide, partiality, bias or arbitrariness. Vide the impugned order not only

extension granted to the petitioner for one year has been withdrawn but disciplinary action has also been recommended against M.E. Raj Kumar and Secretary Municipal Committee, Kalayat, namely Sh.Bambul Singh. It cannot be said that the petitioner has been singled out for action in the matter. Even otherwise the extension period for one year starting from 12.1.2020 has since expired and no reinstatement of the petitioner can be ordered.

8. It needs to be mentioned here that a contract with regard to personal services cannot be got specifically enforced. The petitioner may claim damages for the remaining part of his contract period by approaching the Court of competent jurisdiction, if so advised. It has to be kept in mind that power of issuing a writ is not to be used in routine but in exceptional circumstances. Here I do not see any reason to exercise such power.

9. The instant writ petition is dismissed accordingly.

02.11.2021

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No