

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

CWP-17113-2021(O&M)

Date of decision:-28.9.2021

Rakesh Kumar

...Petitioner

Versus

The State of Haryana and others

...Respondents

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

Present: Mr.Rakesh Nagpal, Advocate  
for the petitioner.

Mr.Sharad Aggarwal, AAG, Haryana.

Mr.H.S. Gill, Advocate  
for the respondents No.3, 5 and 6.

\*\*\*\*

**H.S. MADAAN, J.**

Case taken up through video conferencing.

Petitioner – Rakesh Kumar son of Sh.Tara Chand, resident of House No.252, Gali No.7, Ward No.6, Tibba Dana Sher, Hisar has filed the instant civil writ petition under Articles 226/227 of the Constitution of India against respondents i.e. State of Haryana through its Principal Secregtary, Secretary to Governor of Haryana, Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panachkula, Deputy Commissioner – cum – Chairman, Hisar, Officiating Assistant Director, Welfare Centre for Hearing and Speech Impairment, Hisar and Mr.Subodh Kumar Dubey, Officiating Assistant Director, Welfare Center

for Hearing and Speech Impairment, Hisar, craving for issuance of a writ more particularly in the nature of certiorari seeking quashing of order dated 27.4.2021 (Annexure P11) vide which request of petitioner for continuation in service has been rejected, whereas juniors to him are still working.

As per the case of the petitioner, he was appointed as *MAALI* by respondents on 19.9.2018 at the consolidated salary of Rs.11,990/- per month for 15 days from 19.9.2018 to 3.10.2018; it was so done against a regular sanctioned post, which had fallen vacant due to death of Sh.Kedar Nath, regular *MAALI* and case was recommended to the higher authorities for regular appointment of the petitioner; the services of petitioner were extended from time to time; on 15.12.2018, the petitioner was appointed as Chowkidar-cum-*MAALI* vide appointment letter dated 15.12.2018; on 17.1.2019, the petitioner was again appointed on contract basis at consolidated salary of Rs.12,710/- per month till 30.3.2019; his services were further extended from 1.4.2019 to 29.9.2019. According to the petitioner, he is 70% handicapped and has worked with respondent – society for about 1 ½ years. That post is vacant and work is there but the respondent society had asked the petitioner not to come to the office of respondent in the month of October, 2019. The petitioner made several representations to respondents and got served a notice dated 10.7.2020 upon them. According to the petitioner, while dispensing with his services, the employees juniors to him have been retained and respondents have passed a stigmatic order against the petitioner.

Counsel for the petitioner has come up with the arguments on

the line of pleas taken in the writ petition. Whereas the counsel for the respondents have been asked to assist the Court have submitted that the writ petition is doomed for failure for various reasons.

The counsel for the petitioner was asked to address the Court on the point of maintainability of the writ petition against the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panchkula. He has referred to various judgments in that regard i.e. LPA-1124-2015 titled 'Janki Devi Versus State of Haryana and others', decided on 22.10.2018 by a Division Bench of this Court, CWP No.1286 of 1987 titled 'Shakntla Devi Versus The Deputy Commissioner and another' decided on 13.8.2010, 'Marwari Balika Vidyalaya Versus Asha Srivastava & Ors.' 2019(2) S.C.T. 197 by the Apex Court.

Whereas the learned State counsel has contended that in the impugned order, there is reference to judgment passed by Division Bench of this Court in CWP No.12204 of 2006 titled 'Poonam Dhameja Versus State of Haryana and others' relying upon the law laid down in 'Dr.N.K. Sharma and others Versus The Commissioner and Secretary to Government Haryana Social Welfare Department and others' and further CWP No.10205 of 1988 titled 'Mrs.Bhagwanti Versus State of Haryana and others' holding that writ petition against the present society is not maintainable.

However, it comes out that there are conflicting views of various benches of this Court Single as well as Larger with regard to maintainability of the writ petition against the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panachkula. Therefore,

in my view, it would not be proper and appropriate to dismiss the writ petition for the reason of being not maintainable.

Now coming to the merits of the case. Admittedly, the petitioner was appointed on contract basis though his contract stood extended from time to time, then his services were dispensed with. Learned counsel appearing for the respondent – society has categorically stated that no seniority list of employees taken on contract basis is maintained, as such there is no question of services of petitioner having been dispensed with while persons juniors to him having been retained. He has further submitted that respondent No.3 does not have sufficient financial resources and for that reason services of petitioner having been dispensed with and no other person has been employed/hired in his place.

In view of such statement made by learned counsel for respondent No.3 – society, the petitioner does not have any case claiming continuation in service. Admittedly, he was employed on contractual basis, which stood extended from time to time and when his last contract had come to an end, the same has not extended. Thus, no cause of action arose to the petitioner to file the present writ petition, which has been so done quite belatedly inasmuch as his services were dispensed with in October, 2019, whereas the present writ petition was filed by him 15.7.2021 i.e. after a period of little less than two years. He had filed a writ petitioner earlier bearing CWP No.4851 of 2021, which was disposed of directing respondent No.3 i.e. Organizing Secretary, the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panchkula to take a decision qua the legal notice dated 10.7.2020

(Annexure P8) in accordance with law, within a period of one month from the date of receipt of certified copy of the order. Such respondent had accordingly passed a detailed order dated 27.4.2021 copy of which has been attached with the writ petition as Annexure P11. A perusal of that order goes to show that petitioner was engaged on purely temporary/contractual basis and it was clearly mentioned in his appointment letter observing that his services would be liable to be terminated even during the period of contract if his work and conduct is not found satisfactory without notice and without assigning any reason. That work and conduct of the petitioner was not satisfactory and he was issued memos dated 12.3.2019, 10.5.2019, 20.6.2019, 11.7.2019 and 24.7.2019 etc. and despite that he did not improve his work and conduct. In addition to that petitioner had taken Rs.8,800/- on 2.11.2018 and 14.11.2018 from SDM Office, Hisar, which had been collected by that office through coupons in the name of the Welfare Centre for Persons with Speech and Hearing Impairment, Hisar for driving rests conducted by SDM Office, Hisar. However, that amount was not deposited with the centre, therefore, in public interest, the services of petitioner were not continued. Though learned counsel for the petitioner has labelled this order dated 27.4.2021 being stigmatic in nature but it has to be kept in mind that the order was passed by respondent No.3 in compliance with the directions issued by this Court in CWP No.4851 of 2021, whereas while dispensing with his services no stigmatic language has been used.

It is not a case of one contractual employee being replaced by another contractual employee, rather here is a case of the employer being

unable to continue availing services of the petitioner on account of financial constraints and furthermore, work and conduct of petitioner was also not found to be satisfactory. This subjective satisfaction of an employer with regard to work and conduct of his employee, who has been employed on contract basis is required to be given due weightage in such like matter. There could not be any question of petitioner having been shown the door while the juniors were retained in service as the petitioner was not working on a regular post and no seniority list of petitioner and his co-employees is not being maintained.

Even otherwise, a writ is to be issued in exceptional cases and not in routine. Here I do not find any reason to exercise such power.

The instant writ petition is dismissed accordingly.

28.09.2021  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**