

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

**LPA-736-2021 (O&M)
Date of decision: 2.9.2021**

Surender Kumar Saini

... Appellant (s)

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Gopal Soni, Advocate,
for the appellant (s).

KARAMJIT SINGH, J.

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

The appellant has preferred this appeal against the order dated
7.4.2021 whereby the writ petition filed by the appellant (petitioner therein)
was dismissed by the learned Single Judge.

Pleaded case of the appellant is that he was engaged as
Accounts Assistant under National Rural Health Mission (in short,
“NRHM”) on contract basis and he joined his duty as such at Bhiwani on
24.1.2012. In 2014, the department received complaint against the appellant
that he had embezzled an amount of ₹ 93,000/-. An inquiry was conducted
by the Committee and the said Committee recommended that no further
extension be given to the appellant and it further recommended for
registration of a criminal case against him. Being aggrieved, the appellant

fresh inquiry was conducted and the inquiry officer gave its report dated 16.10.2018 whereby the appellant was exonerated of the charge of embezzlement and was found guilty only of improper accounting. The inquiry officer further recommended that no criminal proceedings be initiated against the appellant. The said recommendations made by the inquiry officer were accepted by Director, National Rural Health Mission vide his communication dated 26.6.2019 and the pending complaint was directed to be filed. In the meantime, the appellant made request in writing dated 21.6.2019 seeking his reinstatement but the same was declined vide impugned order dated 16.7.2020 (Annexure P-20). Being aggrieved by the same, the appellant filed the writ petition.

After hearing both the parties, learned Single Judge rejected the claim of the appellant (petitioner therein) vide impugned order dated 7.4.2021 while holding as follows : -

“A perusal of the aforementioned facts shows that on account of the complaint dated 14.7.2015, an enquiry was conducted and based thereupon, it was decided not to extend the contract of the petitioner. Whether, contract is to be extended or not is purely in the administrative domain and cannot be interfered with unless the exercise is shown to be mala fide or arbitrary. That is not the case of the petitioner. Claiming reinstatement on the basis of enquiry report dated 16.10.2015 is impermissible in law as the petitioner was not a regular employee. At best, he could have asked for fresh appointment on contract basis for which he needed to apply pursuant to any advertisement that may have been issued. The enquiry report has held that criminal

prosecution may be dropped and the same has been done and thus, there is no illegality in the actions of the respondents.

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

Being dissatisfied, the appellant has filed the present appeal. We have heard the counsel for the appellant.

Counsel for the appellant has assailed order (Annexure P-12) as well as order dated 7.4.2021 passed by the learned Single Judge. Counsel for the appellant contended that no such embezzlement as alleged by the department was ever committed by the appellant. Learned counsel further argued that the matter was inquired by the department and on conclusion of the departmental inquiry, the appellant was given clean chit by the inquiry officer as is evident from inquiry report (Annexure P-10). Learned counsel further contended that as the appellant was exonerated in the departmental inquiry, he is entitled to be retained in service. So, the impugned order (Annexure P-12) is liable to be set aside being totally illegal. Counsel for the appellant while summing up his arguments submitted that the present appeal deserves to be allowed.

We have considered the submissions of the counsel for the appellant.

Admittedly, the appellant was working on contractual basis, when departmental action was initiated against him for alleged embezzlement of ₹ 93,000/-. The matter was firstly inquired by the Committee headed by Dr. Sunil Kumar, Deputy Civil Surgeon (NHRM).

The said Committee found the appellant guilty of embezzlement of ₹

police for proper investigation. On the basis of the said inquiry report submitted by the Committee, Chairman, District Health and Family Welfare Committee, Bhiwani directed that the contract of the appellant should not be extended further beyond 1.7.2015. Accordingly, the appellant was disengaged. However, on the written request of the appellant, the entire departmental action was reviewed by the inquiry committee headed by Dr. Abhimanyu, Deputy Civil Surgeon (NHRM). Vide its report Annexure P-10, the said inquiry Committee, while adopting a sympathetic approach held that the appellant be issued warning for not following the rules of accounting and while exonerating him of other grave charges, recommended that complaint be filed. On the basis of the aforesaid inquiry report (Annexure P-10), the appellant moved the concerned authority with request for his reinstatement. However, the same was declined by the competent authority vide letter dated 16.7.2020 (Annexure P-12). The appellant has laid challenge to the said letter/order.

Undisputedly, the appellant was not the permanent employee. He was working as Accounts Assistant on contractual basis under NHRM. Even if he was engaged on contract basis, the appellant, being Accounts Assistant was under obligation to maintain proper discipline and to keep the accounts of the department as per the settled principles of accounting. In the present case, serious allegations of embezzlement of Rs. 93,000/- were leveled against the appellant and the department initiated action against him which was later on reviewed. Even as per the said reviewed action, the appellant was issued warning vide order Annexure P-11, for not following the rules of accounting. It is evident that on the basis of the first inquiry

Surgeon, NHRM, the appellant was disengaged with effect from 1.7.2015.

In light of the above, we are of the view that learned Single Judge rightly pointed out that question of extension of contract of an employee purely comes in the administrative domain of the employer and cannot be interfered with by the Court unless the action of the employer is arbitrary or smacked with malafide. However, in the present case, the appellant has failed to establish the same. It was the prerogative of the employer to engage or disengage such a contractual employee. In **Yogesh Mahajan v. Professor R.C. Deka, Director, All India Institute of Medical Sciences;** 2018 (1) SCT 690 Hon'ble Apex Court has held that no contractual employee has a right to have his or her contract renewed from time to time.

That being so, we do not find any illegality or perversity in the action taken by the employer. Thus, we concur with the findings returned by the learned Single Judge. Consequently, the appeal, being devoid of merits, is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

September 2, 2021

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No