

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

CWP-16743 of 2020 (O&M)

Reserved on : 02.12.2021

Date of decision: 06.12.2021

Dinesh Dahiya

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Sachin Gupta Ladwa, Advocate for the petitioner.

Mr. Sharad Aggarwal, AAG, Haryana.

Mr. Subhash Ahuja, Advocate for respondent No.5.

H.S. MADAAN, J.

1. Petitioner Dinesh Dahiya has filed the instant writ petition against respondents craving for issuance of a writ in the nature of certiorari quashing the letter dated 12.05.2020/15.05.2020 (Annexure P-10) said to have been issued to the petitioner on 18.08.2020; in addition to seeking quashing of advertisement dated 09.09.2020 (Annexure P-12) for appointment to the same post by other contractual employee, on which the petitioner is already working in the similar capacity and not to replace him till regular incumbent joins, besides seeking stay on the operation of the impugned letter dated 12.05.2020/15.05.2020 (Annexure P-10) and advertisement dated 09.09.2020 (Annexure P-12).

2. As per case of the petitioner, in response to the advertisement inserted by respondent No.5-Chief Executive

Officer/General Manager, Sonapat Central Cooperative Bank, the petitioner applied for the post of Counselor for Finance Literacy Center, Kathura, District Sonapat and the Committee approved his name for appointment; as such, appointment letter dated 20.02.2017 was issued to him; the petitioner joined his duties against the post in question; an agreement was executed between petitioner and respondent No.5 on 14.03.2017, vide which the tenure of the petitioner was fixed upto November 2018 or until it was renewed, though, it could be terminated at any time by giving one month's notice by either side.

3. The petitioner contends that he has been discharging his duties in a satisfactory manner and he is working against a post, which is regular in nature; he had submitted a representation on 27.12.2019 (Annexure P-5) for extension of his period; the Nodal Officer recommended grant of extension to the petitioner for 03 years, vide letter Annexure P-6; that the petitioner had given reminder seeking extension for 03 years on 09.01.2020, copy of such letter being Annexure P-7; he had sent an e-mail to the respondents along with report for the month of July 2020 on 14.08.2020; the respondents had sent e-mail to the petitioner on 18.08.2020 asking him not to send any e-mail again since he had been relieved from duties on 15.05.2020; the petitioner was surprised to receive such e-mail because he is continuing serving on the post on which he had been appointed and letter dated 15.05.2020 was neither given to him nor any intimation in that regard was conveyed to him; that application of the petitioner regarding extension of his term was recommended to be put up in the meeting of Board of Directors but no

such meeting had been held, therefore, no decision could be taken; the petitioner is continuing in the job and the respondents had sent a letter to him on 11.06.2020 regarding meeting of the District level monitoring and Review Committee; thereafter, the respondents inserted an advertisement in the newspaper to fill up the post on which the petitioner is working, copy of said advertisement dated 09.09.2020 being Annexure P-12; the petitioner had approached the respondent-bank and the bank gave an assurance to him asking him to apply against the post and he would continue; accordingly, the petitioner had applied on 10.09.2020; the petitioner had come to know from reliable sources that respondent-bank would recruit fresh candidates on contract basis, on which the petitioner was employed which is against the settled law that one set of contractual employees cannot be replaced by another set of employees on contract basis, until regularly selected candidates are appointed as per law laid down by the Apex Court.

4. Feeling aggrieved by the attitude of the respondents, the petitioner has approached this Court by way of filing the present writ petition.

5. On notice, the respondents put in appearance. Respondent No.4 filed written statement, contesting the writ petition, contending that petitioner is not entitled to invoke extra ordinary writ jurisdiction of this Court under Article 226/227 of the Constitution of India; that as per Section 124 of the Haryana Cooperative Societies Act, 1984, a notice should have been delivered to the Registrar, Cooperative Societies, Haryana before filing the case against the respondent but no such notice

was got served by the petitioner upon the respondents, therefore, the writ petition is liable to be dismissed; that the petitioner should have filed appeal before the Registrar, Cooperative Societies Haryana, Panchkula under Clause 29 of the Haryana State Central Cooperative Bank's Staff Service (Common Cadre) Rules 1975 since this provision is for filing an appeal against the penalty of removal/dismissal/termination of an employee; the petitioner has not availed of such remedy; according to the answering, respondent No.5 has not inserted any advertisement for appointment of Counselor for Finance Literacy Center, Kathura, District Sonapat and as a matter of fact, the bank had called candidates for walk-in-interview for engagement of a Counselor on contract basis on the recommendation of Committee, vide letter dated 20.02.2017 in a scheme launched by NABARD in terms of the guidelines issued by Reserve Bank of India and the petitioner had been engaged for a fixed period; in that way, the petitioner was employee of respondent No.5 and not respondent No.4; denying the remaining allegations, such respondent prayed for dismissal of the writ petition.

6. In the written reply filed on behalf of respondent No.5, the contentions in the writ petition are contested, contending that the hiring of the petitioner was for a limited purpose and on expiry of that term, he cannot continue, since there is no provision for presumptive extension in the agreement (Annexure P-3) and on end of his term, the petitioner has been relieved from his duties on 15.05.2020; as regards the recommendations made by the Nodal Officer, it was contended that he had only suggested extension of term to the petitioner, however, his

recommendation is not required because it is for the Board of Directors/competent authority to take decision about extension of tenure to such an employee after taking into consideration all *pros* and *cons*; as the petitioner had been relieved from his duties on 15.05.2020, the e-mail dated 14.08.2020 along with report for the month of July 2020 was a malicious attempt on his part to show that he was still continuing there; the petitioner has to prove as to under which authority of law he was continuing in service after 15.05.2020; the petitioner is misreading and misconstruing the letter dated 11.06.2020; the petitioner is not possessing the basic qualifications and experience for the post in question, hence he cannot insist that he should be allowed to continue; the issuance of advertisement by respondent-bank is perfectly legal, valid and as per settled law; the petitioner is guilty of forging the official record. The attendance register was being maintained by the petitioner at his own level and it neither bears signatures of any competent authority nor authenticated by it; the respondent-bank functions on the basis of resolutions passed by the Board of Directors in the meetings summoned and as per provisions of the Haryana Cooperative Societies, Act 1984, the Haryana Cooperative Societies, Act 1989 and the certified bye-laws of the bank and not on the basis of an instrument got privately signed by the petitioner from the Directors in their individual capacity; the impugned order dated 15.05.2020 and advertisement were defended as legal and valid; refuting the remaining assertions, such respondent prayed for dismissal of the writ petition.

7. I have heard learned counsel for the parties besides going

through the record.

8. Admittedly, the petitioner was appointed as a Counselor for a period of one year and an agreement was executed between petitioner and respondent No.5 on 14.03.2017, copy of which being Annexure P-3. A perusal of that document is very vital because that settles the terms & conditions on which the services of the petitioner were hired. It is very clearly mentioned there in that the first party i.e. the employer will be entitled to dispense with the services of the petitioner-employee without assigning any reason at any time during the contractual period by giving one month's notice. Thus, it was a contractual appointment and on completion of the contract period, the petitioner had to leave, unless the period was extended. There is no question of any automatic extension in service of the petitioner or his continuance as such. Though, according to the petitioner, he had submitted a representation on 27.12.2019 for extension of his period but merely on account of that, it cannot be assumed that the extension had been granted. Similarly, the recommendation said to have been made by the Nodal Officer to extend the service period of the petitioner for 03 years, does not bestow any valuable right upon him to seek extension.

9. The petitioner comes out to be a scheming type of person, who as per his version had sent an e-mail to the respondents along with report of month of July 2020 on 14.08.2020, however, the respondents in response sent through e-mail on 18.08.2020, had clarified the things asking the petitioner not to send any e-mail again, since he stood relieved from duty on 15.05.2020. Though, according to the petitioner, he was not

intimated in that regard by the respondents but he himself has placed on record copy of letter dated 12.05.2020/15.05.2020, copy Annexure P-10. According to him, copy of that letter had been supplied to him at his request. This contention does not seem to be plausible or convincing. The communications are sent in the normal course of business and it is to be taken that such normal course was adopted with regard to Annexure P-10 also and it was duly received by the petitioner in terms of Section 114 of the Indian Evidence Act, 1872. The petitioner himself states that his application regarding extension of term was to be put up in the meeting of Board of Directors but since no such meeting took place, therefore, no decision could be taken. May it be so, unless the Board of Directors had allowed the extension in term to the petitioner, he could not possibly assume that he continues in service after expiry of his original term. The record being relied upon by him with regard to sending e-mail on 18.08.2020, attendance register etc., is of no help to the petitioner, since the petitioner could easily manipulate such record and even he had been reporting for work and discharging duties after 15.05.2020, that cannot be taken to be automatic extension in his service, bestowing any valuable right of continuation upon him. Similarly, the letter Annexure P-11 addressed to the petitioner asking him to attend meeting on 11.06.2020 is not of any significance. According to the respondents, the petitioner was In-charge of his office and could very easily mark his attendance in the register, which used to be in his custody and after expiry of his term, he had not handed over charge to any other officer, therefore, any such record manipulated by him does not help him. As observed already, such

type of documents hardly help the petitioner in making out a case that even though no formal extension in his contractual period had been granted by respondents, it should be assumed to be continuance as per facts of the case.

10. Admittedly, the petitioners was appointed on contract basis. Such contractual employee do not have got any vested right for regularization of his services, though his case could be considered subject to some conditions, which include availability of the vacancies/workload, the petitioner fulfilling the necessary qualifications as well as requirement of the employer. It depends upon the policy of the Government as to whether the contractual employees are to be regularized, if so, after how much service, the eligibility criteria for regularization, the number of such employees to be regularized, etc. On completion of his term, the petitioner cease to be in employment of the respondents. As submitted by learned counsel for the respondents, the services of the petitioner were hired under scheme of NABARD and since his contract period was not extended, his services were dispensed with on 15.05.2020. It is certainly not the case of the contractual employees being replaced by another set of contractual employees without any rhyme or reason.

11. In judgment *Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences 2018 (2) Apex Court Judgments (SC) 56*, it was observed that since appointment of employee on contract basis is not made in accordance with any regular procedure by following necessary rules, no right accrues to such type of employee for

regularization of services and there is no statutory right of a contract employe for renewal of contract from time to time.

12. Learned counsel for respondent No.5 had referred to judgment **Dr. Sandeep & Ors. Vs. State of Haryana, 2007 (2) SCT 487 DB (P&H)**, wherein it was observed that once an appointment is made on contractual basis for a fixed period, then no interim directions could be issued by extending the tenure beyond the period prescribed. In the present case, the petitioner was appointed for a period of one year with no extension being granted to him, therefore, he cannot insist that he should be allowed to continue to work on that very post. He had further referred to judgment **Dr. Vijay Kumar Kathuria Vs. State of Haryana, AIR 1983 (SC) 622**, wherein it was observed that when a relief is obtained by making false representation, petitioners are dis-entitled to relief by such conduct. He has pointed out that the petitioner has furnished wrong translation of document in the form of Annexure P-10. In the original, which was in Hindi, he was asked not to correspond and not to do any work till decision was taken on his representation dated 27.12.2019, whereas, in the translation by the petitioner annexed with the petition as Annexure P-10, word 'not' has been deleted, so as to give entirely different interpretation that the petitioner should do some work.

13. Thus, keeping in view the detailed discussion above, the petition is doomed for failure and is dismissed accordingly.

06.12.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No