

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

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CWP No.15266 of 2022 (O&M)
DATE OF DECISION: 18th JULY, 2022

Dr. Naveen Saini

.... **Petitioner**

Versus

Krishi Vigyan Kendra and others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sardavinder Goyal, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ especially in the nature of Certiorari for quashing of impugned order dated 30.06.2022 (Annexure P-13), whereby the service of the petitioner has been terminated from the post of Subject Matter Specialist (Animal Sciences), with certain other prayers made in the present petition.

The case of the petitioner, in nutshell, is that the petitioner was appointed on the post of Special Matter Specialist (SMS) on a contractual post. Pursuant to the selection, the petitioner was offered the contractual appointment for a period of two years vide appointment letter dated 08.09.2018. Thereafter the contract was renewed on 25.09.2021. Still further, the contract was renewed upto 25.09.2023. However, the service of the petitioner has been terminated vide order dated 30.06.2022.

Challenging the said termination order, the present petition has been filed.

While arguing the case, the counsel for the petitioner has submitted that the advertisement, pursuant to which the petitioner was appointed, mentioned the post as regular post because it was not specified as contractual. Therefore, the offer of appointment to the petitioner on contract basis itself was wrong. It should have been on regular basis. Moreover, vide order dated 22.03.2022, the petitioner was placed under suspension in contemplation of the enquiry into the alleged misconduct on the part of the petitioner. However, without holding an enquiry, the service of the petitioner has been terminated. Since the order has emanated from the proceedings in which the petitioner was placed under suspension, therefore, the order of termination is stigmatic in nature. The disciplinary enquiry should have been held by the respondents before passing the stigmatic order. However, no such enquiry has been held. Therefore, the order stands vitiated. The counsel for the petitioner has further submitted that the petitioner was working against a regular post and he was also being paid salary like a regular employee; by granting even the increments. Moreover, the NPS contribution was also being deducted from the salary of the petitioner. Further, in the records sent to the ICAR as well, the petitioner was shown as a regular employee. Hence, the petitioner had attributes of being a regular employee. Therefore, he should have been treated as a regular employee and, accordingly, his service could not have been terminated without holding a regular enquiry.

The counsel for the petitioner has also relied upon the judgments rendered by Telangana and Andhra Pradesh High Court in the case of ***S.Zabeda Parveen Versus A.P. Women's Co-operative Finance Corporation, Hyderabad and another, Writ Petition No.34361 of 2011, decided on 16.09.2015*** and the one rendered by Madhya Pradesh High Court in the case of ***Vijay Barde S/o Late Shri Dhan Singh Versus The State of M.P. and another, WP No.4680 of 2017, decided on 13.02.2020***, to argue that even in case of contractual employee, the employer is required to hold an enquiry before termination of his service.

Having heard the counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments of the counsel for the petitioner. It is not even in dispute that the petitioner was issued the appointment letter vide order dated 08.09.2018 and the said order specifically describes the appointment as being contractual in nature for a specified period. Not only that, even after the initial appointment the contract of appointment of the petitioner has repeatedly been renewed also. The petitioner never raised any objection before any Court of law. Therefore, after abolition of the contract, now the petitioner cannot be permitted to turn around to start challenging the very nature of the appointment in which the petitioner has continued for such a long time. Merely because the salary is being paid in a pay scale or that in a communication sent to regulating body, the status of the petitioner is shown as a regular employee; would not change the nature of the employer-employee relationship, as determined by the initial engagement letter of the petitioner. Although the counsel for the petitioner has also submitted that the advertisement itself did not

specify the post offered to the petitioner to be contractual despite the fact that some other posts were so described, would mean that the post of the petitioner was advertised on regular basis, however, this Court does not find any substance in the said argument of the counsel for the petitioner as well. The nature of the employment and the terms of payment of salary for the said appointment are two different things. Even in a contractual appointment, the employee can be very well paid the salary in the pay scale for the duration of the appointment. Moreover, the communication to the regulating body, in which the petitioner was shown as a regular employee, cannot be taken as a proof of change of nature of the employment after the petitioner was, undisputedly, engaged on contract basis.

Although the counsel for the petitioner has also submitted that since his contribution qua the NPS was also being deducted and hence he has to be treated as a regular employee, however, deduction of contribution towards a pension scheme itself does not confer any status of a regular employee. The appointment was specifically mentioned as contractual. The counsel for the petitioner has submitted that the respondents have terminated the service of the petitioner after placing the petitioner on suspension in contemplation of the enquiry against him, therefore, the petitioner could not have been dismissed without any enquiry. However, even this argument of the counsel for the petitioner is totally irrelevant. The order passed against the petitioner is an order *simplicitor* of termination of the contract of employment. The order, *per se*, does not reflect any stigmatic character in itself. What was the intention of the Punishing Authority before actually passing the order of

termination is within the sole domain of the competent authority, but the facts remains that no charge-sheet leveling any allegations was ever issued, nor any enquiry was held. Therefore, it cannot be inferred even from the record that the intention of the Punishing Authority was to terminate the service of the petitioner by way of stigmatic punishment. The order of termination, expressly avoids any expression relating to any kind of punishment. The order being *simplicitor* of termination of contract, cannot by any means, be treated as stigmatic order in itself. A perusal of the aforesaid judgments relied upon by the counsel for the petitioner in the cases of ***S.Zabeda Parveen (supra)*** and in ***Vijay Barde (supra)***, shows that in the said cases, the order had attributed loss to the employees and had reserved the right to recover the loss from the petitioner in that cases. However, in the present case, there is not even any mention of any misconduct on the part of the petitioner, hence, the said cases are totally distinguishable from the present case.

The pending miscellaneous application, if any, is also disposed of as such.

18th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No