

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

CWP NO. 20391 OF 2016

DATE OF DECISION : 09.03.2022

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. K. Verma, Advocate,
for the petitioner.

Mr. Sharan Sethi, Addl. AG, Haryana.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

Petitioner is before this Court aggrieved against the loss of his livelihood caused by virtue of an order dated 08.08.2016 (Annexure P-14) impugned herein, whereby his services were dispensed with from the post of Computer Operator/Clerk with immediate effect as on the date of passing of the order.

2. Petitioner alleges that no reason, whatsoever, what to say any plausible reason was given while dispensing with his services. He also alleges that while on one hand there was requirement of the work on the post being manned by the petitioner, on the other hand, his services were summarily terminated merely to accommodate another favourable candidate by the official respondents.

3. Succinct facts first. Upon requisition for requirement of Data Entry Operator/Clerk sent by respondent No.3-Deputy Director, Animal Husbandry & Dairying Kaithal, District Kaithal, to Hartron Workstation Kaithal, the latter vide its letter dated 14.11.2007 sent the name of petitioner for appointment on contractual basis for two months. Petitioner accordingly joined the office of respondent No.3 on 15.11.2007. His term was extended from time to time. Meanwhile, Government of Haryana issued a regularization policy dated 18.06.2014 for regularizing services of Group C and D employees. Pursuant thereto, petitioner made representation dated 04.07.2014 requesting to regularize his services in terms of policy, *ibid*. His name was also recommended by respondent No.3 but respondent No.2 directed respondent No.3 to make fresh appointment instead of acceding to the recommendation of respondent No.3. Vide impugned order dated 08.08.2016 (Annexure P-14), respondent No.2 directed to dispense with the services of the petitioner with immediate effect. Hence, the petition.

4. When the case was first taken up for hearing on 29.09.2016, following order was passed :

*“Counsel for the petitioner seeks time to place on record the relevant material/document to substantiate his assertion that the respondent authorities are adopting a methodology, whereby after having disengaged the petitioner from the post of Data Entry Operator (contractual basis), he is sought to be replaced by another similar arrangement.
On his request, adjourned to 18.10.2016.”*

5. In response to the above specific observation made by this Court, a return was filed. However, it was found evasive qua the specific averments contained in the petition. Vide subsequent order dated 12.03.2020 passed by this Court, an additional affidavit was directed to be filed, particularly, in response to the facts stated in para 12 of the writ

petition. The said order of the Court is reproduced herein below, for ready reference :

*“After hearing learned counsel for the parties, the respondents are directed to file an additional affidavit, clarifying the stand on the facts as stated in paragraph No.12 of the writ petition, wherein reference has been made a letter dated 23.08.2016, dispatched vide³ Diary no.1438, to the Hartron Work Station, vide which requisition was made for a Data Entry Operator/Clerk for the vacant sanctioned post against which the petitioner was allegedly working.
Adjourned to 24.04.2020.”*

6. It would also be apposite to reproduce para 12 of the writ petition and response thereto by way of additional affidavit dated 04.03.2022, wherein an unequivocal stand has been taken. Relevant thereof is reproduced herein below :

“Para 12 of the Writ Petition :

12. That thereafter, the respondent No.2 has directed the respondent No.3 to make fresh appointment against the post of Data Entry Operator/Clerk. Even the respondent No.3 has also started the process and has written a letter dated 23.08.2016 having dispatch No.1438 to the Hartron Work Station in this regard. From which it is apparent that respondents No.2 and 3 have requirement of a Data Entry Operator/Clerk for the vacant sanctioned post against which petitioner was working. From the above, it is also clear that respondents No.2 and 3 just want to replace the petitioner with another contractual employee of their favour so that petitioner could be deprived of the benefit of regularization. It amounts to unfair labour practice on the part of respondents. However, this the settled proposition of law that one set of contract and ad hoc employees cannot be replaced by another set of contract and ad hoc employees till regular selection is not made.”

Corresponding response in Para 4 of the affidavit dated 04.03.2022

4. *That it is pertinent to state here that the respondent no 3 has written a letter dated 23.08.2016 address to Hartron informatics Limited (HIL) and not to the Hartron Work Station Computer Training centre Kaithal as Hartron informatics Limited (HIL) was the only agency authorized by the Government of Haryana for providing computer professional to Government Departments/ Boards/*

Corporation. It is also pertinent to submit here that the petitioner did not remain in contractual service after 31.08.2015 and respondent no 3 had written a letter on 23.08.2016 after a considerable gap of approx. one year and although a letter was written to Hartron informatics Limited (HIL) to engage a data entry operator but no data entry operator was engaged by the respondent no 3 in view of the said letter. Therefore, no question of replacement of the petitioner with another contractual employee arose.”

7. On a Court query, learned counsel for the petitioner submits that the above deposition in the affidavit dated 04.03.2022 is factually incorrect and misleading. He further submits that not only services of another person were hired but in order to avoid being confronted by this Court, his services were transferred to another department.

8. Be that as it may, in case the above affidavit is factually incorrect and deposition therein is wrong, the petitioner is at liberty to take appropriate remedy qua the same. It is not for this Court to hold a trial in the extra ordinary writ jurisdiction on the disputed facts of the case.

9. In the premise, no ground for interference by this Court is made out.

10. Dismissed.

MARCH 09, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No