

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

CWP-24177-2019(O&M)

Date of decision: November 10, 2022

Chinky

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jasbir Mor, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of an appropriate writ in the nature of Certiorari for quashing impugned letter/ order dated 31.05.2019 (Annexure P-14) and another letter dated 31.05.2019 (Annexure P-15) whereby the services of the petitioner as contractual staff nurse were terminated.

2. First, succinct factual background as pleaded. Petitioner was selected for the post of Staff Nurse by the Selection Committee after considering the claim of all the eligible candidates and her name was sent to CHC Pundri. Senior Medical Officer, Pundri-cum-President of Society issued appointment letter to the petitioner on 02.04.2012 (Annexure P-2) whereby, she was appointed on the said post till 31.03.2013, on a consolidated remuneration of Rs.10,340/- per month. She was sent to the General Hospital, Kaithal where she worked upto 29.03.2013, when she was relieved from the duties on 29.03.2013 (Annexure P-5) on completion of contract of one year.

Petitioner was again appointed on the said post vide order dated 02.04.2013

(Annexure P-6) by the District Health and Family Welfare Society, Kaithal on the basis of her performance and recommendation of Senior Medical Officer. She was posted in CHC Pundri. The Contract was thus extended to 31.03.2014. Thereafter, contract was being extended from time to time.

Respondents extended the service contract period of other contractual employees working under the National Health Mission from 01.06.2019 to 31.03.2020 vide impugned office order dated 31.05.2019 (Annexure P-14), but the contract of the petitioner was not extended. Accordingly, she was relieved from the post in question. Petitioner also submitted a representation dated 04.07.2019 (Annexure P-16) requesting that she be allowed to join duty, but no action has been taken on the same. In March 2019, petitioner had suffered depression due to adverse family circumstances and did not perform the duties for the said month. Hence, the present petition.

3. Following stand has been taken in Para-2 of Preliminary Submissions of the written statement dated 28.03.2022 filed on behalf of respondents No.1 to 6:

“2. *That in this regard, it is submitted that the petitioner was engaged as Staff Nurse on contract basis and her contract period was being extended from time to time by the competent authority. However, as per terms and conditions of her contract, mentioned in her appointment letter attached as Annexure P/6, her contract was liable to be terminated at any time without assigning any reason. It is worth-while to mention here that the petitioner while working with the department attempted to commit suicide by consuming **alproalzalm** during duty hours. The DDR No.14 dated 16.03.2019.*

In this regard is attached as Annexure R-1, was registered in the Police Station, Guhla, Distt. Kaithal. However, no departmental action could be taken as the Code of Conduct was in force but she was counselled by SMO, Guhla himself when she returned to her duties. The

petitioner tried to justify her act by saying that when things go against wishes, such steps are to be taken. It may be mentioned that the petitioner being the only staff Nurse on duty in Labour Room, she put many patients on a potential risk to life of both mother and baby. The act and conduct of the petitioner proved her to be mentally unfit whereas it is very much essential that person on duty must be mentally fit that too for service where lives of others lie at potential risk due to the mental condition of the service provider. It is further submitted that attempt to commit suicide during duty hours has shown gross indiscipline and needs no further clarification. This incident has also caused a lot of damage to the image and reputation of the Health Department which has been set up by the Govt. for welfare of people and not to put their lives in danger when such mentally unfit irresponsible service provider is working there. It is further submitted that there were two complaints in CM Window which show her rash behaviour. It is also pertinent to mention here that after 16.03.2019 during duty, she was kept monitoring by Doctors, so that lives of others may not be put in danger during the duty of the petitioner. The irresponsible level is such that she preferred to handover her charge to another employee when she was not provided extension. The lives of the patients cannot be put in the hands of indisciplined and irresponsible employee and as such the petitioner was not given extension in service on contract basis and her contract was terminated by the competent authority vide letter/order dated 31.05.2019, Annexure P-15. Hence the action of the answering respondents is within the terms and conditions of her contract especially keeping in view her act and conduct and she cannot claim any right for her extension in contract after 31.05.2019.”

4. Having heard rival contentions, I am of the view that ordinarily this Court would not have interfered as it pertains to a contractual employee whose rights are governed within the limited four corners of the terms and conditions envisaged in the contract. However, given the peculiar facts and circumstances and the mitigating reasons, I am of the view that the claim of the petitioner to be re-inducted on contract, is to be considered more on compassionate basis in the interest of justice and equity rather than on the strict application of the contractual terms. No doubt, in the return, specific

stand has been taken that despite the petitioner taking the extreme step of attempting suicide, the same was viewed with certain compassion and even subsequent thereto, the superiors tried to adjust with her rather than petitioner cooperating with them.

It appears that with the passage of time, petitioner would have learnt her lesson having remained out of job for all this period and deserves to be given one more opportunity.

5. In the course of arguments on a Court query, learned State counsel under instructions from Sh. Sanjay Kumar, Med. Lab. Technician and Sh. Subhash, MPHS (M), O/o Civil Surgeon, Kaithal submits that DDR, which appears to have been on the mind of the respondent-Department as the reason for her non-consideration for appointment on contract, at that stage was not converted into registration of an FIR as the preliminary investigation did not reveal any criminal culpability on the part of the petitioner. This fact seems a mitigating circumstance in favour of the petitioner.

6. Be that as it may, what has already been observed hereinabove, humanitarian approach needs to be taken. In the premise, writ petition is disposed of with the expectation from the respondents that if found otherwise eligible, and subject to availability of the post and work exigency, the petitioner's candidature shall be considered in accordance with law. It would be appreciated that in case vacancy is not available as on today, the petitioner's application for re-employment on contract basis shall be considered in preference over others, keeping in mind her past experience. This is subject of course to prior claim any other candidate being available who is more meritorious than the petitioner.

7. Necessary exercise be carried out within a period of 2 months from today.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 10, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No