

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

CWP-18946-2022
Date of Decision: 26.08.2022

Himanshu Pandey

..... Petitioner

Versus

Union Territory of Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gunjan Mehta, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned order dated 18.08.2022 (Annexure P-9), whereby services of the petitioner are discontinued w.e.f 29.07.2022 after 17 years of unblemished record; as also seeking issuance of a writ of mandamus directing the respondents not to terminate the services of the petitioner without following the due process of law; and also seeking directions to the respondents to allow the petitioner to continue to work as Accountant in the respondent-Society.

As per the facts on record, the petitioner was engaged on contract basis to perform his duties as an Accountant. Although, the contract period had been extended by the authorities from time to time. However, during the currency of the last tenure, the performance of the petitioner has not been found to be satisfactory. Therefore, the contractual services of the petitioner has been discontinued w.e.f. 29.07.2022, vide order

dated 18.08.2022 (Annexure P-9).

Notice of motion.

Mr. Gaurav Mohunta, Additional Standing Counsel, with Mr. Aditya Pal Singla, Junior Panel Counsel, accepts notice on behalf of the respondents.

Arguing the case, learned counsel for the petitioner has submitted that the services of the petitioner have been terminated despite the fact that the petitioner has been in service for the past 17 years. Moreover, the order passed against the petitioner is stigmatic in nature due to the allegations of unsatisfactory performance of the petitioner. For passing the stigmatic order, the respondents were required to hold a departmental inquiry. No such inquiry was ever held. Hence, the impugned order itself is bad in law. Moreover, the order has been passed on 18.08.2022, ordering the termination of contractual services of the petitioner w.e.f. 29.07.2022. Therefore, the said order has been passed with retrospective effect. The administrative order could not have been passed with retrospective effect. Hence, the impugned order deserves to be set aside.

On the other hand, learned counsel for the respondents has submitted that undisputedly the petitioner has been working for a long time, however, the said engagement of the petitioner was only on contract basis. The contract of service can be terminated by the respondent-authority at any time. The service contract cannot be specifically enforced by the petitioner through the process of the Court. Learned counsel has further submitted that the order passed against the petitioner is simpliciter an order of

discontinuing the contract without attaching any stigma to the petitioner. Only this much has been informed to the petitioner vide the impugned order that his work and conduct has not been found to be satisfactory. Conveying the assessment of the authority is not casting any stigma upon the petitioner. Learned counsel has further submitted that no regular inquiry is required to be held against the petitioner for two reasons, firstly, that the petitioner was only a contractual employee and the impugned order is of only discontinuation of the contract. There are no rules or regulations which require holding of any inquiry against the petitioner. Secondly, the order passed against the petitioner is not by way of any punishment under any rules. Regarding the assessment of the authority qua the performance of the petitioner being found unsatisfactory, the petitioner was asked to furnish his explanation on the aspect which was disclosed to him. That explanation was duly considered by the authority. Only after the explanation was found to be unsatisfactory, the contract of the petitioner was discontinued. The authorities have been careful enough not to even mention the alleged deficiency on the part of the petitioner in the order so as to ensure that the order is not rendered stigmatic. Hence, the order is legal and justified. Qua the retrospectivity of the order, learned counsel for the respondents has submitted that the order, in fact, was passed on 29.07.2022. However, the same could not be communicated on the same day. The order impugned in the present petition is communicating the decision which was already taken on the files. Hence, there is no retrospectivity involved in the matter.

Having heard learned counsel for the parties, this Court does

not find any substance in the arguments being raised by the learned counsel for the petitioner. Undisputedly, the petitioner was engaged on contract basis. The service of the petitioner has, undisputedly, been continued only through repeated extension of the contract of service of the petitioner. As a result, till the last date, the service of the petitioner happened to be only on contract basis. The petitioner has not even been able to refer to any decision or provision of law or policy of the respondents to show that there exists any regular post or that there had been any policy for regularization of the service of the employees like the petitioner. So far as the contractual service is concerned, the contract being a contract can be terminated at any time. Even, the terms of the contract so provided specifically that the contract of service of the petitioner can be terminated at any time. Hence, no fault could be found with the action of the respondents in terminating the contract of the service of the petitioner; as such. Mere length of the tenure is immaterial when the question of implementing the terms of the contract comes up.

Although, the learned counsel for the petitioner has submitted that the order is stigmatic in nature, however, this Court does not find this order to be stigmatic. The order is simpliciter in nature, which only reflects the assessment of the authority qua the work and conduct of the petitioner. Mere mention of the words 'work and conduct not found satisfactory' cannot be taken as stigmatic; by any means. This, at the best, is disclosing the reason to the petitioner; which led the respondents to discontinue the contract of service of the petitioner. Needless to say that there has not been

any charge-sheet against the petitioner levelling any formal allegation against him. So far as the holding of any inquiry is concerned, unless the authority considers a misconduct serious enough to punish an employee by imposing any punishment, there would not be any requirement of holding an inquiry qua such misconduct, particularly when such a person is not governed by any statutory rules qua the discipline and punishment. The authority would always be free to use other provisions of rules or term of contract to discharge such a person or to discontinue service of such person as per terms of contract, without attaching any punitive attributes to the order. So far as the grant of hearing to the petitioner, by way of complying principles of natural justice, is concerned, undisputedly, the petitioner was granted opportunity of hearing by seeking explanation from him qua the aspect of his default, leading to the assessment by the authority. Therefore, even this cannot be said that the petitioner has gone unheard. Needless to say that there are no rules brought to the notice of this Court requiring any formal disciplinary inquiry against the petitioner who has been engaged only as a contractual employee.

However, this Court finds substance in the arguments raised by the learned counsel for the petitioner qua retrospectivity of the impugned order. It is not even in dispute that the proceedings for dispensing with the service of the petitioner were undertaken and ordered on 29.07.2022, however, that was not communicated to the petitioner except through the order impugned in the present petition, which was passed on 18.08.2022. In the interregnum, the petitioner has even attended to his duties. Unless the

order is communicated, the same cannot be said to be an order so far as the rights of the petitioner are concerned. Therefore, the order, even if it was passed on an earlier date would be effective only from the date on which it is communicated to the petitioner. Hence, despite the order communicating to the petitioner that his services are terminated w.e.f. 29.07.2022, the petitioner is required to be treated in service upto the date of actual communication of the order to him. Accordingly, the petitioner is held entitled to the service benefits, including the salary, upto the date the order was communicated to the petitioner, i.e. upto 18.08.2022.

In view of the above, the present petition is disposed of in above terms.

(RAJBIR SEHRAWAT)
JUDGE

26.08.2022
adhlakari

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