

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

CWP-28534-2018 (O&M)

Date of decision: September 06, 2022

Dr. Sunita

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.S. Sahu, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of an appropriate writ in the nature of Mandamus directing respondent No.4-Civil Surgeon, Fatehabad to adjust/accommodate the petitioner as per instructions dated 08.04.2016 (Annexure P-4) issued by respondent No.3-Mission Director (NHM), Haryana according to which preference is to be given to the retrenched/ excess staff against the vacancies and no fresh appointment ought to be made until retrenched/ excessive staff are adjusted.

2. Pledged case is that the petitioner applied for the post of Medical Officer and being eligible, she was called for interview. Vide letter dated 27.01.2014 (Annexure P-1), petitioner was appointed as Lady Medical Officer on contract basis, under National Health Mission. She joined as such on 28.01.2014. Vide letter dated 20.11.2014 (Annexure P-3) issued by respondent No.3, petitioner was informed as under:-

“Post of posts of contractual MBBS/AYUSH LMOs and AMOs at various health facilities in the district under Maternal

health Division of NHM are withdrawn as these posts are not approved by GOI in ROP 2014-15.

You are hereby informed that your contract has been terminated according to contract letter (S. No.1 the contract can be terminated at any time without assigning any reason within 15 days notice or proportionate remuneration at any time before the completion of project on either side).

So you are hereby informed that your contract of LMO will discontinue on 04.12.2014 and your notice period will be started on 20.11.2014.”

3. Instructions were issued by respondent No.3 vide circular dated 08.04.2016 (Annexure P-4) to the following effect:-

“It is further clarified that all earlier communication regarding the adjustment of excess/ retrenched staff is hereby set aside and no further advertisement/ recruitment may be made until the excess/ retrenched staff is adjusted. The staff with similar basic qualification should be adjusted against the vacant posts in any scheme/ programme funded under NHM including Disease Control Programme, RNTCP etc whose age is less than 62 years.

The spirit of this office letter No.1HR/2016/343-63 dated 22.01.2016 is reproduced for necessary action “It is pertinent to mention that during the Civil Surgeon Conference held under the chairmanship of Sh. Ram Niwas, IAS, Addl. Chief Secretary to Govt. Haryana, Health Department it was decided that preference will be given to NHM retrenched/ excess staff even in the outsourcing of staff under Chief Secretary, Haryana outsourcing policy”.”

4. On advance service, learned State counsel opposes the petition.
5. I have heard rival contentions of learned counsel for the parties and gone through the case file.
6. Factual position as stated above is not disputed.
7. Concededly, the petitioner’s services were hired on contract. The contractual employee has only limited rights confined within the four corners of the contract of employment. It is the prerogative of an employer to continue and/or discontinue with the contractual services in terms of the contract. I am of the view that on the short ground of being a matter of contract, this Court ought not to exercise its extraordinary writ jurisdiction.

8. This Court would refrain from interfering in the domain of the employer's discretion to engage employees on contract. It is expected of respondent No.3 to follow the instructions in Annexure P-4.

9. However, non-interference by this Court shall not be construed to mean in any manner that the petitioner is to be visited with any adverse consequence in case her services are required to be hired either on contract or for regular appointment for which she is at liberty to compete. Needless to say, the employer is at liberty to enter into contract subject to the work exigencies. It will, however, be appreciated that in case petitioner's work was satisfactory, then given the past service rendered by her, due credence will be given to her experience, if she re-applies for the contractual position.

10. Disposed of accordingly.

(ARUN MONGA)
JUDGE

September 06, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No