

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

CWP-28947-2018 (O&M)

Date of decision: April 06, 2022

Pardeep Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashok Kaushik, Advocate for the petitioner.

Mr. Pankaj Midda, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of an appropriate writ commanding the respondents to allow the petitioner to continue in service.

2. Petitioner was appointed as Sweeper-cum-Chowkidar in June 2007 on contract basis at D.C. rates. His contract was renewed from time to time. On 19.08.2014, respondent No.4 removed the petitioner from service, allegedly to appoint another contractual employee. Petitioner approached this Court vide CWP-19822-2014, which was allowed on 30.01.2017 with a direction to respondents No.1 to 4 to permit the petitioner to rejoin on contractual basis immediately, in case said post had not been filled up on regular basis. When petitioner was not allowed to continue on service despite the orders of this Court, he preferred EA-9-2018. During the pendency of said execution proceedings, petitioner was allowed to rejoin his duties. However, salary was not paid to him. He then filed CM-9321-CWP-2018 for release of salary. Vide an order dated 26.07.2018, it was directed by this Court that in case, arrears of salary have not been paid to the petitioner till today, same will be deposited in his account. In addition, petitioner was also held entitled to costs of Rs.10,000/-

to be paid by the officer responsible for delay in disbursing his salary. On 09.08.2018, respondents made a statement that a total sum of Rs.1,74,721/- along with costs of Rs.10,000/- has been disbursed to the petitioner. In the premise, execution application was disposed of.

3. Learned counsel for the petitioner submits that now again petitioner is being harassed on account of the litigation earlier raised before this Court and the respondents are also not allowing him to continue on the job. Hence, the present petition.

4. On the other hand, learned State counsel strenuously opposes the petition arguing on the lines of defense taken in the written statement filed on behalf of respondents.

5. I have heard learned counsel for the parties and perused the record.

6. There are disputed questions of facts as is borne out from the perusal of the pleadings and the same cannot be gone into on the basis of affidavits.

7. Written statement on behalf of respondents No.1 to 4 had been filed on 18.12.2018, wherein, following specific stand has been taken by the respondents in Paras-5 & 6 of preliminary submissions, which read as below:-

“5. That the petitioner was relieved on 18.08.2018 on completion of the contractual period i.e. from 19.08.2017 to 18.08.2018 and he cannot claim continuation in service as a matter of right. It is most pertinent to mention here that no other employee has been appointed in place of the petitioner. In a catena of judgments of the Hon’ble Supreme Court as well as Hon’ble High Courts, it has been held that “the right of the respondent State and for that matter of any employer to terminate the service of an employee in accordance with the terms of his appointment is inherent and well recognized by law (Anil Kumar &Ors vs State of Haryana and Ors., P&H 2000)”.

6. That it is further submitted that it is well within the rights of the Department to seek extension of the period of the contractual employee on the basis of the assessment of work and conduct of the employee. That the work and conduct of the

petitioner also has not been satisfactory and he took least interest in performing his work and duties. That on 23.06.2018, the petitioner left his duty and station without prior permission/leave of absence from the competent authority and a show cause notice dated 27.06.2018 (Annexure R-3) was issued to him to which he did not bother to file the reply. That again a reminder dated 01.08.2018 (Annexure R-4) was issued to him, the reply of which was found to be unsatisfactory and so a warning dated 16.08.2018 (Annexure R-5) was issued to him not to be negligent in future. It is further submitted that the petitioner was highly negligent towards his duties and on various occasions the petitioner was found to be under the influence of liquor while at work. Still leniency was shown and he was verbally cautioned to improve his conduct many times. That the petitioner was responsible for gross negligence, high irregularities and dereliction of duties. His work and conduct is not upto the mark and not being satisfactory, it would always be open to the higher authority not to extend the services of such employee in the interest of the Department and the State.”

8. Apart from disputed facts as aforesaid, concededly, the petitioner’s services were hired on contract. The contractual employee has very 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.

9. This Court would refrain from interfering in the domain of the employer’s discretion to engage employees on contract.

10. Dismissed with liberty to the petitioners to seek appropriate alternative civil remedy as may be advised and available in law.

(ARUN MONGA)
JUDGE

April 06, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No