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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24583-2021

Date of decision: 19.05.2022

KAVITA RANI BHARDWAJ

...Petitioner

versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashok Kumar Sharma, Advocate,
For the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Rajpal Singh, Advocate,
For respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari to quash the order dated 12.11.2021 (Annexure P-5) passed by respondent No.2 vide which services of the petitioner were terminated.

2. Petitioner was selected in the year 2013 for the post of Data Entry Operator in Integrated Water Management Programme/Pradhan Mantri Krishi Sinchai Yojana Scheme. She had earned an unblemished service record until 08.11.2011 when she was posted in District Rural Development Agency, Palwal. On account of sudden death of her grandmother- in-law, when she was on leave, respondent issued impugned order on account of her remaining absent from duty. Hence, the instant petition.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. It does appear that decision to terminate the services of the petitioner was taken summarily without proper application of mind, inasmuch

as, on one hand petitioner submitted a leave application on account of death of her grand mother-in-law and without taking any decision on the same, she was merely marked absent in the attendance register. Disproportionately, harsh step was taken, notwithstanding that she had rendered 8 years of unblemished service in past. Other than her being absent on a particular date from the office, there is no allegation against her of any misconduct as is borne out from the plain language of the impugned order. It is though stated that she has disobeyed the official work and orders of the assigning authorities. However, no particulars thereof have been mentioned. Only a bald allegation has been made against her.

5. Learned counsel relies upon an order/judgment of a Coordinate Bench of this Court rendered in **CWP No.23400 of 2014** decided on 17.08.2016 titled “**Pramod Kumar Sharma Vs. State of Haryana and others**” wherein my learned brother Tejinder Singh Dhindsa J. speaking for this Court held as below:-

“This Court would have no hesitation in recording that the decision of the respondent Corporation not to grant extension to the petitioner as regards his contractual assignment is founded on charges of grave misconduct. Since the matter had been enquired into and a report dated 30.09.2014 (Annexure R-3) had been furnished by the Financial Controller of Municipal Corporation, Faridabad and against the petitioner, the misconduct cannot be seen merely as a motive but would have to be construed as the foundation of the decision not to continue with the services of the petitioner. The decision of the respondent Corporation was thus clearly punitive.

During the course of arguments, it has gone uncontroverted that prior to the decision contained in Annexure R-3 to dispense with the services of the petitioner, no opportunity of hearing was granted to him and even a show cause notice had not been served.

It is by now well settled that even in the case of tenure appointees/contractual employees, if the order of dispensing of the services is founded on misconduct then it is imperative upon the employer to conduct an inquiry and in which such employee has to be associated. In the facts of the present case, the decision of the respondent Corporation to dispense with the service of the petitioner

cannot sustain as the same is in clear negation of the principles of natural justice.”

6. I am in respectful agreement with the view taken by my learned brother. I find no reason as to why the petitioner be not accorded the same benefit on parity with the petitioner in CWP No.23400 of 2014 who was also on contractual service. It is though conceded position in law that contractual employees are not to be given parity of Service Rules, which are applicable/conferred on regular employees but at the same time the right of livelihood as contained under Article 21 of the Constitution of India cannot be harshly and summarily dealt with.

7. In the premise, impugned order dated 12.11.2021 (Annexure P-5) is set aside. Subject to the requirement of job as on today on the contractual post, which was being handled by the petitioner at the relevant time, she shall be inducted back in service. In case, no vacancy is available she will be adjusted on the next future vacancy as and when the same arises. However, it is made clear that for the period, petitioner remained out of job, she will not be entitled to monetary benefits on the principle of ‘no work no pay’.

8. Disposed of accordingly.

(ARUN MONGA)
JUDGE

May 19, 2022

vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No