

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

CWP-3266-2017

Date of decision: 03.02.2022

MADHVI LOHCHAB

...Petitioner

V/S

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Before this Court is a Protection Officer (as designated under Protection of Women from Domestic Violence Act), whose services were hired on contractual basis. She is aggrieved by order dated 30.06.2015 (Annexure P-9) vide which her services were terminated summarily before completion of the contract period. Petitioner seeks mandamus to reinstate her on the post of Protection Officer along with all consequential benefits.

2. Before advertng to the facts of the case, it would be relevant to reproduce relevant terms of hiring her services for contractual period as contained in appointment letter dated 30.10.2008 (Annexure P-1):-

“6. The contract of appointment can be terminated by the appointment authority by giving a notice of one month without assigning any reason or by giving one month's contractual pay in lieu of the notice period. However, if term of an employee is left short of one month, service of that employee can be terminated by giving notice or by payment of contractual salary for that short period. Furthermore, if at any stage you desire to resign from your post, you will be required to give one month's clear notice or forfeit in lieu thereof, your one month's salary or for the period by which the notice falls short of one month.

7. If your work and conduct is not found satisfactory or in case you are found guilty of insubordination,

intemperance or any other misconduct, your services can be terminated without any previous notice.”

3. A perusal of the above leaves no manner of doubt that completion of contract is not a die cast in stone and during the contractual period, if either the services of the employee are found unsatisfactory or the employer otherwise considers appropriate, the same can be terminated subject of course to the issuance of one month's notice or payment of one month's salary in lieu thereof.

4. Adumbrating briefly now to the facts of the case. Petitioner was appointed as Protection Officer-cum-Child Marriage Prohibition Officer on 30.10.2008 for an initial period of three years. In terms of the appointment, petitioner joined on the post of Protection Officer. The contractual period was extended from time to time until later, the services of the petitioner were terminated owing to registration of an FIR No.39 dated 18.06.2015 against her under the Prevention of Corruption Act. The petitioner was allegedly caught red handed on the very day of registration of the FIR itself. Therefore, she was put under arrest. The culmination of trial eventually led to the acquittal of the petitioner. Thereafter, she approached the respondents for reinstatement. As she was not reinstated, hence the writ petition seeking direction from this Court for her re-instatement as well as quashing of the order dated 30.06.2015, which was passed *ex parte* terminating her services owing to the registration of criminal case and her having been caught red handed therein.

5. I have heard rival contentions of the learned counsels.

6. Learned counsel for the petitioner strenuously relies on case law titled as “***Chander Singh Dalal Vs. Haryana Dairy Development Co-operative Federation Limited, Chandigarh through its Managing Director***”

and others decided on 25.02.2008 reported as **2008 (3) SCT 33** and “*Punjab State through its Collector and another Vs. Ex. Constable Gulzar Singh*” decided on 01.02.2012 reported as **2012 (3) SCT 579**. Relying on the aforesaid judgments, learned counsel for the petitioner would emphatically canvass that once the petitioner had been acquitted in the criminal proceedings, she ought to have been reinstated since the termination order was passed on the basis of an FIR leading to the criminal trial, wherein, she was acquitted. Accordingly, once after trial, she was acquitted by the Court in the FIR registered against her, the said FIR could not have been the basis of termination of her services. Next, he would argue that even otherwise, a contractual employee is entitled to direction of certain protection in the employment inasmuch as in the event of services being not satisfactory, there ought to be an enquiry *qua* the same and it is only after due application of mind and conducting an inquiry that services can be terminated taking away the right of livelihood of an employee. He would, therefore, argue that on both the counts, the impugned order is not sustainable and is liable to be set aside.

7. Per contra, learned State counsel opposes the petition *inter alia* on the ground that the petitioner was only a contractual employee and the writ is not maintainable as she ought to have invoked her other civil remedies as are available to her seeking enforcement of contractual rights, if there is any violation thereof. He would further submit that even otherwise, this is not even a case where there has been any violation of the contractual terms. He would rely on clauses 6 & 7 of the contract *ibid* to argue that the petitioner was not entitled to any prior notice and/or departmental enquiry as her services were found to be unsatisfactory. Furthermore, he would argue

gratification from one of the parties in the pending litigation. Though she has been acquitted in the criminal proceedings, but the parameters of continuing in the employment are totally different than the yard stick adopted by a criminal Court while ascertaining the culpability of an employee in commission of the offence under trial. In this case, the petitioner was acquitted by the criminal Court vide judgment Annexure P-6 only giving her a benefit of doubt and no more than that.

8. Having given my thoughtful consideration to the aforesaid rival contentions, I am of the view that on the short ground that it being a matter of contract, this Court ought not to exercise its extraordinary writ jurisdiction. Even if it is assumed for the sake of arguments that there has been a violation of contractual terms, proper remedy *qua* the same is not a writ petition, which is decided merely on the basis of pleadings and affidavits. There being disputed questions of facts with regard to the unsatisfactory work and performance of the petitioner, the same is required to be adjudicated on appreciation of evidence to be adduced by the respective parties.

9. Be that as it may, even otherwise, it cannot be ignored that the petitioner's services were hired on contract and it is the prerogative of an employer to continue with the services of the petitioner. As regards argument that once the petitioner is acquitted in the criminal side, she cannot be made liable for the civil consequences arising out of the registration of the same very FIR. I am of the view that had it been a case that it is only the FIR which has resulted in termination of the services, perhaps the petitioner might have had a case.

10. Being not so, there is no room for interference by this Court since it is not the FIR alone that resulted in the termination order, but the

unsatisfactory work performance of the petitioner as noted in the impugned order itself.

11. No grounds are made out to interfere. Dismissed with liberty to the petitioner to seek alternative remedy under civil law.

(ARUN MONGA)
JUDGE

February 03, 2022
vandana

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