

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

**CM-732-LPA-2020 in/and
LPA No.269 of 2020 (O&M)
Decided on: 19.04.2022**

Harish Kumar and another

... Appellants

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Rohit Ahuja, Advocate
for the appellants.

G.S. Sandhawalia, J.(Oral)

CM-732-LPA-2020

Application for condoning the delay of 28 days in filing the appeal has been filed.

For the reasons mentioned in the application, duly supported by affidavit of appellant No.1, the same is allowed. Delay of 28 days in filing the appeal is condoned.

CM stands disposed of.

LPA-269-2020

Challenge in the present letters patent appeal is to the order of the learned Single Judge dated 15.10.2019 passed in **CWP No.27538 of 2018** titled as '**Harish Kumar and another Vs. State of Haryana and others**'. The learned Single Judge had dismissed the writ petition on the ground that the appointment letters of the writ petitioners dated 08.03.2013 and 12.04.2013 (Annexure P-1 & P-2) were in the form of contract. It was, accordingly, held that terms and conditions of the appointment letters were sacrosanct and, therefore, since the replacement was not by another set of

contractual employees, the same was not liable to be interfered with and the writ petition was dismissed.

A perusal of the appointment letter of appellant No.1 dated 08.03.2013 (Annexure P-1) would go on to show that the selection was till 31.03.2014 on a fixed salary of Rs.7,300/-. The same was apparently extended. The appointment order further goes on to show that it was under a scheme which is stated to be Surgical Package Programme, which was merged in the Mukhyamantri Muft Ilaaj Yojana (MMIY) w.e.f. 01.01.2014. Relevant portion of the said appointment letter reads as under:-

“SUB: Regarding post of OTA on Contract Basis under the SPP scheme.

You are selected on contract (sic. contract) basis on the post of OTA under the SPP scheme on consolidated remuneration of Rs.7300/- per month under the following conditions. Initially this selection would be till 31.3.2014:-

1. This selection is absolutely non-government and remuneration will not be based on any government scales.
2. Your services can be terminated without any notice by the competent authority. If for any reason you want to leave, you will have to give one week notice or deposit one week's salary.
3. If your work is not found satisfactory or you found engaged in any unconstitutional work, your services would be terminated with immediate affect (sic. effect) without giving any notice by the office.”

The reasons for dispensing the services of the appellants were that regular Operation Theatre Assistants (OTAs) had been recruited. The termination order of appellant No.1 reads as under:-

“Subject:- Regarding Termination from the post of OTA at Civil Hospital, Panchkula.

On the subject cited above.

It is to inform you that as per terms and conditions of your appointment letter no.SPP/2013/211-12 dated 08.03.2013, as regular OTA has joined at Civil Hospital, Panchkula. Your services are here by terminated w.e.f. 19-09-2018 (AN).

You stand relieved from this hospital w.e.f. 19-09-2018 (AN).

It is, thus, apparent that the appellants' services which are contractual in nature came to an end as the regular OTAs had been appointed. The appellants have no vested right as such to continue as they were not appointed against a proper selection process.

The stand of the respondents No.1 to 3 in the written statement filed was that the appointment of OTAs was under a scheme to provide hassle free surgeries at a very low cost and reliance had been placed upon Clause (2) of the appointment letter, which has been reproduced above. The plea taken was that the permission had been given for extension till 30.09.2018 or till the regular manpower joins, whichever is earlier, as per the order dated 03.04.2018 (Annexure R-2). It was further the case of the respondents that Staff Selection Commission Haryana had recommended the names of the selected candidates against

Advertisement No.1/2015 under Category No.10 and regular candidates had joined.

In such circumstances, dispensing the services of the appellants was in terms of the appointment letter and no fault as such can be found in the order of the learned Single Judge. Resultantly, there is no merit in the present appeal and the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

April 19, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No