

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

CWP No.2940 of 2019 (O&M)

Date of Decision:03.08.2023

Ramesh Kumar

...Petitioner

Vs

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shubhkarman Singh Gill, Advocate for
Mr. Kshitij Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Gaurav Tyagi, Advocate for
Mr. S.S. Kharb, Advocate
for respondent No.2.

-.-

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed challenging the action of the respondents in terminating services of the petitioner by the impugned order dated 16.03.2018 (Annexure P-5). Certain facts, which are necessary to appreciate the issue, are being mentioned herein under.

The petitioner was appointed on the post of Computer Operator on contractual basis on a consolidated salary after considering candidature of all the candidates as the post in question was duly advertised. The petitioner was posted in the District IT Society, Narnaul, which Society was headed by the Deputy Commissioner, Narnaul, being the Chairman. The petitioner continued working on the said post for a period of over 11 years when the petitioner's services were terminated by the impugned order dated 16.03.2018 (Annexure P-5) by stating that his services are no longer required. The said order dated 16.03.2018, copy of which has been appended as Annexure P-5, has been challenged by the petitioner by way of present petition.

Upon notice of motion, respondents have filed reply wherein it has been mentioned that though innocuous order was passed terminating the services of the petitioner but actually there was a complaint, which was received in the CM window making certain allegations against the working of the Society, as the visitors were being harassed by the employees concerned Society and a fact finding enquiry was got conducted into the allegations. Copy of the said fact finding enquiry has been appended as Annexure R-2/1 with the reply.

Learned counsel appearing for respondent No.2 submits that keeping in view the report of the Additional Deputy Commissioner, Narnaul, the services of the petitioner were terminated in accordance with the conditions of the appointment letter, hence, no grievance can be raised by the petitioner qua his termination.

I have heard learned counsel for the parties and have gone through the pleadings of the case with their able assistance.

From the factual narration, it is clear that the petitioner had worked in District IT Society for a period of 11 years on contract basis before the impugned order was passed. Nothing has been brought to the notice of this Court that at any given point of time, during those 11 years, there has been any complaint against the petitioner with regard to his working or the employer was in any way not satisfied with the work and conduct of the petitioner. The only reason being stated by the respondent-Society is the fact finding enquiry conducted by the Additional Deputy Commissioner on a complaint made in Chief Minister window, which report was made the basis for terminating the services of the petitioner. From a bare perusal of Annexure R-2/1, which is the fact finding report, it is clear that the officer concerned has conceded the fact that no one has ever complained about the petitioner about his working with regard to issuance of

token, which work was being undertaken by the petitioner at the relevant time. None of the persons who were present in the Society at the relevant time raised any grievance qua the working of the petitioner. Though the said officer conceded in the fact finding report that there is no specific complaint against the petitioner available before society to verify the fact of harassment or demand of money for issuance of the token but still went ahead to record that as the complaint has been received on the CM window, allegations cannot be brushed aside. The reason given by the officer concerned to hold the petitioner guilty cannot be accepted. There has to be some substantial material against an employee so as to allege misconduct and to prove the same. In the present case, merely that a complaint was filed in CM window will not render that employees working in the Society were not discharging their duties properly. Further once there is no specific complaint or any evidence mentioned in the fact finding report, the action could not have been taken against the petitioner so as to hold him guilty of performing his duty contrary to the procedure prescribed.

Further, nothing has come on record that petitioner was given a personal hearing to defend himself before submitting the fact finding report. In the absence of any opportunity to the petitioner to rebut the allegations, despite the fact that there was no evidence which had come on record before the officer, who was conducting the said fact finding enquiry, the petitioner could not have been held guilty merely because there was a complaint filed by someone without substantiating the same with evidence.

Keeping in view the above, the impugned order dated 16.03.2018 (Annexure P-5) cannot be sustained in the eyes of law and is accordingly set aside.

At this stage, learned counsel appearing on behalf of respondent No.2, on instructions from Mr. Kapil Kumar, Accountant, submits that the petitioner was appointed on contractual basis and is not working for the last more than five years, hence, the claim of back wages may kindly be rejected.

Learned counsel for petitioner, on instructions from the petitioner, who is also present in Court, submits that the petitioner will not claim any back wages for the period he remained out of service but the benefit be given for the earlier service rendered and the period for which the petitioner remained out of service to be taken into account while fixing the salary upon rejoining so that the petitioner does not suffer any prejudice.

Learned counsel for respondent No.2 raises no objection to the said proposal.

Keeping in view the above, the impugned order is set aside and the respondents are directed to allow the petitioner to rejoin service within a period of two weeks from the date of receipt of certified copy of this order on the terms and conditions as mentioned hereinbefore.

The writ petition is allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

August 03, 2023
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes