

270-2

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

CWP-7409-2023 (O&M)

Date of Decision: 05.10.2023

Sandeep and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Dr. Surya Parkash, Advocate and
Mr. Vikram Amarnath Garg, Advocate
for the petitioners.

Mr. Tapan Yadav, D.A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

The present petition has been filed by the petitioner challenging the order dated 29.03.2023 (Annexure P-1) whereby respondent No.2 has issued direction to respondent No.4 for not continuing the petitioners in service.

Certain facts need to be noticed for the correct appreciation of the issue in hand.

Petitioners were appointed as Drivers/Fleet Manager/EMT on contractual basis under the Scheme called National Health Mission by the State of Haryana on certain terms and conditions. The petitioners were working with the respondents when the services of the petitioners were directed to be terminated w.e.f. 01.04.2023 by placing reliance upon Clause 21 of the Service Bye-laws, according to which, the Appointing Authority had a power to curtail the contract of an employee in case,

he/she is alleged to have committed insubordination, misconduct or unsatisfactory or poor performance during the service. Vide impugned order dated 29.03.2023, the Mission Director, National Health Mission, Haryana, Panchkula directed to terminate the services of the petitioners on the ground that certain misconduct were proved against them in an inquiry conducted against them by the Civil Surgeon, Bhiwani.

Learned counsel for the petitioners argues that in the present case, the impugned order Annexure P-1 has been passed by the Mission Director, National Health Mission, Haryana without noticing certain facts which were relevant and had come into being after the inquiry report was submitted but the same has not been taken into consideration while passing the impugned order, which itself renders the impugned order to be bad.

Learned counsel for the petitioner further argues that inquiry report is a totally cryptic and non-speaking inquiry report as it does not give the reasons/evidence which had come against the petitioners to hold the petitioners guilty of the allegations, which fact was supported by the Additional Deputy Commissioner, Bhiwani in his order dated 04.10.2022, wherein the Civil Surgeon, Bhiwani was directed to conduct the inquiry afresh in a manner required before taking any action on the basis of the allegations/the inquiry report submitted by the Committee constituted by the Civil Surgeon, Bhiwani.

Learned counsel for the petitioners argues that without complying with the said order dated 04.10.2022 of the Additional Deputy Commissioner or taking into consideration the said order, the services of the petitioners have been terminated which is arbitrary and illegal.

Upon notice of motion, the respondents have filed the reply

in which, the facts which have been stated hereinbefore are not disputed. The respondents have submitted that after the order of the Additional Deputy Commissioner, Bhiwani dated 04.10.2022, the comments of the Civil Surgeon was sought and keeping in view the comments received, the impugned order has been passed, hence, the grievance of the petitioners that report of the Addl. Deputy Commissioner dated 04.10.2022, has not been taken into consideration before passing the impugned order, is incorrect.

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

Once the services of the petitioners are being terminated on the basis of an allegation and the respondents decided to inquire into the allegations, it was incumbent upon the respondents to follow a fair and transparent process to come to the conclusion as to whether, the allegations alleged against the petitioners are proved or not. In the present case, the inquiry report, on the basis of which the action is taken is as under:-

“Inquiry Report

Subject: Regarding negligence towards the duties of staff under Referrala Transport Scheme in district Bhiwani.

All three members of the committee formed on the above mentioned subject gathered today on 08.04.2022, in compliance with the complaint branch office, Civil Surgeon, Bhiwani's letter no. C.S./S.S./159 dated 11.03.2022. After re-viewing the complete record, it has come to the notice of the Inquiry Committee that the Serial Number - From 01 to 06 the staff is as follows:

- 1. Sh. Navdeep, Fleet Manager*
- 2. Sh. Anil S/o Sh. Bhup Singh, Driver*
- 3. Sh. Sandeep S/o Sh. Suresh, Driver*
- 4. Sh. Sajjanpal, Driver*
- 5. Sh. Roshanpal, Driver*

6. Sh. Satpal, EMT

Sr. No. 01 Sh. Navdeep, Fleet Manager's work is to ensure compliance of duty roster. Which was not done and 02 to 06 employees did not perform duty as per prescribed duty roster.

Therefore, the inquiry committee has come to the conclusion that the employees of Sr. No. 01 to 06 are found guilty and disciplinary action is recommended against them. It is sent to you for further action."

A bare perusal of the inquiry report would show that nothing has come on record as to on what basis, the charges/allegations have been proved against the petitioners.

For this very reason, the Addl. Deputy Commissioner did not agree with the said report and directed that appropriate inquiry be conducted against the employees concerned and only thereafter appropriate action should be taken. Whereas, the impugned order has been passed on the basis of the comments of the Civil Surgeon stating that the inquiry already conducted which resulted in the inquiry report (which has already been reproduced hereinbefore) is perfectly valid. The said action of the Department is not sustainable in the eyes of law as the inquiry report is totally cryptic and non-speaking and does not give the reasons for arriving at a conclusion to hold the petitioners guilty of the allegations. That being so, the said inquiry report could not have been made the basis of any action to be taken against the petitioners especially when the said inquiry report had not been accepted by the Additional Deputy Commissioner vide his order dated 04.10.2022.

Keeping in view the above, the impugned order is accordingly set aside. The petitioners are directed to be reinstated in services.

At this stage, learned counsel for the respondents submits

that the department be given liberty to pass an appropriate order against the petitioners after following due process of law.

As the present order is being passed on the basis of the technicalities, the respondents are well within their rights to pass appropriate order afresh by following due process as envisaged under law. The respondent-Department will be free to conduct appropriate inquiry afresh against the petitioners which should also be in accordance with law by giving due opportunity to the petitioners to represent/defend themselves as per law and the said enquiry should be based on the record of the Department.

Learned counsel for the petitioners submits that petitioners will not claim any benefit for the period the petitioners remained out but they should be reinstated in service forthwith.

Keeping in view the said fair proposal, the respondents are directed to reinstate the petitioners forthwith but not later than 4 weeks from the receipt of the copy of this order, failing which, the petitioners will also be entitled to raise their claim *qua* consequential benefits for the period they remained out of the service.

It is made clear that the impugned order has been set aside with liberty to the respondents to pass appropriate order afresh in accordance with law.

05.10.2023

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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes