

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18844-2011 (O/M)

Date of decision : 15.11.2023

Smt. Saroj

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Sangita Dhanda, Advocate
for the petitioner.

Mr. Saurav Khurana, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Smt. Saroj) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned Award dated 28.02.2011 (Annexure P-4), whereby the reference of Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal below') has been decided against petitioner-worker.

A further prayer has been made for directing respondents No. 2 and 3 to reinstate the petitioner-worker back in service with continuity of service, full back wages and all other consequential benefits.

2. Briefly, the petitioner-worker raised an industrial dispute by serving Demand Notice dated 06.05.2003, which was referred by the appropriate Government/State Government in exercise of its power under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication to the Tribunal below. In the aforesaid demand notice, petitioner-worker claimed that she was employed with District Red Cross Society, Panipat as Auxillary Nurse and Midwife (hereinafter referred to as 'ANM') on 02.06.2000 and she worked to the satisfaction of her superiors, however, her services were terminated on 03.09.2002 by way of unfair labour practice and in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. The petitioner-worker claimed to have worked from 02.06.2000 to 03.09.2002 under District Red Cross Society, Panipat and she further claimed that she has completed more than 240 days of continuous service with respondent-Management. It was also claimed by petitioner-worker that juniors to her have been retained in service, therefore, her termination was illegal, arbitrary, perverse and against the provisions of law. Accordingly, she claimed reinstatement in service with continuity of service, full back wages and all other consequential benefits.

3. It appears that the demand notice served by the petitioner-worker was treated as statement of claim on behalf of petitioner-worker, which was contested by respondents No. 2 and 3-District Red Cross Society, Panipat (hereinafter referred to as 'respondent-Management') on the plea that the petitioner-worker was not covered under the provisions of Section 25-B,

Section 25-F, Section 25-G and Section 25-H of 1947 Act as her (petitioner's) appointment was purely on temporary basis and her termination was inevitable in view of directions issued by Director General, Health Services, Haryana dated 20.06.2002, whereby amount of grant was reduced to 50% and it is the stand of respondent-Management that termination of services of petitioner-worker was as per the terms of her appointment letter. It was also stated that the petitioner-worker was offered post of ANM, vide letter dated 16.07.2003, however, she did not avail said opportunity. As per respondent-Management, they had not violated any provision of 1947 Act and prayed for dismissal of the claim of petitioner-worker.

4. From the pleadings of the parties, the issues were framed and evidence was led by respective parties.

5. After considering the material/evidence placed on record, the Tribunal below rejected the claim of petitioner-worker and answered the reference against her, vide impugned Award dated 28.02.2011 (Annexure P-4).

6. In the aforementioned circumstances, the petitioner-worker has filed the instant writ petition before this Court.

7. Learned counsel for petitioner-worker submits that the impugned award is arbitrary, illegal, perverse and against the provisions of 1947 Act and hence, unsustainable in the eyes of law. Learned counsel further submits that the services of petitioner-worker have been terminated in view of letter dated 20.06.2002 (Annexure P-5), issued by Director General, Health Services, Haryana, indicating that the Central Government had imposed 50%

cut on the amount of grant and, therefore, action may be taken for imposing cut in staff strength, so as to avoid economic difficulties. It is submitted that immediately thereafter, Director General, Health Services, Haryana had written another letter dated 16.07.2003 (Annexure P-6) to respondent-Management regarding sending them full grant-in-aid and not to terminate anybody, however, respondent-Management violated the said letter without any reason.

It is submitted that the Tribunal below has erred in appreciating the evidence on record and also the services of petitioner-worker were terminated due to imposition of cut in staff strength, however, since they receive full grant, respondent-Management was duty bound to restore the services of same employees. It is contended that the Tribunal below has overlooked the fact that the petitioner-worker was offered appointment on fixed pay scale, vide letter dated 16.12.2003, whereas in case of reinstatement of worker, he/she should be taken back in service on the same terms and conditions on which he/she was retrenched, therefore, respondent-Management could not offer her another appointment on fixed pay basis.

It is next contended that the petitioner-worker had completed more than 240 days in each calendar year, but no compliance of provisions of Section 25-F of 1947 Act was made while terminating the services of petitioner-worker. It is also submitted that the Tribunal below has wrongly observed in the award that Shri R.S. More, the then Secretary of District Red Cross Society, Panipat is husband of petitioner-worker, whereas infact the petitioner-worker is wife of Om Pal. With the aforesaid submissions, learned

counsel for petitioner-worker has prayed for quashing of impugned award with a further prayer for directing respondent-Management to reinstate the petitioner-worker back in service with continuity of service, full back wages and all other consequential benefits.

8. Per contra, learned counsel appearing for respondent-Management has opposed the prayer made on behalf of petitioner-worker by submitting that the Tribunal below has passed a well reasoned award after considering all the facts and circumstances and no interference is required in the same. It is submitted that the services of petitioner-worker were purely on temporary basis and while terminating her services, all the conditions as laid down in the appointment letter dated 02.06.2000 (Annexure P-1), were complied with as the petitioner-worker was duly compensated by way of one month's advance pay in lieu of notice, therefore, there was no illegality committed while terminating the service of the petitioner-worker. Learned counsel further submits that in view of directions issued by Director General, Health Services, Haryana dated 20.06.2002 (Annexure P-5), whereby the amount of grant was reduced to 50%, accordingly, the services of petitioner-worker were dispensed with as per her appointment letter. It is submitted that subsequently, the petitioner-worker was again offered appointment, vide letter dated 04.11.2003, however, she did not come forward to avail such opportunity.

As regards the plea of petitioner-worker that her juniors had been retained in service, it is submitted by learned counsel for respondent-Management that one Sandeep Kumar was working as an employee of Red

Cross Society, who was taken in the project in order to cope up with said project, however, after imposition of 50% cut in grant, said Sandeep Kumar was also sent back to his parent department i.e. District Red Cross Society, Panipat. It is case of respondent-Management that petitioner-worker is not covered under Section 25-B, Section 25-F, Section 25-G and Section 25-H of 1947 Act.

As regards the contention of learned counsel for petitioner-worker that the Tribunal below has wrongly mentioned that the petitioner-worker is wife of Shri R.S. More, it is stated that on the same day, claim of another worker Smt. Beermati, whose services were terminated, was decided and she is wife of Shri R.S. More, the then Secretary, District Red Cross Society, Panipat. It is contended by learned counsel for respondent-Management that the said observation of the Tribunal appears to be a typographical error and on the said ground alone, the impugned award is not liable to be set aside, moreso when the engagement of petitioner-worker was purely temporary in nature. Accordingly, it is submitted that there is no merit in the writ petition and prayer has been made for dismissal of the same.

9. I have heard learned counsel for respective parties and have also pursued the paper book with their able assistance.

10. It is well settled position that an employee appointed on temporary basis, is not governed by any service Rules and he/she is bound by the terms and conditions incorporated in the appointment letter. It is also a settled legal proposition that a person, who has been appointed on ad hoc basis with the conditions stipulated in his/her appointment letter that his/her

services can be terminated at any time without notice, does not have a right to claim any relief, if his/her services are terminated in terms thereof.

In State of U.P. and Ors. v. Kaushal Kishore Shukla, (1991) 1 SCC 691, the Apex Court has categorically held as under:

"Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service."

Hon'ble the Supreme Court in Parshotam Lal Dhingra v. Union of India, AIR 1958 Supreme Court 36, has held that "A person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier" and further held that "a Government servant holding a post temporarily does not have any right to hold the said post."

In Chandradeo Gautam v. State of U.P. and Ors., JT 2000 (10) SC 199, the Hon'ble Supreme Court held that the termination of services of temporary employee does not require interference on being removed on any ground as it does not cast any stigma or aspersion on him/her.

In Nazira Begum Lashkar and Ors. v. State of Assam, AIR 2001 Supreme Court 102 : 2001 LaB IC 42, the Apex Court held that where appointment neither confers any right nor any equity in favour of the employee, as the appointment was purely temporary and could be terminated without notice, no grievance can be entertained by such employee. Moreso, he/she cannot claim any equitable relief from any Court.

A temporary or ad hoc appointment does not confer any legal right. Such an appointee cannot claim equity in his/her favour, nor the equitable relief can be granted to him/her by the Court even if he/she had worked for an unusual long period, on humanitarian considerations. A person holding a temporary/ad hoc post is not a member of service in accordance with the statutory Rules and, therefore, cannot have any vested right in the post. [Vide Nazira Begum Lashkar (supra) and P.D. Agarwal and Ors. v. State of U.P. and Ors., AIR 1987 Supreme Court 1676].

Similar view has been reiterated by the Hon'ble Apex Court in cases where the person was holding the tenure post by observing that by efflux of time appointment comes to an end automatically on the expiry of the tenure of appointment, and such appointee cannot claim any relief either on the basis of equity, or humanitarian considerations, or in law. (Vide Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava, AIR 1992 Supreme Court 2070, State of U.P. v. Dr. S.K. Sinha, AIR 1995 Supreme Court 768.)

11. Coming to case in hand, concededly, the petitioner-worker came to be engaged as ANM, vide appointment letter dated 02.06.2000 (Annexure P-1), which was purely on temporary basis. The relevant extracts of appointment letter dated 02.06.2000 (Annexure P-1) read as under :-

“ You are hereby offered the temporary post of A.N.M. In the pay scale of 4000-100-4800-E.B.-100-6000 P.M. plus allowances as may be sanctioned from time to time in the said scale by the Haryana Government (as per approval of Distt. Red Cross Society, Panipat).

Your appointment will be terminable on one month's notice on either side or pay in lieu thereof for the period by which the notice period falls short of one month. However, your services can be terminated without notice on ground of misconduct or insubordination etc.

Your appointment is subject to your being medically, fit and you will be entitled to any travelling allowances for the journey performed by you for medical examination and joining the appointment.”

Thus, the petitioner-worker was very well aware that her appointment was temporary in nature and she did not have a right to continue in service.

12. It is not disputed that the petitioner-worker was relieved from service, vide letter dated 03.09.2002 (Annexure P-2), which reads as under :-

“ Vide letter No. Cashier (F.W.)/02/1307 dated 20.6.02, the Director General, Health Services, Haryana, Panchkula has imposed 50% cut in the amount of grant. Thereafter, action be taken for cut in your staff so as to avoid economic difficulties. Therefore, as per the orders, dated 2.9.02 of the Deputy Commissioner and President, District Red Cross Society, Panipat, you are relieved from the service today 3.9.02 (F.N.) Amount payable (arrear of pay and compensation) to you is being deposited in your Bank Account No. 10674.”

A perusal of the above extracted letter would clearly indicate that while relieving from service, the petitioner-worker was paid arrears of pay and compensation in her Bank Account No. 10674. It is thus manifest that the condition as envisaged in the appointment letter dated 02.06.2000 (Annexure P-1), i.e. payment of one month in lieu of notice, was duly

complied with by respondent-Management while relieving the petitioner-worker from services.

13. It is also not disputed by the petitioner-worker that she was again offered appointment, vide appointment letter dated 04.11.2003, however, she refused to join. In this regard, reference can be made to the cross examination of petitioner-worker, which reads as under :-

“ It is correct that I was appointed in Family Planning Welfare Center, which is a project. It is correct that grant is given to the project only on completion of target. On non-completion of target, the grant to the project is being withheld. Every one has different target but I do not remember what was my target.

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..... When my services were terminated, my scale was Rs. 4000/- but could not tell how much the total salary was getting. My salary was being credited in my salary account with Central Cooperative Bank, Railway Road, Panipat. It may be correct that at the time of termination of my services, I was given one month's advance salary, which was given due to non-service of notice. After my removal, Neelam and Usha have been appointed as A.N.M. I do not know that when they were appointed in service. I cannot tell that they have been appointed in 2006 or earlier. I had instituted this case in 2003. When I had instituted this case, Neelam and Usha were not appointed in service. It is correct that on receipt of letter Ex.WX, I have not joined deliberately. Again stated that since Ex.WX was regarding fixed pay, therefore, I have not joined and furnished reply. Voluntarily stated that reply was that I am willing to work

on previous salary and I had also personally requested the madam.”

A perusal of the above extracted cross examination of petitioner-worker would clearly indicate that respondent-Management had duly complied with terms of the appointment letter dated 02.06.2000 (Annexure P-1) wherein it was clearly stated that the petitioner-worker was appointed on a temporary post and her services were liable to be terminated on one month's notice on either side or pay in lieu thereof. It is clearly admitted by the petitioner-worker that one month's advance pay was duly paid to her at the time of relieving her from service.

14. Keeping In view the legal position indicated above and in the peculiar facts and circumstances of this case; I do not find any merit in the instant writ petition and same is accordingly dismissed.

15. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

15.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No