

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

**CWP-19777-2013 (O&M)
Date of decision : 15.11.2023**

Ranjodh Singh

...Petitioner

Vs.

**Shiromani Gurdwara Prabandhak
Committee and another**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Vanita Sapra Kataria, Advocate
for the petitioner.

Mr. S.S.Mattewal, Advocate
for the respondents -SGPC.

DEEPAK MANCHANDA, J.

CM-16021-22-CWP-2022

Applications are allowed as prayed for.

CM-16023-CWP-2022

This is an application filed under Order 1 Rule 10 CPC for impleading President, Shiromani Gurdwara Prabandhak Committee as respondent No.3.

Vide order dated 20.01.2023, notice in the application was issued, but no reply has been filed. No formal reply to the said application was filed. However, at this stage learned counsel for the petitioner does not want to press the present application and seeks withdrawal of the same and she submits that she is ready to argue the matter without impleading respondent no.3 as party in the present case. Hence, the application is dismissed as not pressed.

Main case

This petition has been filed to challenge the order dated 25.08.2012 (Annexure P-2), vide which the services of the petitioner were terminated and accordingly, the petitioner was dismissed on the ground being stigmatic on the character of the petitioner, which was passed without issuance of notice in violation of service rules as well as principles of natural justice.

The facts in brief leading the present writ petition are that the petitioner was appointed as a Granthi by respondent No.2 by passing an order dated 28.12.2011 (Annexure P-1) on a daily wage of Rs.90/- w.e.f.01.04.2012 to 31.07.2012, however, vide order dated 25.08.2012 (Annexure P-2) the services of the petitioner were terminated on the ground of complaints received from villagers against him and also on account of complaints regarding his character. It is the case of the petitioner that impugned order has been passed without affording an opportunity of hearing to him. Even no notice or charge-sheet was issued before passing of the said order. Hence this writ petition.

Learned counsel for the petitioner contends that the petitioner was appointed as a Granthi on a daily wage of Rs.80/- in the month of February, 2011 and he continued to work without any break till 31.07.2012 as per Annexure P-1 and even thereafter petitioner was allowed to work by respondent No.2 without any break, but on 25.08.2012 vide Annexure P-2, the petitioner was terminated from service w.e.f. 01.08.2012 on the basis of complaints from the villagers against him as he was not having good character. Learned counsel further contends that the order dated 25.08.2012, being stigmatic on the character of petitioner vide which the services of the petitioner was terminated and the same was passed without giving any show-cause

notice, holding any inquiry and without affording any opportunity to explain his conduct. Therefore, the petitioner had applied for issuance of documents relating to his service from the day he joined till his termination under the RTI Act. However, no such document was ever furnished to him relating to the said period showing his employment with respondent No.2. The said application is Annexure P-3.

To support her contention, learned counsel for the petitioner has relied upon the judgments passed by the Coordinate Benches of this Court on similar issue i.e.CWP-3388-2009 decided on 09.12.2010 (Annexure P-7), CWP-19180-2001 decided on 14.03.2002 (Annexure P-8) and CWP-3418-2006 decided on 28.11.2013 (Annexure P-9) and while relying upon the said judgments, she has prayed for quashing of the impugned order as well as reinstatement of petitioner with continuity in service with all consequential benefits.

Notice of motion was issued on 13.01.2015 on same plea advanced by the learned counsel for the petitioner.

On the other hand, learned counsel for the respondents submits that initially vide order No.94 dated 31.08.2011, the petitioner was appointed as Granthi on daily wage of Rs.80/- w.e.f.01.09.2011 to 28.02.2012, but the said order was never implemented and neither the petitioner joined nor performed his duty and was not paid for the said period. He further contends that the petitioner was again appointed as Granthi in Gurdwara on daily wages vide order No.99 dated 28.12.2011 on daily wage of Rs.90/- w.e.f. 01.04.2012 to 31.07.2012 and he worked for the said period and accordingly was paid for the same. But he categorically submitted that the said period was never

extended beyond 31.07.2012 although petitioner kept on approaching the respondents for extension of his services. He further submitted that the service of the petitioner was rightly terminated on the basis of complaints from villagers regarding his character. Lastly, he prayed for dismissal of the present writ petition.

I have heard learned counsel for the parties.

A perusal of the impugned order shows that the order is stigmatic in nature in the sense that the services of the petitioner were terminated because of receiving complaints from the villagers being of bad character and the wording used in the order shows aspersion on the work and conduct of the petitioner, which reached on the conclusion without even holding any inquiry and in violation of principle of natural justice. Even otherwise the respondents have failed to produce any iota of evidence in the shape of any such complaint written by any of the villagers regarding the bad character of the petitioner. Once the petitioner has raised a specific plea that the said order is stigmatic and same is passed in absence of any inquiry which should have been conducted before reaching to the conclusion, the arguments of the petitioner contains weight that because of the said stigmatic order, the petitioner was removed from service. The petitioner faced consequences on account of his character assassination, which became the sole ground for his termination from service. Moreover, even as per the stand taken in the reply by the respondents adds weight to the arguments of learned counsel for the petitioner that since the petitioner was approaching the respondents for extension of his services, the impugned order No.115 dated 25.08.2012 was passed just to wriggle out from the situation and to ignore the petitioner so that the period of service may not

be extended and the said fact has also been admitted by learned counsel for respondent No.2.

In this regard, reference can be made to the decision of this Court in “Satish Kumar and others Vs. State of Haryana and another, 2022 (2) PLR 106,” and the relevant observations read as under:

“11. Now the question arises as to whether on expiry of the contract period, the petitioners have got any vested right to continue in service, the answer cannot be in affirmative. The petitioners cannot go beyond the terms and conditions of the appointment letters. It is clearly mentioned in their appointment letters that they had been appointed for one year or till appointment of regular incumbents, whichever was earlier. Though their period stood extended but after expiry of period of last extension, they cannot insist to continue in service. The petitioners are relying upon judgment by the Apex Court i.e. **Hargurpratap Singh Versus State of Punjab and others, 2007(13) SCC 292** wherein while dealing with the case of ad hoc employees seeking minimum pay scale and continuance till regular incumbents joined, it was observed that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that should not be continued till regular incumbents are appointed. However, when the case of the petitioners is examined in light of this judgment, it comes out that the petitioners cannot insist for continuance in service by extension of their contracts. As already observed, they had been initially appointed for one year and on expiry of that term were granted extensions. On completion of last extension, they are taken to be relieved. As regards their plea that they are not being allowed to join, the stand taken by the respondent No.2 is that the corporation is in process of restructuring and even the requisition sent to Staff Selection Commission for filling up regular posts including those of Junior engineers has been withdrawn. Since there is no work available services of the petitioners are not required. As such the petitioners cannot claim that they be allowed to join and work when no such work is available. Without doing active work they cannot possibly claim wages for that period.

13. Merely on account of petitioners working on contract basis for some time does not bestow upon them any right for extension of their contract period or their made regular employees. There cannot be any automatic extension of period. Rather, as observed Supra, there are several factors

which are to be taken into consideration for that purpose, to say, availability of posts, an employee working on contract basis possessing necessary educational qualifications and expertise for that post, his work and conduct while working on contract basis, etc. Therefore, the petitioners cannot claim extension of contract period and then continuity in service as such, merely for the reason that they are working in the respondent for some time. The requirement of manpower varies from time to time. The respondent can certainly hire additional work-force having necessary qualification, experience and expertise, by way of outsourcing and petitioners cannot find any fault with such policy of the respondent – Corporation and seek that this circular be not acted upon.”

Further, in **“Lokesh Rana and another Vs. Union of India and others”** passed in LPA No.513-2022 on 04.07.2022, it has been observed as under:-

*“On the contrary, the Supreme Court, in the cases of **Yogesh Mahajan v. Prof. R. C. Dea Director All India, 2018 (3) SCC 218** and **Gridco Limited and another v. Sadananda Doloi and others, 2011(15) SCC 16**, has clearly held that it is a settled law that no contractual employee has a right to have his contract renewed from time to time and can be discontinued after the contractual period is over. In the cases of **State of Uttar Pradesh and others v. Ex-Pilot Officer Arun Govil, 1989 (Supp.) 2 SCC 593** and, **State of Orissa v. Chandra Sekhar Mishra, 2002 (10) SCC 583**, the Supreme Court has further held that a person appointed on contractual basis is entitled to continue as a contractual employee only till the period of his contract or for the period extended from time to time, and not beyond that, and that after the lapse of the contractual period, the employee has no right to continue as such and on his disengagement cannot be directed to be reinstated by the High Court. In the case of **Union of India and others v. N. Murugesan and others 2022(2) SCC 25**, the Supreme Court, though with reference to appointment on a very high post, has further held that in the cases of tenure appointment, the principle and doctrine of ‘**approbate and reprobate**’ would also apply, and a person, with his eyes open and full knowledge, having taken the advantage of obtaining a contractual appointment, cannot subsequently challenge its terms and conditions and seek status of a permanent employee”.*

In case of **“Gurbachan Singh Vs. Shrimoni Gurudwara Parbandhak**

Committee and another”, passed in CWP-18632-2020, decided on 22.03.2022

it has been held as under:-

“Even otherwise, wherever, the rules provide exception of doing away with the enquiry for instance in case of Article 311 (2) (b) of the Constitution of India, the same can be done only after giving an explanation in writing and there is no absolute power to the authorities to do away with the enquiry. Even the reasoning for doing away with the enquiry proceedings is also subject to the judicial review keeping in view the facts and circumstances of each case. Hence, even where the law grants a disciplinary authority power to do away with the enquiry before passing the order of punishment, the same is also not an unfettered power.

*The Hon'ble Supreme Court of India even while interpreting Rule 311 (2) (b) of the Constitution of India in **Civil Appeal No.10587 of 1983 titled as Jaswant Singh versus State of Punjab and others, decided on 27.11.1990** held as under:-*

“..... insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: Shivaji Atmaji Sawani Vs. Union of India; Shivaji Atmaji Sawani Vs. State of Maharashtra and Ikramuddin Ahmed Borah Vs. Superintendent of Police Darrang.”

The Apex Court further held in the above judgment that clause (b) of second proviso to [Article 311 \(2\)](#) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably

practicable to hold enquiry. Further satisfaction has to be based on certain objective facts and not the outcome of whim or caprice of concerned officer. Following was laid down in paragraph-5 of the said judgment:

“5.....it was incumbent on the respondents to disclose to the Court the material in existence at the date of passing of the impugned order in support of the subjective satisfaction recorded by respondent no. 3 in the impugned order. Clause (b) of the second proviso to [Article 311 \(2\)](#) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram's case :

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and must fall." The decision to dispense with the departmental enquiry cannot therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law it is incumbent on those support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.....”

From the above, it can be very well said that doing away with the enquiry not only requires the power to do so but even where there is a rule for the said dispensation, the same cannot be at the ipse dixit of the concerned authority. In the present case, firstly no rule has been brought to the notice of this Court which gives the power to the disciplinary authority to do away with the enquiry proceedings secondly when concededly a preliminary enquiry has been conducted by the respondents in light of which, it cannot be said that the regular enquiry, cannot be conducted”.

In such a circumstance as well as the law discussed above, the impugned order cannot be sustained in the eyes of law and the same is hereby quashed. As far as the prayer of the petitioner for reinstatement of service is concerned, where the petitioner was appointed on daily wages/on contractual basis for the period, which was valid upto 01.04.2012 to 31.07.2012 and had

already been ended before passing of the order dated 25.08.2012, now the same cannot be extended.

Consequently, the present petition is partly allowed to the extent that the impugned order dated 25.08.2012 (Annexure P-2) stands quashed which was passed without holding an enquiry. However, liberty is granted to the petitioner to approach the respondents by moving a fresh representation with regard to his reinstatement/fresh appointment, which shall be considered in accordance with law by the respondents.

Pending application(s), if any, also stand disposed off.

	(DEEPAK MANCHANDA)	
	JUDGE	
15.11.2023		
vanita		
Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No