

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

**CM No.7906-CWP of 2023 in/and
CWP No.11027 of 2006
Date of decision : 12.05.2023**

Ram Charit Shukal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Manoj K. Sood, Advocate
for the applicant/petitioner.

Mr. Aman Dhir, Dy. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

CM-7906-CWP-2023

This is an application for fixing actual date of hearing in the main writ petition.

For the reasons recorded in the application and with the consent of State Counsel that he is ready with the arguments, the matter is taken on Board today itself for hearing.

Application stands disposed off.

CWP-11027-2006

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of a writ in the nature of certiorari quashing the order dated 12th of July, 2006 (Annexure P-5) terminating the services of the petitioner.

2. The petitioner was appointed as Peon with respondent No.1

and was posted under respondent No.3 on adhoc basis for 89 days. However, vide order dated 7th of March, 1996 (Annexure P-3) the petitioner was appointed on regular basis. The petitioner joined pursuant thereto. After about more than 10 years the services of the petitioner stand terminated with immediate effect vide impugned order dated 12th of July, 2006 (Annexure P-5). Counsel for the petitioner submits that the petitioner was appointed on regular basis. It is admitted case of the respondents that the service conditions of the petitioner are governed by the Punjab State District Consumer Disputes Redressal Forums Class-III and Class IV Service Regulations 1999 (hereinafter referred to as '1999 Regulations'). As per the same the probation period of an employee cannot exceed three years. Meaning thereby that after joining having completed three years without there being any complaint *qua* work and conduct of the petitioner he had successfully completed his probation period. Thus, services of the petitioner ought not have been terminated vide order dated 12th of July, 2006 (Annexure P-5) that too without any notice, inquiry etc.

3. Per contra, Mr. Dhir submits that since the petitioner was appointed on temporary basis there was no legal infirmity in terminating the services of the petitioner without giving any notice as stipulated in the appointment letter. He further submits that since the services were no longer required, the services of the petitioner have been dispensed with. The order of termination being not stigmatic in any way the petitioner has

no grievance to be redressed in the present writ petition.

4. I have heard counsel for the parties and have gone through records of the case.

5. There is no denial to the fact that the petitioner was in regular service. It being an admitted position that the services of the petitioner would be governed by 1999 Regulations, the services of the petitioner cannot be terminated but in accordance with the said Regulations. The respondents have not assigned any reason in Annexure P-5 to terminate the services of the petitioner. It has been simply stated that as per terms & conditions contained in appointment letter services of the petitioner are terminated with immediate effect. Even in the written statement nothing has been placed on record in form of background behind termination of the services of the petitioner. Admittedly, the period of probation prescribed under the Regulations cannot be beyond three years and the petitioner has worked for more than 10 years. While dealing with the similar situation, Supreme Court in the case of '**The Manager, Government Branch Press and another vs. D.B. Belliappa**', (1979) 1 SCC 477 held as under :

21. In the instant case, no special circumstance or reason has been disclosed which would justify discriminatory treatment to Belliappa as a class apart from his junior who have been retained in service. Mr. Veerappa's frantic efforts to spell out justification for differential treatment to the respondent by reference to the show-cause notice that preceded the impugned action, is entirely futile when the stand adhered to throughout by his client is that there is no nexus between the show-cause notice and the

impugned action which was taken without any reason in exercise of the power vested in the competent authority under the conditions of the respondent's employment.

22. In view of this, we have no alternative, but to hold, that the termination of Belliappa's service was made arbitrarily and not on the ground of unsuitability or other reason, which would warrant discriminatory treatment to him as a class apart from others in the same cadre.

23. In the view we take, we are further fortified by a decision of the Constitution Bench in Champak Lal's case (supra). That was a case of a temporary Government servant. Rule 5 governing a temporary Government servant, which came up for consideration in that case, gave power to the Government to terminate the service of a temporary Government servant by giving him one month's notice or on payment of one month's pay in lieu of notice. This rule was attacked on the ground that it was hit by Article 16. In the alternative it was urged that even if rule 5 is good, the order by which the appellant's services were dispensed with, was bad because it was discriminatory. Reference was made to a number of persons whose services were not dispensed with, even though they were junior to the appellant and did not have as good qualifications as he had. Wanchoo J. (as he then was), speaking for the Court, repelled the alternative argument in these terms (at p. 1860).

"We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in

considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's services were terminated because his work was found to be unsatisfactory..... (In such a case) there can, in our opinion, be no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory." (Parenthesis and emphasis supplied.)

The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16.

24. Conversely, if the services of a temporary Government

servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), Proviso (c), the authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in *Breen v. Amalgamated Engineering Union (1971) 1 All England Reporter 1148* "is one of the fundamentals of good administration" and, to recall the words of this Court in *Khudi Ram v. State of West Bengal (1975) 2 SCR 832* at p. 845 in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability." The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16 (1).

25. Another facet of Mr. Veerappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter of his appointment is that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority, without reason and

without notice. Having willingly accepted the employment on terms offered to him, the respondent cannot complaint against the impugned action taken in accordance with those mutually agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time, "This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the house-hold, were not his own but those of his pater familias." The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K. K. Mathew J. (vide his treatise : "Democracy, Equality and Freedom", page 326) "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporation employers." To bring it in tune with vastly changed and changing socioeconomic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Articles 14, 15, 16 and 311 is available."

6. In view of the aforesaid ratio of law laid down by the Apex Court and in the facts and circumstances of the present case, the inevitable conclusion is that the action of the respondents terminating the services of

the petitioner abruptly that too without assigning any reason cannot be sustained.

7. In view above, the present writ petition is allowed. Impugned order dated 12th of July, 2006 (Annexure P-5) is ordered to be quashed. Petitioner is held to be entitled for all consequential benefits in accordance with law.

8. Respondents are directed to allow the petitioner to join the services forthwith and to pay the arrears within a period of eight weeks from the date of receipt of certified copy of this order.

May 12, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No