

CWP-23822-2014 (O&M)

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

CWP-23822-2014 (O&M)

Judgment reserved on 10.05.2023

Date of pronouncement :- 07.07.2023

Meena Kumari

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP-1216-2023

Meena Kumari

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. R.S.Mamli, Advocate
for the petitioner (in CWP-23822-2014).

Mr. Abhishek Bansal, Advocate
for the petitioner (in CWP-1216-2023).

Mr. Pankaj Middha, Additional Advocate General, Haryana
for the respondents (in both the cases).

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SUVIR SEHGAL, J (ORAL)

1. This order shall dispose of both the above mentioned writ petitions as they are inter-connected and involve common questions of law and facts.

2. Undisputed factual matrix leading to filing of the petitions is that the petitioner was appointed as Protection Officer-cum-Child Marriage Prohibition Officer (PPOs) on contract basis vide Memorandum dated 30.10.2008 for a period of 3 years, which was extended by another similar period vide Memorandum dated 16.11.2011. A show cause notice dated 04.08.2014 was issued to the petitioner and some other PPOs, instructing them to improve their performance as per the guidelines issued by the Department from time to time for effective implementation of the provisions of Protection of Women from Domestic Violence Act, 2005 and Prohibition of Child Marriage Act, 2006. Petitioner submitted reply dated 27.12.2013. By order dated 11.11.2014, Annexure P-5, impugned in CWP-23822-2014, petitioner was informed that it has been decided not to extend or renew her contract w.e.f. 16.11.2014 due to poor performance. Petitioner filed a civil suit challenging the impugned order, but it was withdrawn on 18.11.2014 and the above noted writ petition was instituted before this Court, wherein, while issuing notice of motion, this Court directed that the services of the petitioner shall not be dispensed with. An FIR bearing No.17 dated 30.05.2022 was registered at Police Station SVB, Gurugram under Section 7 of the Prevention of Corruption Act, 1988, alleging that the petitioner demanded illegal gratification of Rs.5000/- for sending a report in the Court in relation to an incident of domestic violence. Petitioner was arrested on 07.12.2022 and was released on bail on 23.12.2022 by the learned Judicial Magistrate First Class,

Gurgaon. By e-mail dated 28.12.2022, petitioner requested the respondents to permit her to resume her duties. A show cause notice was served upon the petitioner and by order dated 03.01.2023, which has been impugned in CWP-1216-2023, petitioner was terminated from service. Petitioner submitted her reply to the show cause on 04.01.2023. Both the writ petitions have been contested by the respondents. In their response, filed to the first writ petition, stand taken by the respondents is that the petitioner was a contractual employee, who had been engaged for a specific period and her contract had not been extended as per the terms and conditions stipulated in the appointment letter. Reference has also been made to the performance appraisal of the petitioner, which was conducted in 2014. It has been specifically stated that the decision not to renew the contract was taken as the extended period of contract had expired.

3. By referring to the Appraisal Committee Report dated 21.07.2014, Annexure R-1, Mr.R.S.Mamli, Advocate, counsel representing the petitioner has contended that there is an arithmetical error in the calculation of marks obtained by the petitioner. He urges that no regular inquiry was conducted before passing of the impugned order. Mr. Abhishek Bansal, Advocate, counsel representing the petitioner in the second petition has argued that the impugned action has been taken against the petitioner in violation of the principles of natural justice in as much as the petitioner has not been given sufficient time to respond to the show cause notice nor has she been supplied with the documents on the basis of which show cause notice

had been issued to her. It is his argument that the petitioner has been discriminated against as she had asserted her legal rights by approaching this Court seeking minimum of the pay-scale at par with district level officers.

4. Per contra, Mr. Pankaj Middha, Additional Advocate General, Haryana, has contended that one post of PPO was created in each district on contract basis in the financial year 2007-08 and it was never sanctioned on regular basis. Learned State counsel has invited the attention of the Court to the interim order dated 25.11.2014 passed in CWP-23822-2014 to submit that notice of motion was issued and this Court granted interim protection due to the pendency of CWP-23538-2014, filed by Madhavi Lochab, a counter-part of the petitioner. He submits that this petition was withdrawn with liberty to file a fresh petition with better particulars. Still further, he points out that fresh petition bearing CWP-3266-2017 was filed by Madhavi Lochab, which has been dismissed by a co-ordinate Bench of this Court vide judgment dated 03.02.2022. Referring to the observations made by the co-ordinate Bench of this Court, he contends that the petitioner was engaged under a contract and her services had been terminated in terms of the contract, therefore, writ petition is not maintainable. He submits that the petitioner had been performing poorly and due to non-satisfactory performance of the work, her contractual period was not extended. He submits that the appraisal report has not been challenged by the petitioner.

5. Controverting the submission made by the State, counsel for

the petitioner has urged that although the petitioner was a contractual employee, but as her termination is based on alleged mis-conduct, which is punitive, she cannot be shown the door on the basis of the impugned order, which is stigmatic. He has placed reliance upon ***Hari Ram Maurya Versus Union of India and others, Law Finder Doc Id # 191250; Gordhan Singh Gulia Versus State of Haryana 1996 (1) RSJ 243; Meenakshi Uppal Versus Society for Promotion of Information Technology Chandigarh (SPIC) and others 2005 (4) SCT 151; Union Territory of Chandigarh and others Versus Central Administrative Tribunal, Chandigarh Bench and others Law Finder Doc Id # 239228; Karam Singh Versus Managing Director, National Health Mission and others Law Finder Doc Id # 1944409; Jyoti and others Versus State of Haryana and others 2021 (1) SCT 588 and Minakshiben Laxmanbhai Paraliya Versus State of Gujarat Law Finder Doc Id # 1943554***. Still further, he submits that the judgment passed by this Court in Madhvi Lochab's case (supra) is subject matter of appeal, which is pending before a Division Bench of this Court, though no interim order has been passed.

6. I have heard counsel for the parties and considered their respective submissions.

7. It cannot be disputed that the terms and conditions laid down in the appointment letter of the petitioner and that of Madhvi Lochab, which have been noticed by a co-ordinate Bench of this Court in its judgment dated 03.02.2022, are identical. After noticing the

respective submissions of the counsel for the parties, this Court in Madhvi Lochab's case (supra) has held as under:-

"8. *Having given my thoughtful consideration to the aforesaid rival contentions, I am of the view that on the short ground that it being a matter of contract, this Court ought not to exercise its extra-ordinary writ jurisdiction. Even if it is assumed for the sake of arguments that there has been a violation of contractual terms, proper remedy qua the same is not a writ petition, which is decided merely on the basis of pleadings and affidavits. There being disputed questions of facts with regard to unsatisfactory work and performance of the petitioner, the same is required to be adjudicated on appreciation of evidence to be adduced by the respective parties.*

9. *Be that as it may, even otherwise, it cannot be ignored that the petitioner's services were hired on contract and it is the prerogative of an employer to continue with the services of the petitioner. As regards argument that once the petitioner is acquitted in the criminal side, she cannot be made liable for the civil consequences arising out of the registration of the same very FIR. I am of the view that had it been a case that it is only the FIR which has resulted in termination of the services, perhaps the petitioner might have had a case.*

10. *Being not so, there is no room for interference by*

this Court since it is not the FIR alone that has resulted in the termination order, but the unsatisfactory work performance of the petitioner as noticed in the impugned order itself.

11. No grounds are made out to interfere. Dismissed with liberty to the petitioner to seek alternate remedy under civil law."

8. The case of the petitioner is on the same footing as that of Madhvi Lochab's case (supra). In view of the above reproduced observations of this Court, writ petition is dismissed. However, liberty is granted to the petitioner to seek alternate remedy available to her in accordance with laws.

9. Pending application(s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

07.07.2023
Pardeep

Whether speaking/reasoned	Yes
Whether reportable	Yes