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

CWP-19685-2018

Date of decision : 19.09.2023

Sachin Sharma and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Alka Chatrath, Advocate and
Mr. Nikhil Singh, Advocate
for the petitioners.

Mr. Arun Gupta, AAG, Punjab.

Mr. N.P.Chandel, Advocate for
Mr. R.S.Pandher, Advocate
for respondent No.5.

DEEPAK MANCHANDA, J.

This petition has been filed for quashing of the order dated 27.07.2018 (Annexure P-5-colly) vide which the appointment of the petitioners had been cancelled on the basis of inquiry conducted by Vigilance Department wherein irregularities were found in the selections. Aggrieved against the said order, the petitioners have approached this Court saying that neither any opportunity of hearing was afforded to them during inquiry nor thereafter.

The facts emanating from the present petition are that Resolution No. 84 dated 11.07.2016 was issued for appointment of the petitioners as Clerks/Peons/JCB Driver after approval from the Government vide letter bearing No.A3-GB-DLG (Batala-7)/2016/35714 dated 26.07.2016 and in pursuant to the same, the petitioners were appointed vide appointments letters

dated 17.03.2017 (Annexure P-2-colly). The appointment letters were issued by respondent No.5. However, on the basis of the one vigilance inquiry conducted by the Chief Vigilance Officer, Local Government Department, irregularities/deficiencies were found in the recruitment of the petitioners. Thereafter, to the surprise of the petitioners, Executive Officer, Municipal Council, Batala/respondent No.5 issued impugned order dated 27.07.2018 (Annexure P-5-colly) to the petitioners therein referring to letter dated 26.07.2018 issued by Chief Vigilance Officer and the order dated 12.06.2018 of the Local Government Minister, Punjab Govt. that the recruitment of Clerk/Peon/JCB Driver made on contract basis as per the Resolution No.11 dated 08.06.2015, Resolution No.84 dated 16.06.2016, Resolution No.110-A dated 07.09.2016 and Resolution No.119 dated 14.10.2016 were cancelled and therefore, petitioners were ordered to be relieved w.e.f.27.07.2018 (F.N.). Aggrieved from the said orders, the present petition has been filed.

Learned counsel for the petitioner contends that services of the petitioner are governed by provisions of Punjab Municipal Act, 1911 (as amended from time to time) and the Rules framed thereunder. She has referred to Section 39 and Section 4 of the Act and submits that appointments of the petitioners have been cancelled on the basis of irregularities/deficiencies found in the enquiry conducted by the Chief Vigilance Officer, where no opportunity of hearing/notice was issued to the petitioners before passing of the order dated 27.07.2018 and the same is in violation of principle of natural justice. Learned counsel further contends that the respondent No.5 is not the competent authority to cancel the appointments as they were appointed on the respective posts after following the procedures by passing resolution by the Municipal

Council and relies upon Sections 4 and 39 of the Act by saying that the petitioners are servants of the Municipal Council and the respondent No.5 i.e. Executive Officer has no power to cancel their appointment. She further argues that Vigilance Inquiry on the basis of which the petitioners have been relieved from the duties have no concern with the inquiry as the same was conducted against the respondent No.4, who is President of the Council, which was initiated against the act and conduct of the respondent No.4 only, whereas the petitioners are poor contractual employees and have suffered due to no fault on their part. Learned counsel further argues that respondent No.5 has arbitrarily exercised its power, which is state's instrumentality and being public authority same must be based on some rational and relevant principles, whereas though it is the factual aspect that the dispute may fall within the domain of contractual obligation, but it would not relieve the State of its' obligation to comply with the basic requirement of Article 14 and the claim of the petitioners even being the contractual employees cannot be ignored, where the right of livelihood is involved. Learned counsel for the petitioner in support of her contention has relied upon two Sections i.e. Section 39 and 4 of the Punjab Municipal Act, 1911.

On the other hand, learned State counsel submits that the appointments of the petitioners have been cancelled as in the inquiry conducted by Committee consisting of Deputy Director Urban Local Bodies, Amritsar and officers from the office of Vigilance Local Government Department, who have found irregularities in the selection. He further submits that resolutions were sent for approval of government and a conditional approval was granted by imposing conditions for filling of the posts, where it was specifically

mentioned in the letter dated 19.12.2016 that contractual appointments would be carried out under the supervision of Deputy Director Local Government, Amritsar, but the respondent No.4 and Respondent No.5 conducted the selection process without taking Deputy Director Local government into loop and violated the conditional orders. The inquiry committee which conducted the investigation came to the conclusion that instructions of Government were flagrantly violated, where petitioners are not entitled to claim any right over the post on which they would appointed merely on contractual basis as they would enter through irregular procedure by respondent No.5. Learned State counsel further submits that petitioners were merely on contractual posts which can be revoked/terminated at any point of time by the appointing authority as per their appointment letters and since the irregularities and discrepancies were found in the appointment of the petitioners, thus their services were terminated by respondent No.5, who was appointing authority of the petitioners.

Apart from the above, learned counsel for respondent No.5 in the written statement submitted that the recruitments in question were illegal and were made in violation of the conditions laid down by the government without following proper procedure and were *void ab initio* which was unauthorized, mere in an illegal manner. Hence has been rightly cancelled after conducting due inquiry.

Learned counsel for respondent No.5 further submitted in his written statement that petitioners were merely on contractual basis and claim their right and equate themselves with the rights of other regular employees and respondent No.5, who was the appointing authority was well within its rights and competent to terminate their services at any point of time and

termination simplicitor is neither illegal nor arbitrary.

Heard the learned counsel for the parties and perused the case file carefully.

Section 39 deals with the *Employment of other officer and Servant* and Section 4 deals with *Power of the Executive officer*, which read as under:

*“Section 39: Employment of other officer and Servant
As per Section 39, a Committee may, and if so required by the State Government shall employ other officers and servants and may assign to such officers and servants such remuneration as it may think fit and may suspend, remove or dismiss or otherwise punish any officer or servant so appointed.”*

Section 4 : Power of the Executive Officer:

(a) the Executive Power for the purpose of carrying on the administration of the Municipality shall, subject to the provisions of this Act and of any Rules made under this Act or under the Municipal Act, vest in the Executive Officer.

(b) The powers conferred and duties imposed upon the functions vested in, and the objections to be rendered and notice given to the Committee under the Section of the Municipal Act mentioned in Schedule I shall not be exercised or performed by vested in, or be tendered or given to the Committee, but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to the Executive Officer, provided that:

(i) the power conferred by Section 39 of the Municipal Act 1911 shall not be exercised by the Executive Officer and may be exercised by the Committee in the appointment of any other or servant, or the Committee to a post for which the monthly remuneration exceeds Rs. 25/- and in respect of the power of removal, or dismissal of any officer or servant whose monthly remuneration exceeds Rs. 45/- provided that the Executive Officer shall dismiss an employee if required by the Committee to do so;

ii) the power to revise the valuation and assessment conferred by the Section 65 of the Municipal Act and the owner to amend the assessment list conferred by sub- clause (i) of Section 67 of the Municipal Act shall be exercised by Sub-Committee consisting of the Executive Officer and two members of the Committee appointed by the committee for the purpose;

iii) the power of the Executive Officer to withhold the grant of a license for any of the traders or purposes specified in Section 121, 122 of the Municipal Act or to withhold written permission under Section 124 of the Municipal Act may bye-laws be made subject to revision by the Committee;

iv) the exercise or discharge by the Executive Officer or any power, duty or functions thus conferred, imposed or vested in

him, shall be subject to such restrictions, limitations itations and conditions as may be imposed by any rules made by the State Govt. under the Municipal Act upon the exercise or discharge of such power, duty or function by the Committee;
c) the Municipal Act shall be deemed to have been amended in the manner set forth in Schedule II;
d) no bye-laws inconsistent with this Act shall be made by the Committee in exercise of the powers conferred by Section 31 of the Municipal Act and if any such bye-laws have been made they shall be deemed to have been cancelled to the extent to which they are thus inconsistent;
e) If in any bye-laws made by the Committee in exercise of the powers conferred by Section 188, 189 or 197 or in any rule made in exercise of the powers conferred by Section 3 of the Hackney Carriage Act, 1879, it is provided that notice shall be given to or licences granted the Committee, such bye-laws or rule shall be deemed to have been amended so as to provide that subject to bye-laws made under the Municipal Act or Rules made under this Act as Notice shall be given to, or such license granted by the Executive Officer.”

A particular query was put to the learned counsel for the petitioner with regard to definition of the servant enumerated in the Act, whereas no such definition has been provided under which the case of the petitioner can be covered within the definitions of the servant. In the present case, petitioners cannot equate themselves with word mentioned in Section 39 of the Act, which talks about that a Committee may suspend/dismiss/remove or otherwise punish any officer/servant so appointed.

The second argument raised by learned counsel for the petitioner is the Executive Officer, who is appointing authority does not have any power to terminate the services of the petitioners and to support her contentions, she has referred to the Section 4 of the Act, which deals with the power of the Executive Officer and has emphasised by saying that without passing of resolution vide which the petitioners were appointed, respondent No.5 cannot terminate the services of the petitioners on his own by passing the impugned order in the capacity of the Executive Officer, whereas as per Section 4 no such definition is given or procedure is mentioned either in the sub clause where it is

mentioned that before passing of such order, no resolution is required to be passed by the Committee with regard to the termination of appointments of the contractual employees. Once there is a specific categorical stand taken by the respondents/State as well as Municipal Council that there was an inquiry conducted by the Committee as well as Chief Vigilance Officer, where the selection made by the respondent Nos.4 and 5 and same was conditional and after conducting the inquiry, it was found that selection in pursuance to the different resolutions were made in violation of the norms and conditions prescribed by the Government as well as the instructions, hence they were held to be illegal. Accordingly, the services of the petitioners were terminated and they were ordered to be relieved.

Further, the petitioners appointments were made vide order dated 17.03.2017 (Annexure P-2-colly) on certain conditions being a contractual engagement and there was a specific clause that the services of the petitioners being a contractual employee could have been terminated any time during the contract period on the basis of any complaint and the same was accepted by the petitioners while joining the services of the respondent No.5. Further, once the appointment letters were issued by the Executive officer i.e respondent No.5 and now the cancellation of services in pursuance to the recommendations by the Government is also by the Executive officer cannot be challenged on the ground that no opportunity of hearing was given to the petitioners nor on the ground that he is not competent to cancel the order even as per Section 4. Rather Section 4 of the Act has purpose of carrying out administration of the municipality shall subject to the provisions of this Act vests in the Executive Officer.

In view of the aforesaid facts and circumstances, no case is made out for exercise of power under Article 226/227 Constitution of India.

Petition is dismissed.

(DEEPAK MANCHANDA)
JUDGE

19.09.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No