

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

268

**CWP-27768-2017  
Decided on : 21.09.2023**

Shamsher Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI****PRESENT:** Mr. Karanvir Singh Khehar, Advocate  
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

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**HARSIMRAN SINGH SETHI, J. (ORAL)**

1. In the present petition, challenge is to the order dated 02.05.2017 by which the services of the petitioners have been terminated. Further the prayer of the petitioners is that they should be reinstated in the services with all the consequential benefits.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand. Before proceeding further, it may be noticed that the said society is being funded by the Government of Haryana and the IAS Officer of the Government of Haryana is Incharge and the Chief Secretary Haryana is the Chairperson of the said society which fact shows that the financial as well as administrative control of the society is with the Government of Haryana and the same is amenable to the writ jurisdiction of this Court. Apart from petitioner No. 1, all the petitioners were appointed as a temporary workers on Class IV post on 01.09.2009 by the Governing council of the Pet Animal Health Society, Panchkula. Petitioner No. 1 was appointed as a driver-cum-care taker on 03.09.2010. The petitioners continued to perform their duties. When the services

of the petitioners were terminated by the respondents on 25.08.2015, the said termination order was challenged before this Court and this Court directed the respondents to consider the claim of the petitioners by giving them opportunity of hearing and pass appropriate order on their grievance in a time bound manner. In pursuance to the directions given by this Court in CWP-11655-2016, all the petitioners submitted representation before the respondent- Society wherein, it was mentioned that their services have wrongly been terminated and infact, the termination of their services is bad as the petitioners were replaced by similar set of employees. Further, grievance raised by the petitioners was as the petitioners resisted the reduction of their salary, their services have been terminated by making allegations against them. Keeping in view the allegations alleged against the petitioners, the respondents passed an order on 02.05.2017 (Anneuxre P-8), wherein it has been mentioned that the petitioners were appointed purely on temporary basis for a period of one year with the condition that their services can be terminated without giving any notice or assigning any reason thereof. It has been further mentioned in the impugned order that the conduct of the petitioners No. 1 and 2 was not satisfactory and they had disobeyed the orders of the Officer Incharge of the Pet Animal Medical Center and they also never attended their duty whenever directed. Further, it has been mentioned that the conduct of the petitioners was not in public interest, hence, the dismissal of the services of petitioners No. 1 and 2 was quite justified keeping in view the allegations which were alleged against them. With regard to petitioners No. 3 to 5, it has been mentioned that they had abandoned their job, hence, they cannot be considered for continuation in service.

3. With regard to reduction in the salary, it has been mentioned in the

order that the hike of 15% given to the petitioners was wrong as they were appointed on contractual basis for a period of one year and the same was rightly withdrawn, the said order dated 02.05.2017 is under challenge in the present petition.

4. Learned counsel for the petitioners argues that from the impugned order, it is clear that their services had been terminated on the basis of the allegations being alleged against them. Hence, without conducting any enquiry into the allegations, the said allegations could not have been made and no action could have been taken against them. Learned counsel for the petitioners further argues that the impugned order is stigmatic in nature as the petitioners have been portrayed in a negative manner while terminating their services and that too without proving the allegations alleged against them. Hence, the impugned order is liable to be set aside on this ground.

5. Learned counsel for the petitioners further argues that the finding being recorded by the respondent that petitioners No. 3 to 5 have abandoned their job is incorrect, rather, nothing has come on record as to from which date, the petitioners No. 3 to 5 had stopped attending their duties so as to treat that they had abandoned their jobs. Hence, without proving the said factual aspect, findings have been recorded qua petitioners No. 3 to 5 which cannot be sustained in the eyes of law.

6. Learned State counsel, on the other hand, submits that in the present case, once in the appointment order of the petitioners, it was mentioned that if their work and conduct is not satisfactory, their services can be terminated, hence, keeping in view the fact that the services of the petitioners were not satisfactory and as per their conditions of appointment order, services of the petitioners were

terminated, hence, no grievance can be raised by the petitioners in this regard. Learned State counsel further submits that the petitioner No. 1 was the driver of the vehicle which used to ferry the animals and as the petitioner No. 1 was not obeying the orders of the superiors at the relevant time when needed, the services of the petitioners have rightly been terminated.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. From the order impugned, it is clear that allegations have been alleged against the petitioners qua their work and conduct with regard to disobeying the orders of the superiors as well as the fact that they were refusing to perform their duties. Further, it has been mentioned that the conduct of the petitioners No. 1 and 2 was not in the interest of public. Once these kind of allegations have been made in the impugned order and the same have made the basis for termination of services of the petitioners, the respondents were under obligation to prove the said allegations before taking action. It is not a case of simple termination of the services of the petitioners but it relates to taking punitive action qua the conduct of the petitioners and that too without giving any opportunity to the petitioners to present their side or to rebut the said allegations. The respondents were well within their right to take appropriate action qua the conduct of the petitioners but their said action is permissible only after proving the allegations and that too by giving the employee concerned a reasonable opportunity to defend. As per the settled principle of law, the order terminating the services cannot be a stigmatic on certain allegations. While passing the orders in ***Civil Appeal No. 1965 of 2000*** decided on 06.03.2000 titled as ***V. P. Ahuja Vs. State of Punjab***, the Hon'ble Supreme Court of India has held that even a

probationer whose services are on test during the probation, the services cannot be terminated in a punitive manner by making allegations and that too without substantiating the same and without holding any enquiry to prove the said allegations. The relevant paragraph of the judgment is as under:

*“2. The appellant was appointed as Chief Executive in the Establishment of Punjab Co-operative Cotton Marketing & Spinning Mills Federation Limited by order dated 29th of September, 1998. One of the terms of his appointment was that he would be on probation for a period of two years which could be extended further at the discretion of the Management. It further provided that during the probation period, the Management shall have the right to terminate his services without notice. His services were terminated by order dated 2.12.1998 reading as under:-*

*"ORDER*

*Sh. V.P. Ahuja, S/o Late Sh. H.N. Ahuja was appointed on probation for 2 years as Chief Executive of the Coop. Spg. Mills Ltd., vide orders Endst. No.Spinfed/CCA/7844-45 dated 29.9.98 and posted at Bacospin. However, he failed in the performance of his duties administratively & technically. Therefore, as per Clause-I of the said appointment order, the services of [Sh. V.P. Ahuja](#) are hereby terminated with immediate effect.*

*Sd/-  
( Managing Director )  
SPINFED"*

*3. This order was challenged by the appellant in the Punjab and Haryana High Court through a Writ Petition which was dismissed by order dated 26th of March, 1999 reading as under:-*

*"Vide order dated 2.12.1998, Annexure-P- 17 petitioner has been asked to quit, concededly during the period of probation. The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation. Insofar as, thus, order, Annexure-P-17 is concerned, we find no infirmity therein."*

*xxx—xxx—xxx*

*6. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with*

*the principles of natural justice.*

*7.The affidavit filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.”*

9. The claim of the petitioners in the present petition is squarely covered by the judgment in **V.P. Ahuja** (*supra*).

10. In their claim, learned counsel for the respondents has not been able to rebut the fact that no enquiry was held by the respondent to prove the allegations as mentioned in the impugned order. Hence, the impugned order terminating the services of the petitioners cannot be held to be valid as the same is stigmatic in nature.

11. Further, with regard to the petitioners No. 3 to 5, it has been mentioned in the impugned order that they have abandoned their job but nothing has come on record that as to how the said finding has been recorded as no date has been mentioned so as to show this Court from which date petitioners No. 3 to 5 were not attending the office so as to plead that they have abandoned the job. Mere allegations have been made without supporting the same with any specific date or factual aspect. In the absence of any factual aspect, it cannot be said that the petitioners had abandoned their job. Hence, the order passed by the respondents cannot be sustained in the eyes of law and is accordingly set aside.

12. Further, with regard to the reduction of pay, the respondents have mentioned that the petitioners were wrongly given 15% hike in pay. In case, an employee has already been given a benefit and the same needs to be withdrawn, the rules of natural justice have to be followed keeping in view the settled principal of law settled by The Hon'ble Supreme Court of India in **Civil Appeal**

**No.9417 of 2019** titled as ***M/s. Daffodils Pharmaceuticals Limited and another vs. State of U.P and another***, decided on 13.12.2019, has held that no one can be inflicted with adverse order without being afforded a minimum opportunity of hearing. Relevant paragraph of the said judgment is reproduced as under:-

*“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.”*

13. Keeping in view the settled principle of law noticed hereinbefore, as in the present case, the salary of the petitioners were reduced without giving any opportunity of hearing to the petitioners, the said action of the respondents cannot be sustained. Hence, the order dated 02.05.2017 is set aside and the respondents are directed to reinstate the petitioners in service forthwith.

14. At this stage, learned counsel for the respondents submits that the department be given a chance to pass an appropriate order in accordance with law.

15. As per the settled principle of law, in case, any order which is being set aside on technicality, the department needs to be given a chance to rectify the said mistake to pass a fresh order in accordance with law. Hence, the respondents are given appropriate liberty to pass a fresh order in accordance with law.

16. With regard to the consequential benefits for the period when the

petitioners remained out, the same will depend on the fresh orders passed by the respondents.

- 17. The present petition is disposed of with the abovesaid terms.
- 18. Any civil miscellaneous application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)  
JUDGE

21.09.2023  
*Mehak*

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|----------------------------|--------|
| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |