

2023:PHHC:094456

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

Sr. No.210

CWP-30065-2017

Date of Decision: July 25, 2023

ASHISH KUMAR

...Petitioner

Versus

**STATE OF POLLUTION CONTROL BOARD, PANCHKULA AND
ANOTHER**

...Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Chirag Kundu, Advocate, for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Udit Garg, Advocate, for the respondents.

SANDEEP MOUDGIL, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of India seeking of a writ of certiorari for setting aside the letter/orders dated 18.12.2017 (Annexure P-20) and 19.12.2017 (Annexure P-21) along with orders dated 29.12.2017 (Annexures P-22 & P-23).

2. A letter dated 18.12.2017 (Annexure P-20) was made to the Member Secretary, Haryana State Pollution Control Board, Panchkula by Regional Officer, Bhiwani on the alleged incident which took place between Sh. Ashish Kumar, DEO (petitioner) and Dr. Sunil Kumar Sheoran, Scientist-B with regard to the replacement of petitioner on account of his inconducive behaviour. In response to the said letter, the impugned order dated 29.12.2017 was passed. The operative part of the said impugned order read as under:

“The Regional Officer, HSPCB, Bhiwani vide his letter No.5097 dated 27.11.2017, No.6411, dated 18.12.2017 and No.6412, dated 19.12.2017 has informed this office that your working behaviour is not conducive. It is also informed that your conduct is encouraging indiscipline and indecorum in the office atmosphere. Hence, the service contract agreement which was valid upto 31.12.2017 is not extended beyond 31.12.2017 and you are hereby relieved w.e.f. 31.12.2017 (A.N.).”

3. In response thereof, at the very outset, Mr. Chetan Mittal, Senior Advocate appearing on behalf of the HSPCB in support also refers to the judgment passed by the Apex Court in ***Bijendra Kumar Singh vs. The State of Bihar and others, 2014(21) SCT 589***, tenders a statement to the effect that the stigmatic part will be omitted, however, the rest of the order will remain same. The relevant paragraphs of the said judgment read as under:-

6. From the pleadings, it appears that the petitioner was appointed on contract basis vide letter dated 02.08.2011 for a period of one year. The petitioner, therefore, cannot claim as of right, continuance of such contractual appointment after completion of the period of one year. The impugned order has been issued on 01.08.2012 when the petitioner completed the period of one year of his contractual appointment. It is trite law that where appointment is contractual and the appointment comes to an end with efflux of time, the appointee has no right to continue in the said post. The prayer to the extent that he

should be allowed to continue on such appointment therefore, cannot be acceded to.

7. However, on perusal of the impugned order dated 01.08.2012, it is apparent that it is stigmatic in nature in as much as it has been mentioned that his contractual appointment was being terminated on the basis of adverse report received against him. The order does not contain any discussion on the petitioners explanation submitted on 18.02.2013. The said order dated 01.08.2012 cannot be sustained on that ground and it is accordingly, set aside.”

4. This Court in addition to above submissions would also take note of the judgment rendered by this Court in **CWP No.16199 of 2007**, dated 16.10.2007, titled **Bhupinder Kaur v. State of Punjab and others**, wherein it was observed as under:

“6. The question for consideration is whether termination of services on the ground that the same were not satisfactory, can be held to be stigmatic.

7. In Municipal Committee, Sirsa v. Munshi Ram, AIR 2005 SC 792: [2005(2) SLR 288 (SC), it was observed:

“.....the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of the termination is colourable and in fact is a punitive order.”

Reference was also made to judgment of three Judges’ Bench in H.F.Sangati v. Registrar General, High Court

of Karnataka and others, (2001) 3 SCC 117, taking similar view.

It was concluded as under:

“17. As noticed above in the instant case, the respondent having been appointed as a probationer and his working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot be ipso facto be termed as misconduct requiring an inquiry. It may be a ground for the employer’s assessment of the workman’s efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge.”

8. *In view of the above, the judgment relied upon on behalf of the petitioner has to be held to be on its own facts, not laying down an inflexible rule that wherever termination is on account of unsatisfactory work, enquiry was required.”*

5. In another case of identical circumstance, the Supreme Court in ***Radhey Shyam Gupta v. U.P.State Agro Industries Corp. Ltd., 1999(2) SCC 21*** wherein it was held as under:

30. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J. (as he then was) in Ram Narayan Das's case.

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31. But in the cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee- even though such acceptance of findings is not recorded in the order of

termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

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6. In view of the judgment referred by the respective counsels and in light of the fact that learned counsel for the petitioner has no objection, in case, the petition is disposed of after deleting the part which is to the effect that the working and behaviour of the petitioner is not conducive and his conduct is encouraging indiscipline and indecorum in the office, is ordered to be deleted.

7. However, considering the fact that the service contract dated 31.12.2017 was valid which has not been extended and thereafter, petitioner stands relieved from the service with effect from the said date i.e. 31.12.2017 itself. The petitioner has also not claimed for further extension of the contract and he is satisfied today after deletion of the part of the order. Hence, the petition is ordered to be disposed of in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

July 25, 2023
Ankur

Whether speaking/reasoned Yes

Whether Reportable Yes