

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26616-2021 (O&M)
RESERVED ON 16.03.2023
DATE OF DECISION:- 12.04.2023

PAWAN KUMAR PUNDIR

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Satya Veer Singh, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.
for the respondents.

SUVIR SEHGAL, J.

By way of present writ petition, petitioner has sought issuance of a writ in the nature of certiorari for quashing impugned order dated 05.10.2021, Annexure P-1, issued by respondents No.2 and 3, whereby service of the petitioner has been terminated and for issuance of a writ in the nature of mandamus directing the respondents to re-instate the petitioner.

Few facts may be noticed. After notifying a comprehensive Contractual Policy for IT Professionals in the State vide notification dated 31.08.2017, Annexure P-2, Government of Haryana issued advertisement dated 10.12.2018, Annexure P-3, inviting applications from IT professionals for various positions including that of Joint Chief IT Officer. Petitioner applied for the position, he was interviewed and vide letter dated 24.05.2019, Annexure P-4, he was offered appointment. He submitted letter of acceptance and joined the office of respondent No.2 on 08.08.2019. An agreement dated 19.08.2019, Annexure P-6, was entered into between the Governor of Haryana, through the Department of Electronics and Information Technology and the petitioner, laying down the terms and conditions of engagement. Vide memo dated 09.10.2020, Annexure P-7, a Show Cause Notice was served on the petitioner as to why the agreement may not be terminated on the ground that the petitioner did not possess the requisite experience. Petitioner submitted his reply, Annexure P-8. Vide impugned order dated 05.10.2021, Annexure P-1, service of the petitioner was terminated. Upon notice, the petition has been contested by the respondents by filing a written statement, wherein the stand taken is that the petitioner has educational qualification of AMIE from the Institute of Engineers and he does not possess the required qualification of Bachelor of Engineering in Electronics and Communication. It has been submitted that the petitioner acquired the Masters in Computer Application degree in the year 2004 and the work experience, when considered from the said year, does not fulfill the eligibility requirements as per the advertisement. It has been submitted that principles of natural justice have been complied with

before terminating the petitioner from service and upon accepting the salary in lieu of the notice period, he has been relieved from service. Petitioner has filed a replication to the written statement filed by the respondents.

Counsel for the petitioner has urged that the petitioner has work experience of more than twenty four years and the respondents have erred in not considering the experience gained by the petitioner with the Air Force prior to obtaining the academic qualification of MCA. He has placed reliance upon the judgments in *Shaila Begum Versus Kerala Public Service Commission, 1997 (4) SCT 460; Salig Ram Kumar Versus Secretary Haryana Public Service Commission etc., 1973 (1) SLR 1039; Subhash son of Shri Ram Dhonde Versus State of Maharashtra and another, (1995) Supp 3 SCC 332; and Anil Kumar Gupta Versus Municipal Corporation of Delhi (2000) 1 SCC 128*. It is his argument that the contract could be terminated under Clause 6 of Annexure P-6 on the ground of non-performance or mis-conduct, but the impugned order is not based on any such allegation. He has argued that the principles of natural justice have been violated and the petitioner is being harassed.

Countering his submission, State counsel has contended that the petitioner did not possess the requisite experience for the post as per the advertisement, Annexure P-3. She submits that the petitioner had an experience of eleven years and ten months after acquiring the qualification of MCA, whereas the requirement is of twenty one years. She has placed reliance upon the judgments of the Supreme Court in *K.K. Dixit and others Versus Rajasthan Housing Board and another, (2015)*

1 SCC 474 and Institute of Mechanical Engineers (India) through its Chairman Versus State of Punjab and others, (2019) 16 SCC 95. She submits that by virtue of the impugned order, Annexure P-1, services of the petitioner have been terminated and he has accepted two months salary in lieu of the notice period, therefore, he cannot be permitted to approbate and reprobate. Still further, she submits that in any case, during the pendency of this petition, the contract period of the petitioner has expired on 07.08.2022 and the respondents have decided not to renew the contract. She has urged that in view of this development, the petitioner has no right to continue on the engagement. She has placed reliance upon the judgments of the Supreme Court in *Director, Institute of Management Development, UP Versus Smt. Pushpa Srivastava, (1992) 4 SCC 33; Rajasthan State Roadways Transport Corporation Versus Paramjit Singh, (2019) 6 SCC 250*, a Division Bench of this Court in *LPA No.513 of 2012* titled as *Lokesh Rana and another Versus Union of India and others*, decided on 04.07.2022 as well as a judgment of a Co-ordinate Bench of this Court in *Sunil Kumar Versus State of Punjab 2019 (3) SCT 310*.

I have considered the submissions of counsel for the parties and examined the documents on the record.

Undisputedly, petitioner has been engaged by the respondents by virtue of an agreement dated 19.08.2019, Annexure P-6. The terms of the engagement, which are relevant for the purposes of the decision of the instant petition, deserve to be noticed and are extracted below:-

“Terms of appointment/engagement of contract:-

- (1) *The Second Party agrees to abide by the rules and regulations as laid down in relation to conduct, discipline and other matters. He will always be required to conduct himself accordingly.*
- (2) *That the Second Party i.e. Sh. Pawan Kumar Pundir is hereby engaged as Joint Chief Information Technology Officer on contract for a period of three years effective from 08.08.2019 to 07.08.2022 subject to the terms and conditions herein contained.*

That Sh. Pawan Kumar Pundir shall be paid a consolidated remuneration of Rs.2,08,333/- per month (Rupees Two Lakh Eight Thousand Three Hundred Thirty Three only) including all allowances like medical, conveyance, entertainment and mobile expenses. All taxes, if any, shall be the responsibility of the second party. In addition to above, the incumbent shall be entitled to reimbursement of TA/DA expenses incurred on travel outside the headquarter on official duties equivalent to the TA/DA applicable to Grade-II officer of the Haryana Government from time to time.

- (3) *The contractual engagement can be extended for subsequent year/term based on the performance rated by the competent authority, his work and conduct and requirement of his services by the Department.*

- (4) *In the event, both the parties agreeing to the extension of this contract, the consolidated remuneration fixed for the preceding year can be considered for enhancement upto 10% of the remuneration last drawn by the incumbent.*
- (5) *That the Department shall be at liberty not to renew or extend this contract further beyond the contract period of three years in case the services of the second party is no longer required or his performance, work and conduct during this contract period is not observed to be satisfactory.*
- (6) *That this contract can be terminated pre-maturely by the department with a notice of two months to the second party in case the performance of the second party is not found to be meeting the prescribed standards and deliverables or any mis-conduct on its part. The Department may dispense with the period of notice of two months by paying an amount equal to two months remuneration in lieu of the notice period.”*

Although, much stress have been laid by counsel for both the sides on the academic qualification and work experience of the petitioner, but this Court is of the view that by efflux of time, this controversy has become academic. Petitioner had been engaged under agreement, Annexure P-6, and as is evident from clause (2) reproduced above, contract period term expired in August, 2022. The respondents

constituted a committee to evaluate the performance of the petitioner and on the basis of its recommendation, they have taken a decision not to renew the contract in terms of clause (5) of the agreement.

It has been held by the Supreme Court in ***Pushpa Srivastava's case (supra)*** that when the appointment is contractual and by efflux of time of time the appointment comes to an end, a contractual employee has no right to continue whatsoever on the post beyond stipulated period. A Division Bench of this Court in ***Lokesh Rana's case (supra)*** has observed as under:-

“On the contrary, the Supreme Court, in the cases of Yogesh Mahajan Versus Prof. R.C.Deka, Director All India, (2018) 3 SCC 218 and Gridco Limited and another Versus Sadananda Doloj and others, (2011) 15 SCC 16 has held that it is a settled law that no contractual employee has a right to have his contract renewed from time to time and can be discontinued after the contractual period is over. In the cases of State of Uttar Pradesh and others Versus Ex. Pilot Officer Arun Govil, (1989) Supp. 2 SCC 593 and State of Orissa Versus Chandra Sekhar Mishra, (2002) 10 SCC 583, the Supreme Court has further held that a person appointed on contractual basis is entitled to continue as a contractual employee only till the period of his contract or for the period extended from time to time, and not beyond that, and that after the lapse of the contractual period, the employee has no right to continue as such and on his disengagement cannot be directed to be reinstated by the High Court.

In case of Union of India and others Versus N. Murugesan and others, (2022) 2 SCC 25, the Supreme Court, though with reference to appointment on a very

high post, has further held that in the cases of tenure appointment, the principle and doctrine of ‘approbate and reprobate’ would also apply and a person, with his eyes open and full knowledge, have been taken advantage of obtaining a contractual employment, cannot subsequently challenge its terms and conditions and seek status of a permanent employee.”

The petitioner has been engaged for a specific term under an agreement and its term has expired. As such the petitioner ceases to be in the employment of the respondents, who have taken a conscious decision, not to renew the contract. At this stage, the respondents can neither be forced to reinstate the petitioner nor to renew the agreement.

In view of the above discussion, this Court is of the view that by lapse of time, the relief sought by the petitioner, cannot be granted. There being no merit in the prayer made, petition is dismissed.

All the pending applications are disposed of.

(SUVIR SEHGAL)
JUDGE

12.04.2023
Kamal

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