

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

LPA-1194-2022 (O & M)
Date of Decision: 04.01.2023

Himanshu Pandey

.....Appellant(s)

Versus

U.T., Chandigarh and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Shekhar Verma, Advocate,
for the appellant.

Mr. Gaurav Mohunta, Additional Standing Counsel,
and Mr. Nishant Arora, Advocate,
for U.T., Chandigarh.

G.S.SANDHAWALIA, J. (Oral)

CM-2882-LPA-2022

Application for condonation of delay of 35 days in filing the appeal is allowed, in view of averments made in the application supported by affidavit of the appellant.

Delay of 35 days in filing the appeal is condoned.

CM stands disposed of.

LPA-1194-2022 (O & M)

Consideration in the present letters patent appeal is to the order passed by the learned Single Judge dated 26.08.2022 in CWP No. 18946 of 2022, Himanshu Pandey vs. U.T., Chandigarh and others whereby, the learned Single Judge has declined to interfere in the order dated 18.08.2022 (Annexure P-9 therein) whereby the services of the writ petitioner were discontinued on the ground that he is a contractual employee and merely the length of tenure would be not a ground for consideration if the work and conduct was not upto the mark. It was also noticed that the petitioner was

granted opportunity of hearing by seeking explanation from him and, therefore, it cannot be said that he has not been heard.

Counsel for the appellant has vehemently argued that the order of dis-continuation of the contractual services by the Chief Executive Officer of respondent No.3-Society is without jurisdiction as such while referring to the Memorandum of Association, Rules and Regulations of Society for Promotion of I.T. in Chandigarh (Annexure A-2). It is accordingly submitted that the Executive Committee would have the power as such to take disciplinary action through its authorised representative including termination of services of a contractual employee as per Clause 7(III)(g).

Mr. Mohunta appearing for the U.T. Administration, on the other hand, has referred to Clause 7(V)(e) to submit that the Chief Executive Officer would be competent to determine the terms and conditions of service/appointment of staff to be taken on contract.

We have perused the paper book and gone through the order of the learned Single Judge. Apparently, the writ petitioner was appointed as an Assistant Accountant on 08.11.2005 on a consolidated salary of Rs.6,000/- per month for a period of one year and he continued thereafter. A fresh contractual appointment took place on 20.12.2007 (Annexure P-5) whereby he was put on consolidated salary of Rs.10,000/- plus Rs.800/- as conveyance allowance plus Rs.500/- as book allowance as an Accountant. Thereafter, he was given fresh appointment on 21.03.2011 (Annexure P-6) @ Rs.23,155/- after allowing an annual increment of 10% on the last paid consolidated amount.

The learned Single Judge noticed that the order of termination as

such was retrospective to the extent that it was w.e.f. 29.07.2022 and granted

the relief to the extent that he was entitled for the salary upto the date the order was communicated to the petitioner i.e. 18.08.2022. It is not disputed that as per the last extension of the contract, his tenure was to come to an end on 31.12.2022. The reason as such for dispensing with the services was on account of apparently some apprehension by the employer of financial losses and favouritism, which would be clear from the order whereby the Chief Executive Officer, who was the appointing authority noted as under:-

“In the light of the above narrated facts, to continue the services of Sh. Himanshu, Accountant on contract in the organisation will led to financial losses & favourism to someone. Hence, it is hereby ordered that services of Sh. Himanshu Accountant-SPIC are hereby terminated with immediate effect. Further AC(F & A)-SPIC is hereby directed to initiate process of hiring CA through GeM Portal only. An explanation from the previous AC(F & A)-SPIC may also be sought as per comments of AC(F & A0-SPIC”

On the basis of the above finding recorded, the formal order was passed on 18.08.2022 (Annexure P-9) that his services were being discontinued w.e.f. 29.07.2022 on account of negligence in duties and unsatisfactory performance which had already been conveyed to him.

In such circumstances, we are of the considered opinion that if the appointing authority is not satisfied with the contractual employee and has dispensed with the services, he is duly entitled to determine the terms and conditions as per clause 7(V)(e), which reads as under:-

“V. Powers and Duties of the C.E.O.-cum-Member Secretary.

The Powers and duties of the Chief Executive Officer-cum-Member Secretary are:-

(d) *To be the appointing authority for the staff to be taken on Contract subject to rectification by EC.*

(e) *To determine the terms and conditions of service/appointment of the staff to be taken on contract.”*

The learned Single Judge has rightly observed that the appellant as such is not a regular employee against whom departmental enquiry is to be ordered. In case the employer is not satisfied and being the appointing authority, he can dispense with the services as per the terms of the appointment order which provides that the contract can be terminated as and when his services are not required by the Society without any prior notice. We are of the considered opinion that the appellant has no legal right as such which would give him any cause to continue to serve with the society. Counsel has though argued that he has a long service and, therefore, dispensing with the services at this stage is disproportionate to the reasons which weighed but it is settled principle that the writ Court will not go into the issue of the reasons as such which led to the dispensing with the services between the employer and employee. If the employer is not satisfied with the services of a contractual employee, it is not for the writ Court to substitute its decision and superimpose an employee in whom the trust has been lost.

Accordingly, the present appeal stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

04.01.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No