

210

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-25216-2015
Date of Decision: 16.02.2024

Narender Petitioner
Versus

Haryana Urban Development Authority (HUDA) and others
.... Respondents

CWP-8446-2018

Shailender Singh Petitioner
Versus

Haryana Urban Development Authority (HUDA) and others
.... Respondents

CWP-5004-2015

Balwan Singh and another Petitioners

Versus
Haryana Urban Development Authority (HUDA) and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nitin Rathee, Advocate,
for the petitioner in CWP-25216 & 5004-2015.

Mr. Manvender Rathi, Advocate,
for the petitioner in CWP-8446-2018.

Mr. R.S. Longia, Advocate,
for respondent No.1 in CWP-5004-2015.

Ms. Mallika Dhillon, Advocate for
Ms. Supriya Garg, Advocate,
for respondent Nos.1 to 3 in CWP-25216-2015.

Mr. Deepak Balyan, Advocate
for the respondents in CWP-8446-2018.

JASGURPREET SINGH PURI, J. (ORAL)

1. All the petitions have been filed under Articles 226/227 of the Constitution of India and are being taken up together for final disposal with the consent of the learned counsel for the parties, since the subject matter is inter connected although there are different facts involved in all the petitions. Therefore, the facts of all the cases would be taken up differently.

2. The writ petition bearing CWP-25216-2015 has been filed by the petitioner, namely, Narender wherein the prayer is for setting aside the order dated 18.09.2015 (Annexure P-6) vide which the services of the petitioner have been terminated by respondent No.2-Gymkhana Club, Rewari.

3. Another writ petition bearing CWP-5004-2015 has been filed by the petitioners, namely, Balwan Singh and Hoshiyar Singh with a prayer for quashing of the order dated 08.03.2015 (Annexure P-12) vide which they were relieved from their duties from Gymkhana Club, Rohtak because the competent authority decided to engage the man-power for Gymkhana Club through outsource agencies.

4. The writ petition bearing CWP-8446-2018 has been filed by the petitioner, namely, Shailender Singh wherein the prayer is for setting aside the order dated 18.09.2015 (Annexure P-6) wherein it was decided that the terms and conditions of the initial appointment, which was on year to year basis on consolidated salary, be now fixed by the Deputy Commissioner on year to year basis i.e. DC rates. This petition also pertains to Gymkhana Club, Rewari.

5. In this way, two petitions are pertaining to Gymkhana Club,

Rewari and one petition is pertaining to Gymkhana Club, Rohtak. Therefore, two petitions pertaining to Gymkhana Club, Rewari may be taken up first which are the writ petitions bearing CWP-25216-2015 and CWP-8446-2018.

6. Mr. Nitin Rathee, learned counsel for the petitioners in both the writ petitions i.e. CWP-25216-2015 and CWP-8446-2018, submitted that the petitioner-Narender was appointed as a Bar Supervisor vide Annexure P-2 by the Estate Officer-cum-General Secretary, Gymkhana Club, Rewari on contractual basis and the contract was from 01.04.2010 till further orders. But thereafter, a show-cause notice dated 10.07.2015 was issued to the petitioner and thereafter, personal hearing was also granted to him. Vide order dated 18.09.2015 (Annexure P-6) services of the petitioner were terminated on the basis of two allegations i.e. he failed to perform his duties as a Bar Supervisor and also that he did not fulfill the requisite minimum qualification for the said post. He further submitted that so far as the second allegation is concerned, the same did not find mention in the show-cause notice but still he was terminated on that ground and apart from the above, no departmental/disciplinary inquiry has been conducted against the petitioner and therefore, the aforesaid order of termination is liable to be set aside on the ground of violation of *principle of natural justice* and in this regard, he also referred to a judgment of this Court passed in ***CWP-17747-2011*** titled as “***Karam Singh Vs. Haryana Urban Development Authority and others***” decided on 10.10.2014 (Annexure P-10) wherein without conducting the departmental inquiry, the services of the petitioner therein were terminated and the same was challenged before this Court by way of the aforesaid writ petition which was allowed by the Single Bench and

upheld by the LPA Bench of this Court and against the judgment of LPA Bench, SLP was also dismissed by the Hon'ble Supreme Court.

7. In the second writ petition i.e. CWP-8446-2018, the learned counsel for the petitioner submitted that the petitioner was appointed vide letter dated 03.06.2010 (Annexure P-2) by way of a similar kind of appointment letter as that of the aforesaid petitioner, namely, Narender Singh but there was no specific order of his termination and vide Annexure P-6 dated 18.09.2015, on the basis of a show-cause notice dated 10.07.2015 issued to the petitioner, it was decided by the Gymkhana Club that his services will be continued as Bar Man but on the same terms and conditions of his initial appointment but now instead of the consolidated salary, it will be modified to that at the DC rates and in this way, he continued till the year 2017 but they did not permit him to continue in service thereafter and therefore, the present petition was filed in the year 2018.

8. On the other hand, learned counsels appearing for the respondent-Gymkhana Club, Rewari submitted that the present petition where the relief is sought against the Gymkhana Club Rewari is not maintainable and have also referred to another judgment of this Court passed in ***CWP-15176-2014*** titled as “***Shamsher Singh Vs. State of Haryana and others***” decided on 01.08.2014, which although is pertaining to Gymkhana Club, Rohtak but referred to the observations made by the learned Single Judge of this Court, wherein it was so observed that the writ petition against the Club would not be maintainable. They submitted that thereafter an LPA was preferred by the aforesaid Shamsher Singh and the aforesaid judgment of ***Karam Singh's case (supra)*** was referred to in the order but the argument

of the learned counsel for the petitioner was considered by the learned LPA Bench also in LPA-1296-2014 (*Shamsher Singh Vs. State of Haryana and others*) and vide judgment dated 11.08.2016 (Annexure R-2/2) (in CWP-5004-2015) it was so observed that the cited decision does not advance the case of the appellants and rather it was also held that even if, by inference or implication, the said decision is taken to have held that service dispute of a contractual employee of private entity is adjudicable in writ proceedings, the same was disapproved by the LPA Bench. They submitted that in view of the aforesaid judgment of the Division Bench of this Court in LPA passed in *Shamsher Singh's case (supra)*, the writ petition against the Gymkhana Club, Rewari is not maintainable even if the orders were passed by the Estate Officer of HUDA.

9. The learned counsels also submitted that even otherwise also the subject matter of both the petitions would not survive because the prayer in both the petitions seeking quashing of the termination order of a contractual employee and the action of the Gymkhana Club in not permitting the other petitioner, namely, Shailender Singh to continue after the year 2017 because the aforesaid Gymkhana Club, Rewari has already been closed in the year 2020 at the onset of Covid-19 Pandemic and now he has instructions to state that the aforesaid Gymkhana Club, Rewari has been completely and permanently closed since September, 2023 and therefore, even otherwise also, nothing would survive in the present petition.

10. After hearing the learned counsel for the parties, in the aforesaid two petitions, this Court is of the view that the judgment of LPA Bench of this Court in *Shamsher Singh's case (supra)*, although in the case

of Gymkhana Club, Rohtak, but the present petitions would also not be maintainable against the Gymkhana Club, Rewari. The relevant portion of the observations made by the learned Single Judge in ***Shamsher Singh's case (Supra)*** is reproduced as under:-

“After hearing learned Counsel at length this Court finds no ground to interfere in the impugned order. It is not in dispute that he was in the employment of a club, which is a registered society. It also cannot be disputed that institutions like club have never adopted any regularization policy. It is also not disputed that his engagement was purely contractual for short periods of time. It is further not disputed that one of the terms of his engagement was that his employment would stand automatically terminated at the end of the term of his engagement. Thus by not extending the further period of engagement, the action of the respondent club cannot be faulted. Apart from the above even a writ petition against a club would not be maintainable.”

11. The relevant observations made by the learned LPA Bench are reproduced as under:-

“So far as reliance on the decision of this Court in CWP No.17747 of 2011 Karam Singh Vs. Haryana Urban Development Authority and others decided on 10.10.2014 is concerned, it proceeds on the premise that Haryana Urban Development Authority being a ‘Statutory Authority’ which performs public duties, is amenable to the writ jurisdiction. There is not a whisper in the cited case that the Club run by a Society, even if it for the benefit of residents of HUDA sectors, is an integral part or wing of HUDA- as a statutory authority. There the employee served for 24 years and his services

were terminated alleging a specific misconduct but without holding regular enquiry. The cited decision thus does not advance the case of appellants. However, if by inference or implication the said decision is taken to have held that service dispute of a contractual employee of private entity is adjudicable in writ proceedings, we respectfully disapprove such view of the single Bench.”

12. Apart from the above, as per Mr. Deepak Balyan, learned counsel for the respondents in CWP-8446-2018, since the Gymkhana Club, Rewari has already been closed permanently and the petitioners were only contractual employees, no such relief as prayed for, can be granted to the petitioners for the reinstatement or any other benefits.

13. Consequently, both the petitions bearing CWP-25216-2015 & CWP-8446-2018 are dismissed.

14. Now coming to the writ petition pertaining to Gymkhana Club, Rohtak i.e. CWP-5004-2015, the petitioner has sought quashing of the order dated 08.03.2015 (Annexure P-12) whereby both the petitioners were relieved from duties on the ground that their service contract has expired in February, 2015.

15. The learned counsel appearing on behalf of the petitioners submitted that the petitioners were appointed vide letter dated 27.08.2009 (Annexure P-1) on contract basis for a period of three months and their contract was extended from time to time, but thereafter, vide office order dated 08.03.2015 (Annexure P-12), the Gymkhana Club, Rohtak decided to engage a manpower through outsourcing agencies. He further submitted that the Gymkhana Club could not have decided to replace the petitioners, who are contractual employees, by the outsourcing agencies because it is a settled

law that a contractual employee cannot be replaced with another contractual employee and referred to a judgment of Hon'ble Supreme Court passed in "*Hargurpratap Singh Vs. State of Punjab and others*", 2007(13) SCC 292, in this regard.

16. On the other hand, learned counsel appearing on behalf of the respondent Nos.1 to 3 submitted that even a perusal of Annexure P-1 which was appointment letter of one of the petitioners, would show that the appointment of the said petitioner, on contractual basis, was a tenure appointment for a period of three months, which was extended from time to time and the contractual appointment being tenure appointment, no right vest with the petitioners for seeking an extension of tenure. He also submitted that although the Gymkhana Club, Rohtak is functioning but the petition seeking direction against the Gymkhana Club is not maintainable in view of the judgment of a Co-ordinate Bench of this Court in *Shamsher Singh's case (supra)* as upheld by the Hon'ble LPA Bench which has been discussed as above and therefore, the petition itself is not maintainable.

17. The service contract of the petitioners was for a fixed tenure which was extended from time to time. Preliminary objection was raised by the learned counsel for the respondents during the course of arguments with regard to the maintainability of the present petition. The appointment of the petitioners was made by the Gymkhana Club, Rohtak vide Annexure P-1 & P-2, respectively. However, with regard to the same Gymkhana Club i.e. Gymkhana Club, Rohtak, it was held by a Co-ordinate Bench of this Court that the writ petition is not maintainable and has also been upheld by the LPA Bench as reproduced above. Therefore, this Court of the view that on

the ground of maintainability, the present petition deserves to be dismissed.

18. Accordingly, this writ petition is dismissed.

16.02.2024

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No