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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24060-2019 (O&M)
Date of Decision: 13.08.2024

Pawan Kumar

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikas Kuthiala, Advocate, for the petitioner.

Mr. Randhir Singh, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 10.07.2019 (Annexure P-9) whereby the services of the petitioner have been dispensed with, with a further direction to the respondents to allow the petitioner to rejoin on the post of ALM on DC rates with all consequential benefits such as back wages, seniority etc. along with interest @ 12% per annum from the date of termination till he rejoins as ALM.

2. Learned counsel appearing on behalf of the petitioner submitted that the services of the petitioner have been terminated/dispensed with vide Annexure P-9 which is an illegal order. He submitted that it is a case where on



16.06.2019 in the morning, one Ishwar Singh, JE informed the SDO that one ALM namely, Rajinder Kumar met with a fatal accident at Deod Kheri AP Feeder near the pond of Deod Kheri village and he was admitted in Civil Hospital, Kaithal and thereafter, he died. On preliminary enquiry, it was found that there was no written permit issued to the line staff in the log sheet for the purpose of permission and the schedule of the power supply and there was also some overwriting in the columns of the log sheet. In the preliminary enquiry, it was found that it was the duty of one Dalbir, Lineman and the present petitioner namely, Pawan Kumar, ALM who should have communicated to the aforesaid deceased Rajinder Kumar regarding the working of the line because they knew that Rajinder Kumar had taken the permit of a line and it was found in the preliminary enquiry by the SDO that the occurrence took place due to the negligence of Manish Kumar, SA, Dalbir, LM and the present petitioner namely, Pawan Kumar, ALM as they had the knowledge that the deceased Rajinder Kumar was attending to the fault in line but they did not bother to contact him before cancellation of permit.

3. Learned counsel submitted that as per the aforesaid preliminary enquiry/fact finding enquiry, negligence has been attributed to three persons. So far as the aforesaid Manish Kumar, SA is concerned, he was an outsourced employee and so far as Dalbir, LM is concerned, he was a regular employee of the respondent-Nigam and regarding him a detailed regular enquiry was conducted and thereafter as a punishment only to the extent of stoppage of one increment with cumulative effect has been passed against him and so far as the present petitioner is concerned, he was a contractual employee of the respondent-Nigam on DC rates and admittedly, he was not an outsourced



employee but so far as the present petitioner is concerned, he was straightaway terminated from service/his services were dispensed with vide impugned order dated 10.07.2019 (Annexure P-9) by alleging negligence in the aforesaid order Annexure P-9 as well as in the aforesaid enquiry report. He also submitted that the petitioner is at parity with the aforesaid Dalbir but qua him a regular enquiry has been conducted and he has been only given punishment of stoppage of one increment with cumulative effect but no enquiry has been conducted qua the petitioner.

4. Learned counsel also submitted that since the petitioner was admittedly on contractual basis directly under the respondent-Nigam and his services have been dispensed with by way of a stigmatic order which is clear from a perusal of the aforesaid enquiry report and the impugned order Annexure P-9 itself, the same could not have been done without even affording an opportunity of hearing to the petitioner. He submitted that even a notice has not been given to the petitioner what to talk of holding a regular enquiry. He referred to a judgment of Hon'ble Supreme Court in **A. P. State Fed. of Coop. Spinning Mills Ltd. versus P.V. Swaminathan, 2001 (10) SCC 83** and a judgment of a Division Bench of this Court in **Union Territory of Chandigarh and others versus Central Administrative Tribunal, Chandigarh Bench and others, 2011 (1) SCT 777** and a judgment of a Co-ordinate Bench of this Court in **Pramod Kumar Sharma versus State of Haryana and others, 2017 (1) SCT 79** in this regard to contend that even for a contractual employee, when an order is stigmatic in nature, then without holding a regular departmental enquiry, services cannot be terminated.



5. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that so far as the factual position is concerned, the aforesaid Dalbir was a regular employee and therefore, qua him a regular enquiry was conducted and a punishment of stoppage of one increment with cumulative effect was inflicted upon him but so far as the petitioner is concerned, since he was only a contractual employee, although under the respondent-Nigam, his services have been dispensed with and therefore, there is no illegality in the aforesaid order (Annexure P-9). He also submitted that so far as the Manish Kumar is concerned, he was an outsourced employee and therefore, there was no requirement of giving any opportunity of hearing to the aforesaid Manish Kumar.

6. I have heard the learned counsel for the parties.

7. A perusal of the fact finding enquiry/preliminary enquiry Annexure P-8 would show that equal negligence has been attributed to three persons namely, Manish Kumar, Dalbir and the present petitioner. In other words, the role of the aforesaid three persons was similar, even as per the fact finding enquiry. However when the action was required to be taken against the aforesaid three persons, then qua Dalbir, who is a regular employee, a regular enquiry was conducted and a punishment of stoppage of one increment with cumulative effect was inflicted upon him but when it came to the petitioner no notice or any kind of opportunity of hearing has been given to the petitioner because he was a contractual employee working under the respondent-Nigam.

8. The law in this regard is well settled as to whether for a contractual employee when there is a stigma attached in the order of



termination, then whether any opportunity of hearing and regular enquiry has to be conducted or not and whether the principles of natural justice are to be followed or not.

9. Hon'ble Supreme Court in **A. P. State Fed. of Coop. Spinning Mills Ltd. versus P.V. Swaminathan's case (supra)** observed as under:-

“3. The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by court. But the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. The decision of this Court relied upon by Mr. K. Ram Kumar also stipulates that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive of passing the order of termination, and it is in that sense in the counter-affidavit. It can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining the assertions made in paragraphs 13 and



14 of the counter- affidavit, in the present case it would be difficult for us to hold that in the case in hand, the employer appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.”

10. A Division Bench of this Court in **Union Territory of Chandigarh and others versus Central Administrative Tribunal, Chandigarh Bench and others case (Supra)** observed as under:-

“10. A perusal of the aforesaid para would show that even in a case of contract of service if the termination is founded on a misconduct then it has to be regarded as a punishment because it is manifest in the order itself. The aforesaid judgement holds the field even today which is evident from the perusal of judgements of Hon'ble the Supreme Court in the cases of State of U.P. v. Kaushal Kishore Shukla 1991(1) SCC 691 and P. V.Swaminathan's case (supra). However, in the aforesaid judgements it has been observed that a temporary government servant has no right to hold the post and whenever the competent authority is satisfied that work and conduct of a temporary government servant is not satisfactory or that his continuation in service is not in public interest on account of his inability, mis-conduct or inefficiency it may either terminate the service in accordance with the terms and conditions of service or the relevant rules or it may decide punitive action against the government servant. The observations made in para 7 of the judgement in the case of Kaushal Kishore Shukla's case (supra) reads thus:

“7. A temporary Govt. servant has no right to hold the post, his services are liable to be terminated by giving



him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it 'is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36 a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Govt. servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include



the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and Anr. v. Ram Narayan Das AIR 1961 SC 177; R.C. Lacy v. The State of Bihar and Ors. C.A. No. 590/62 decided on 23.10.1963; Champaklal Chimanlal Shah v. The Union of India AIR1964 SC 1854; Jagdish Miner v. The Union of India AIR1964 SC 449; A.G. Benjamin v. Union of India C.A. No. 1341/66 decided on 13.12.1966 and Shamsher Singh and Anr. v. State of Punjab (1974)2 SCC 831, These decisions have been discussed and followed by a three Judge Bench in State of Punjab and Anr. v. Shri Sukh Raj Bahadur AIR 1968 SC 1089.”

11. A Coordinate Bench of this Court in **Pramod Kumar Sharma versus State of Haryana and others, 2017 (1) SCT 79** observed as under:-

12. This Court would have no hesitation in recording that the decision of the respondent Corporation not to grant extension to the petitioner as regards his contractual assignment is founded on charges of grave misconduct. Since the matter had been enquired into and a report dated 30.09.2014 (Annexure R-3) had been furnished by the Financial Controller of Municipal Corporation, Faridabad and against the petitioner, the misconduct cannot be seen merely as a motive but would have to be construed as the foundation of the decision not to continue with the services of the petitioner. The decision of the respondent Corporation was thus clearly punitive.



13. During the course of arguments, it has gone uncontroverted that prior to the decision contained in Annexure R-3 to dispense with the services of the petitioner, no opportunity of hearing was granted to him and even a show cause notice had not been served.

14. It is by now well settled that even in the case of tenure appointees/contractual employees, if the order of dispensing of the services is founded on misconduct then it is imperative upon the employer to conduct an inquiry and in which such employee has to be associated. In the facts of the present case, the decision of the respondent Corporation to dispense with the service of the petitioner cannot sustain as the same is in clear negation of the principles of natural justice.

12. In view of the facts and circumstances of the present case, a perusal of the fact finding enquiry would show that the element of negligence has been attributable to the petitioner as well which is similar to the aforesaid other two persons. A perusal of Annexure P-9 would also show that the services of the petitioner have been dispensed with on the basis of allegation of negligence. Therefore, it is clear that a stigma was attached to the petitioner at the time when his services were terminated vide Annexure P-9. Apart from the above, even otherwise also, had the petitioner been subjected to regular enquiry, then after holding of the regular enquiry, a similar kind of punishment may have been inflicted upon him as that of the aforesaid Dalbir because the aforesaid Dalbir whose role was similar to that of the present petitioner, a punishment of stoppage of one increment with cumulative effect has been inflicted upon him and therefore by non-adhering to the principles of natural justice namely *audi alteram partem* and by not even issuing any notice what to



talk of a regular enquiry, miscarriage of justice has been done. Once an order of dispensing with the services of a contractual employee is passed and is purely stigmatic in nature, then the principles of natural justice were required to be followed.

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 10.07.2019 (Annexure P-9) is hereby set aside and quashed. The respondents are directed to re-instate the petitioner forthwith and take him back on duty. The petitioner shall not be entitled for any back wages but he will be entitled for all the other consequential benefits.

14. After the petitioner is taken back on duty in pursuance of this order, then the respondent-Nigam shall be at liberty to proceed against him in accordance with law by initiating any other proceedings for the purpose of regular enquiry, if they so desire.

13.08.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No