

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109+259)

CM-1320-CWP-2024 in/and
CWP-24092-2023
Date of Decision : January 24, 2024

Vinod and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jaskirat Singh, Advocate, with
Ms. Sukhvir Gill, Advocate, for
Dr. Surya Parkash, Advocate, for the petitioners.

Mr. Tapan Kumar Yadav, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1320-CWP-2024

As prayed for, the application is allowed.

Replication to the written statement filed on behalf of
respondents No. 1 to 6 and Annexures P-23 to P-29 are permitted to be
taken on record.

CWP-24092-2023

1. In the present writ petition, the challenge is to the Inquiry
Report dated 09.06.2022 (Annexure P-8) wherein, the misconduct being
alleged against the petitioners has been proved as well as the order dated
29.03.2023 (Annexure P-1) which has been passed by the respondents,
terminating the services of the petitioners by not giving further extension in
service.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioners are working as Drivers with the respondent-National Health Mission. While discharging their duties, certain allegations were alleged against them qua the driving of the vehicle and maintaining of log book qua the vehicles being driven by them. The allegations being alleged against the petitioners were that while working as a Driver, they had misused the vehicle in question and a fuel alleged to have been used for driving the vehicle, has been manipulated by the petitioners so as to embezzle the amount.

4. In order to enquire into the said allegations, Deputy Civil Surgeon, Bhiwani was asked to submit an enquiry report on the said allegations and on 09.06.2022, the Inquiry Report was submitted by the said official holding that there was a financial loss caused to the Government to the tune of Rs.4 lacs and recommended that disciplinary action should be taken against the petitioners.

5. By relying upon the said Inquiry Report, order has been passed on 29.03.2023 (Annexure P-1) whereby the petitioners were relieved from service in terms of clause No.21 of the service bye-laws relating to National Health Mission according to which, the service of an employee can be terminated in case of insubordination, misconduct or unsatisfactory or poor performance at any time during the service. The challenge in the present petition is to the Inquiry Report dated 09.06.2022 (Annexure P-8) as well as the consequent termination order dated 29.03.2023 (Annexure P-1).

6. Learned counsel for the petitioners argues that the Inquiry Report dated 09.06.2022 (Annexure P-8) has been made the basis of the

impugned order dated 29.03.2023 (Annexure P-1) so as to terminate the services of the petitioners. Learned counsel for the petitioners submits that the conclusion arrived at by the Enquiry Officer in the inquiry report is without citing any reason and by a cryptic and non-speaking order, the charges have been proved, which Inquiry Report has been made the basis of terminating the services of the petitioners on the ground of misconduct hence, as the basis i.e. the Inquiry Report is cryptic and non-speaking, the same could not have been made the basis to terminate the services of the petitioners.

7. Upon notice of motion, the respondents have filed the reply wherein, they have stated that though there was an allegation against the petitioners, which were proved in the Inquiry Report but as the contract of the petitioners was only upto 31.03.2023, the same has not been extended hence, the petitioners have only been relieved as their term to continue with the respondent-Department came to an end.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The question which arises before this Court is whether, the present is a case of terminating the service of an employee on account of misconduct or it is a simple case of non-renewal of contract and the same is to be adjudicated on the basis of the documents which have come on record. The order dated 29.03.2023 (Annexure P-1) by which, the services of the petitioners have been terminated, is reproduced herein for the ready reference.

“ From

*Mission Director
National Health Mission
Bays No. 55-58, Sector-2,
Panchkula, Haryana.*

To

Memo No. NHM/Admin/A6/2-22-23/2485/12985
dated 29.03.2023

Subject: Regarding termination of services of employees for mis-conduct on duty and misuse of Government Vehicle on duty.

In reference to inquiry report received from your office vide letter No.C.S./C.S./2022/690 dated 20.12.2022 regarding misuse of off road government vehicle TATA Sumo No.HR-03-W-3876.

As per the inquiry report, it has been found that off road Government Vehicle (TATA Sumo) No. HR-03-W-3876 has been driven 48879 kms unauthorizedly by Sh. Roshan Lal, ambulance driver (NHM), Sh. Tony, ambulance driver (NHM) and Sh. Vinod, ambulance driver (NHM). Being a government employee, drivers must know that off road govt. vehicle cannot be used in any case until it is approved by the competent authority. In the said case these drivers have used the off road govt vehicle without the intimation and prior approval of any district authority at their own level and risk. This kind of misconduct has made a financial loss to the state government and it is a total misconduct, insubordination and irresponsible behavior on duty at level of aforesaid contractual employees.

Keeping in view the above facts and public interest and as per the recommendation of your office, you are hereby directed to terminate the services of Sh. Roshan Lal, ambulance driver (NHM), Sh. Tony, ambulance driver (NHM) and Sh. Vinod, ambulance driver (NHM) under RTS as per NHM Service Bye Laws clause No.21. Termination or Discontinuation of contract:

b) The contract of an employee shall be terminated by the Appointing Authority in case of insubordination, misconduct or unsatisfactory or poor performance at any time during the service."

Accordingly, the contract of above employees should not be continued beyond 31.03.2023.

*Sd/-
Mission Director
National Health Mission
Haryana, Panchkula."*

10. A bare perusal of the subject of the letter in question shows that the same is regarding the termination of the services of the employee for misconduct on duty and misuse of the Government vehicle while on duty.

The subject of the letter itself shows that the action is being taken on the

basis of misconduct and not on the basis that the term of the petitioners to continue with the respondents has come to an end. Not only this, even in the said letter, the basis for the termination of services of the petitioners has been based upon as an Inquiry Report which has been submitted by the officer concerned, a copy of which has been appended as Annexure P-8 with the present writ petition. Further, in the letter itself, it has been mentioned that the Department has decided to terminate the services of the petitioners in accordance with clause No.21 of the service bye-laws which has been reproduced in the letter itself according to which clause, in case an employee misconduct during the service, his/her services can be terminated.

11. These fact clearly go on to show that this is not a case of simplicitor non-renewal of the contract but it is a case of termination of services on account of misconduct as proved in the Inquiry Report dated 09.06.2022 (Annexure P-8) hence, the contention of the learned counsel for the respondents that the present case is a case of simple non-renewal of the contract, cannot be accepted.

12. Further, the basis of the order dated 29.03.2023 (Annexure P-1) is the Inquiry Report. A bare perusal of the Inquiry Report would show that the Enquiry Officer has only reproduced the facts in the said report but not even a single reason has been given to hold the petitioners guilty of the misconduct. In the inquiry report, the facts are to be discussed and the reasons are to be given either to exonerate or to hold an employee guilty of the allegations. The same are missing in the said inquiry report. The conclusion which has been given without discussing the evidence is reproduced hereunder for the ready reference.

“ Conclusion-

From 23.03.2020 to 15.09.2021, 48879 kms were driven

unauthorisedly without any controlling officer. For which Roshan Lal, Tony and Vinod ambulance drivers and Suresh driver have been found guilty of irregularities. Therefore the Inquiry Officer recommends disciplinary action against them.

It is also informed that the then Dr. Rakesh Khatak got the diesel bills of the non-driven vehicle without the orders of competent authority. This is a financial loss to the government of about 4 lacks. Therefore the inquiry officer recommends disciplinary action against him.”

13. A bare perusal of the above would show that the Inquiry Report is cryptic and non-speaking hence, cannot be treated as valid document so as to take any action against the petitioners.

14. Even otherwise, once a misconduct has been mentioned in the order dated 29.03.2023 (Annexure P-1) and the Rule regarding the termination on the basis of misconduct has been invoked while passing the order dated 29.03.2023 (Annexure P-1), the same is to be treated as stigmatic and not an order simplicitor. Once, the details of misconduct are being given in the impugned order to say that the same has been proved, the order is being passed on the basis of misconduct only and in the facts and circumstances of the present case, the said misconduct has not been proved in accordance with law after holding a due enquiry qua the allegations of misuse of vehicle by the petitioners.

15. Keeping in view the above, the Inquiry Report dated 09.06.2022 (Annexure P-8) as well as consequent termination order dated 29.03.2023 (Annexure P-1) are set aside. The respondents are given liberty to pass a fresh order in accordance with law in case the respondents intend to take any action on the basis of misconduct even for not allowing further extension to the petitioners in service.

16. The present writ petition is allowed in above terms.

January 24, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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