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

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**CWP-6109-1999 (O&M)
Date of decision: 24.07.2025**

KAMLESH JOSHI ......Petitioner

VERSUS

UNION OF INDIA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Ms. Amrita Nagpal, Advocate
for the petitioner.
(Through Video Conferencing).

Mr. Arvind Seth, Senior Panel Counsel
for respondent No.1.

Mr. Ravi Sodhi, Advocate and
Mr. Umesh Pandey, Advocate
for respondent No.3.

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VINOD S. BHARDWAJ, J. (Oral)

Seeking setting aside of the order dated 04.11.1998, whereby the petitioner's services were dispensed with during her probation, on account of her involvement in a corruption case, the petitioner approached this Court.

2. Counsel for the petitioner vehemently contends that the petitioner was appointed as a Superintendent-cum-Warden, Short Stay Home, Faridabad, vide letter of appointment dated 20.10.1997 and she was put on probation for a period of three months for the time being. She contends that the petitioner’s services were however terminated on 04.11.1998 in a cryptic manner and without conducting any departmental

inquiry or issuing any chargesheet, only on the ground that she had been involved in a corruption case, even though the petitioner stands acquitted in the said criminal case vide judgment dated 01.04.2004. She contends that since the sole basis for termination of the petitioner's engagement was on account of her involvement in a corruption case, she becomes entitled to be reinstated in service after her acquittal. It is also argued by the Counsel that the respondent- Short Stay Home is a State within the aegis of Article 12 of the Constitution of India and would thus be amenable to writ jurisdiction of this Court and that as the order of termination was passed on 04.11.1998, hence, it was way beyond the period of probation as prescribed in the letter of appointment, hence, she would be deemed as confirmed and would thus be governed by the service rules.

3. She further contends that the order is stigmatic and thus could not have been passed except by way of holding a departmental inquiry and granting an opportunity of hearing to the petitioner. She places reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the matter of "***State of Punjab versus Dharam Singh***" in relation to removal of probationers. She contends that the aforesaid judgment as also the judgment of the Hon'ble Supreme Court in the matter of ***"Karnataka Road State Transport Corporation versus S. Manjunath and others"*** reported as ***AIR 2000 SC 2070***, clearly hold that as and when the maximum period of probation prescribed under the rules is exhausted, there would be a deemed confirmation against the said post and a formal order is not required to be passed. Since the probation period was mentioned as 03 months in the

letter of appointment, the same expired on 19.01.1998, hence she is deemed to be confirmed. The order of termination was passed on 04.11.1998 i.e. after 10 months of confirmation. She submits that the petitioner has already passed away in the meanwhile during the present writ petition.

4. Counsel for the respondent No.3, i.e. Social Defence League, Haryana, refers to the written statement filed and contends that the respondent No.3-Society is a private and voluntary non-government organization registered under the Societies Registration Act on 12.10.1983 and not a State as envisaged within the ambit of Article 12 of the Constitution of India. It is further averred that the Society used to run a shelter for women/girls who were subjected to mental, physical or psychological torture arising out of marital or family relations and mal-adjustment in a bid to rehabilitate the said girls belonging to different categories and provide counselling and psychological treatment. As a non-governmental organization, it had received grant-in-aid from the Central Government as well as from the Govt. of Haryana from time to time; however, the same would not amount to altering the intrinsic character of the organization. He further contends that, despite being required to discharge functions that would be best suited to help the women/girls in need of help, the petitioner indulged herself in a highly unbecoming and corrupt conduct. An FIR No. 18 dated 28.10.1999 was registered under Sections 7 and 8 of the Prevention of Corruption Act at Police Station, Sector-7, Faridabad, on the complaint of one Satish Kumar Bhatia, alleging that the petitioner demanded a sum of Rs. 1 lakh for dropping the charges levelled against

Tilak Raj, his elder brother. The petitioner allegedly accepted an amount of Rs. 20,000/- from the said Satish Kumar on 28.10.1998. He refers to the specific stand taken by the petitioner in the said criminal proceedings that the organization, i.e. Short Stay Home, is a private entity and is not discharging any public function and that she was not a public servant or performing a public duty. Accordingly, the proceedings under the Prevention of Corruption Act could not have been initiated against her. The extract of the said judgment pertaining to the defence taken by the petitioner in her statement recorded under Section 313 of Cr.P.C. reads thus:-

> *"3. When examined under Section 313 of the Code of Criminal Procedure, the accused contended that prosecution evidence adduced against her is false and asserted that the prosecutrix Alka alongwith her mother Pushpa had been inmates of the Short Stay Home of which she herself was the Superintendent and added that the rape case against Tilak Raj had been registered by none other than his own daughter Alka wherein she herself had no concern whatsoever except to the extent that the said Alka alongwith her mother Pushpa were inmates of the Short Stay Home of which she herself was incharge. She added that she was not a public servant as the Short Stay Home is a non-government organization. She asserted inter-alia that the complainant had in fact threatened her with dire consequences because he harboured the impression that the said case against Tilak Raj was got registered by his own daughter Alka at her own behest. She further asserted that at the time of alleged rape she was in the bathroom and the complainant had surreptitiously sneaked into her office*

and place the bundle of tainted currency notes in the drawer of her table in her absence and added that when she returned she was told by her staff that he had kept some articles for being delivered to above named Alka but before she could take any action in the matter, the police party stepped in and took her into custody at which time the inmates Fatima, Sushila and her peon Om Singh Rana were also present."

5. A further reference is made to the finding recorded by the Special Judge, which reads thus:-

"I find merit in the above contention because the prosecution has led no evidence whatsoever which may indicate even remotely that the short stay Home run by a non-government organization under licence from Social Welfare Department was being granted any financial aid by the government so as to bring the accused within the definition of 'public servant' as contained in Section 2 (c) of the Act and even if for the sake of arguments it be assumed that she was a public servant, this court could not have taken cognizance of the alleged offence for want of requisite Section 19 the Act which reads as hereunder:-

"Previous sanction necessary for prosecution (1) No court shall be cognizance of an offence punishable under Secs. 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction;

> *(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
>
> *(b) in the case of a person who is employed in connection with the affairs of State and is not removable from his office save by or with the sanction of the State Government, of that Government;*
>
> *(c) in the case of any other person, of the authority competent to remove him from his office.. "*
>
> *In view of the foregoing discussion, the applicability of Section 7 of the Act to the facts of the case in hand stands ruled out altogether. <u>It may be recalled here that prosecution on its part has led no evidence whatsoever to establish that Short Stay Home of which the accused was Superintendent was a government organization or 'aided' by the government, or that the remuneration of the accused came out of any aid which may have been granted by the government to the non-governmental organization running the same."</u>*

(Emphasis Supplied)

6. It is thus contended that the petitioner is blowing hot and cold and advancing arguments tailored to suit her. While the specific stand of the petitioner was that she was not holding a 'public office' in the proceedings before the Special Judge, the argument now being advanced in the petition is

to the contrary. He further contends that even otherwise, the petitioner had not cleared the probation and as such, there was no necessity for conducting a departmental inquiry.

7. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the instant writ petition as well as the judgments cited by the Counsel for the parties.

8. While professing the argument that the respondent-Short Stay Home Society is a State, much emphasis has been given by the Counsel for the petitioner on the argument that the State agencies are at liberty to conduct inspection or surprise checks of the organization premises and as such, the exercise of such supervisory control would bring the Short Stay Home Society within the ambit of a State. When the aforesaid contention of the petitioner is taken in light of her statement recorded under Section 313 Cr.P.C. in the criminal proceedings initiated before the Special Judge under the Prevention of Corruption Act, she had specifically disputed the factum of the State's involvement, control and supervision of the aforesaid shelter home and had taken benefit of the same. The pleading is not established by any documentary record. Even if it is accepted that a grant in aid is received by the NGO for running the shelter home, it is only the public duty element of providing a safe abode to the destitute women which would become amenable to a writ jurisdiction. Per se a contract of employment may not in such circumstances be amenable to the writ jurisdiction of the High Court.

9. Apart therefrom, a mere routine inspection by the State agencies to ensure whether a shelter for distressed women is being run in accordance with the mandate of law would not be akin to exercising supervisory control over the same. The Hon'ble Supreme Court in the matter of ***Ajay Hasia v. Khalid Mujib Sehravardi***, reported as **(1981) 1 SCC 722,** laid down the proposition of law for determination as to whether the agency or instrumentality is a State or not. The relevant para thereof reads thus:

> ***"9.*** *The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [(1979) 3 SCC 489] as follows:*
>
> *"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an*

instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would,

> *as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.*
>
> *Invariably, there is nothing on record that would substantiate the existence of the basic necessities in order to label the non-profit organization as a State.*
>
> (*Emphasis supplied*)

10. Apart from the state financial aid element for the welfare of the destitute women put up in the shelter home, no other evidence is available. Mere funding of all operational expenses by the State would not vest managerial and supervisory control in the State. Such affairs continue to be managed by the NGO. Besides, the entire capital expenditure is incurred by the NGO only. In account keeping, the capital expenditure may often exceed the revenue expenses. There are no separate statutory rules governing the employment terms and conditions and the appointments itself are given by the NGO. Thus prima facie requirements are not satisfied to rule that the private respondent would be amenable to writ jurisdiction pertaining to a contract of appointment.

11. Now, examining the second perspective, as to whether the petitioner would be deemed to have been confirmed in the service on her acquittal in the criminal case or not. The petitioner has placed reliance on the judgments of the Hon'ble Supreme Court to contend that since the maximum period of probation came to an end, there would be a deemed confirmation

against the said post and the concerned person cannot be removed from service except by conducting a regular departmental inquiry.

12. On a pointed query, Counsel for the petitioner conceded that there are no service rules that prescribe the maximum period of probation. Generally the period of probation is for two years and extendable by another year. The probation thus depends upon the employee. In light of the aforesaid position, the terms and conditions qua probation, as incorporated in the letter of appointment are also to be seen. The period of probation was fixed for a period of three months and the expression used in the letter of appointment is "for the time being". Hence, it is not a case where the appointment letter prescribed a maximum time span for which an employee was to remain under probation. The same was thus an initial period to assess the petitioner's conduct and the same was not finally determinative. The judgments thus cited by the petitioner do not come to her aid and rather support the case of the respondents. The proposition of law, having laid down that unless there is a maximum period prescribed, there would be no deemed confirmation till a specific order of confirmation is passed, would rather get attracted against the petitioner in the present case. It is concededly the position that neither the service rules or the appointment letter prescribed maximum period of probation nor any order of confirmation had been passed. It is also undisputed that the petitioner was involved in a case under the Prevention of Corruption Act, within a short period of completion of one year of service with the respondent organization. Thus, the petitioner would be deemed to be still under probation and had not been confirmed.

13. Even though the petitioner may have been acquitted in the aforesaid criminal proceedings by the Special Judge vide judgment dated 01.04.2004, however, the same by itself would not suffice that the organization is obligated to keep such a tainted employee who has not satisfactorily completed the probation. There was no further requirement of any regular inquiry.

14. I do not find that any illegality had crept into the order whereby the petitioner had been disengaged from the services on the ground that her probation period had not come to an end and that she was involved in serious criminal misconduct. Needless to mention that the burden of proof required for establishing a criminal case is far more than what is expected in matters of employment and an acquittal on technical ground would not steer the petitioner clear. The petitioner, despite being a custodian of the destitute women, in fact found it as an opportunity of profiteering in such projects. Her conduct could not have been accepted by the respondent-organization. The order of disengagement of the petitioner vide impugned order dated 04.11.1998 thus needs no interference. The writ petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 24, 2025
Vishal Sharma

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