
(2016) 11 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24495 of 2016

Gurmukh Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226
PBIT Service Rules — Rule 3.16

Citation : (2017) 1 SCT 733

Hon'ble Judges : Mrs. Daya Chaudhary, J.

Bench : Single Bench

Advocate : Mr. Arvind Singh, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Daya Chaudhary, J. - The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order of termination dated 24.03.2015 (Annexure P-10) issued by the respondent authority. A further prayer has also been made for issuance of direction to respondents to re-appoint the petitioner along with all consequential benefits and also for quashing of appointment of respondent No.4 as Driver on contractual basis in the respondent-department.

2. Briefly, the facts of the case as made out in the present writ petition are that the petitioner joined the respondent No.2-department as Driver on 04.01.2013 on contractual basis against consolidated salary of Rs. 9000/-. The appointment was for a period of six months commencing from 04.01.2013. Thereafter, after expiry of period of six months, the period was extended for further one year commencing from 04.07.2013. The salary of the petitioner was revised and fixed at Rs. 9900/- per month vide order dated 24.12.2013 whereas pay scale of post of Driver was Rs. 5910-Rs.20200 + (GP) Rs. 2400/- as per Service Rules. The petitioner approached the respondent authorities by making representation stating that other similarly situated employee, namely, Gurcharan Singh, had

been drawing full salary as per pay scale whereas his salary was very meager. The salary of the petitioner was not increased. However, his period of appointment was extended vide order dated 26.06.2014. Thereafter, respondent-authorities issued an advertisement for inviting applications for the post of Driver on contractual basis in the pay scale of Rs. 5910-Rs.20200 +(GP) Rs. 2400/-. Even after publication of said advertisement, the contractual period of the petitioner was extended for further two months. As such, the petitioner rendered total service of less than two years with the respondent department.

3. The petitioner approached this Court by way of filing CWP No.20031 of 2014 to challenge the advertisement for appointing the Driver on contractual basis. During pendency of the writ petition, the services of the petitioner were terminated vide order dated 24.03.2015 (Annexure P-10). Said writ petition was dismissed along with other bunch of petitions vide order dated 27.05.2016 (Annexure P-11).

4. Aggrieved by said judgment, the petitioner filed LPA No.1391 of 2016, which was also dismissed by the Division Bench vide order dated 08.08.2016 by granting liberty to challenge the selection of respondent No.4.

5. The order of termination dated 24.03.2015 and appointment of respondent No.4 have been challenged in the present writ petition by raising various grounds.

6. Learned counsel for the petitioner submits that it is settled position of law that the contractual employees cannot be replaced by another contractual employee. The work and conduct of the petitioner was satisfactory but his services were terminated during pendency of the petition showing that his work was not satisfactory whereas his period of employment was extended from time to time. Learned counsel further submits that the act and conduct of the respondent-department is malafide and the petitioner has been terminated from service just to accommodate respondent No.4. At the end, learned counsel for the petitioner submits that the impugned order of termination has been passed in violation of principles of natural justice as no opportunity of hearing was given and respondent No.4 has been appointed by throwing the petitioner out of job.

7. Heard arguments of learned counsel for the petitioner and have also perused the impugned order of termination dated 24.03.2015 as well as other documents available on the file.

8. The facts with regard to appointment of petitioner on contract basis and extension thereafter, are not disputed. It is also not disputed that order of termination dated 24.03.2015 was passed on the ground that the services of the petitioner were not found satisfactory. It is also not disputed that earlier petitioner filed CWP No.20031 of 2014 wherein the advertisement inviting applications for appointment to the post of Driver was challenged and written statement was filed by the respondents. In the written statement, it was mentioned that the petitioner was found misappropriating the funds of the respondent-society by producing wrong/false bills of diesel. Certain other bills

were also referred. The explanation of the petitioner was sought to which, he filed reply. The petitioner also admitted his mistake and has undertaken not to repeat the same. It was also mentioned in the reply that the petitioner came on duty late on six/seven occasions and his explanation was also sought. No replication was filed by the petitioner and ultimately, the petition was dismissed. Thereafter the petitioner filed LPA No.1391 of 2016, which was also dismissed vide order dated 08.08.2016. However, the liberty was given to the petitioner to challenge the selection of respondent No.4.

9. In the present writ petition, the order of termination as well as the appointment of respondent No.4 on the post of Driver have been challenged. Same arguments have been raised by learned counsel for the petitioner as have been raised in the earlier petition that the contractual employee cannot be replaced by another contractual employee. An argument has also been raised that the work and conduct of the petitioner was satisfactory whereas in the written statement, it has been mentioned that certain complaints were there against the petitioner and his work and conduct was not found satisfactory. Even after the advertisement was issued by the respondent-department, the petitioner did not apply and he has challenged the order of termination only on the ground that order has been passed without following the principles of natural justice as no notice was issued to the petitioner.

10. As per terms and conditions of the appointment letter, it was purely a contractual employment and the services of the petitioner were to be governed by PBTI Service Rules.

As per Rule 3.16, all direct appointees shall be put on probation for a period of one year subject to extension as may be deemed necessary. The total period of probation shall not exceed two years in any case. However, in case, in the opinion of the appointing authority, the work and conduct of a person during the period of probation is not satisfactory, the services of the employee can be terminated.

Rule 3.16 of the said rules is reproduced as under:-

"3.16 Probation

3.16.1 All direct appointees shall be on probation for a period of one year subject to extension as may be deemed necessary. The total period of probation shall not exceed two years in any case.

3.16.2 Any period after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;

3.16.3 In the case of an appointment by transfer, any period of work in equivalent or higher rank prior to appointment to the service may, at the discretion of the appointing authority, be allowed to count towards the period of probation; and

3.16.4 Any period of officiating appointment to the service shall be reckoned as period spent on probation, but, no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed on regular basis for a period for which the appointing authority considers suitable.

3.16.5 On the completion of the period of probation of a person, the appointing authority shall declare that he/she has completed his/her probation satisfactorily.

However, if in the opinion of the appointing authority the work and conduct of a period during the period of probation is not satisfactory, PBTI may terminate the services of the employee."

11. In the present case, the petitioner has not completed two years of service in total and his services were terminated before expiry of period of two years on the ground that his work and conduct was not found satisfactory. No doubt, the petitioner was allowed to continue thereafter by giving extension but he admitted his mistake and was asked to be careful. In case of termination on the ground of finding work as not satisfactory, no notice was required to be given as it was mentioned in the appointment letter that the services of an employee can be terminated in case, his work and conduct is not found satisfactory.

12. The appointment of respondent No.4 has been challenged only on the ground that he has been appointed by replacing the petitioner whereas neither the petitioner applied in pursuance of advertisement nor he had made out his case that he was more meritorious vis-a-vis respondent No.4. Nothing has come in the ground as well as in the oral arguments raised by learned counsel for the petitioner as to how the appointment of respondent No.4 was bad in law. Simply by saying that respondent No.4 was appointed by replacing the petitioner is not sufficient as the services of the petitioner had already been terminated and order of termination has also been challenged. Issuance of advertisement was also challenged in the earlier petition filed by the petitioner, which was dismissed. Thereafter, LPA was also dismissed and liberty was given to the petitioner to challenge the appointment of respondent No.4. The appointment of respondent No.4 has not been challenged on the ground that he was less meritorious vis-a-vis the petitioner or his appointment was not made after following the proper procedure. Even the petitioner did not apply and the respondents were not to compare the merit of petitioner vis-a-vis respondent No.4.

13. In view of the facts as mentioned above, there is no force in the arguments raised by learned counsel for the petitioner and as such, the petition being devoid of any merit is, hereby, dismissed.