
(2014) 07 P&H CK 0662

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12326 of 1992 (O&M)

Om Pal Rana

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (2014) 07 P&H CK 0662

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ram Kumar Malik, Senior Advocate and Mandeep Singh, Advocate for the Appellant; Shivendra Swaroop, AAG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioner was an Ayurvedic Medical doctor, who had been appointed on ad hoc basis on 24.02.1987. On 04.06.1990, he was reported to have fallen sick and remained absent and supposed to have taken treatment till he reported for duty on 22.07.1991. He was allowed to join, subject to condition that action would be taken for absence from duty. No action for the alleged unauthorized absence was taken, even while the petitioner submitted several medical certificates to show his illness issued during the relevant period. He was terminated on 15.07.1992 that his services were no longer required.

2. The grievance of the petitioner is that in the gradation list which was issued on 01.01.1988 that was even within one year from the date of his initial entry into ad hoc service, he was placed at serial No. 363 and that while persons placed beneath him had been regularized subsequently, he had not been regularized. On the other hand, he had been terminated from service without any enquiry. His contention is that he should have been deemed to have been regularized in terms of the policy statement issued by the Government of Haryana on 29.03.1991 that allowed for regularization of ad hoc employees who had completed 2 years of service as on 31.12.1990 and who were in service on

31.12.1990.

3. It must be immediately pointed out that the petitioner failed in both the qualifications which were necessary for regularization. Admittedly, he remained absent without putting in any leave application when he was alleged to have fallen sick on 04.06.1990 and he had not been in service on 31.12.1990. He had joined only on 24.07.1991 subject however to taking any action for his unauthorized leave. The learned senior counsel would argue that though he was not actually in service on 31.12.1990, by the fact that he was allowed to join on 24.07.1991, he must be deemed to have been in service as on 31.12.1990 and he must have been deemed to have completed 2 years of service as on that date. There is no scope for deeming a person of being in service when he was admittedly absent. If there was an enquiry contemplated, it should have been possible for an employee who was regularized and whose services were protected under Article 311 of the Constitution. If there was an ad hoc engagement and he was terminated from service without assigning any reason, unless the order is shown to be stigmatic, there could be no cause for a complaint by the petitioner. The learned senior counsel refers to me a judgment of this court in *Sunita Rani Versus State of Haryana and others-2011* (1) SCT 525 that held that termination of service of an ad hoc teacher but stigma had been cast, the order without holding regular departmental enquiry would be bad in law. That would make, in my view, the whole difference that a termination that has a stigmatic overtone would fall foul of Article 14 of the Constitution. Yet another judgment of the Supreme Court is cited by the learned senior counsel in *Jarnail Singh and Others Vs. State of Punjab and Others*, where adverse remarks and allegations of embezzlement had been made and the termination effected was taken to be by way of punishment and hence, illegal. I would point out that no adverse remarks had ever been entered in this case and no proceedings were even initiated for his unauthorized absence. If he had a justification for absence, but he could have the leave sanctioned during the period, it is a simple situation of the petitioner failing to fulfill the conditions required in the policy that he must have been in service as on 31.12.1990, which, in fact, he was not.

4. The learned senior counsel argues that an order of termination simpliciter could still to be examined to note any latent motivation for giving such an order of termination. There was not at any point of time an attempt to cause a stigma or carry out an investigation that was dropped midway and to visit a person with termination. There is no scope for lifting a veil that did not exist. I do not therefore entertain an argument in that regard made by the learned senior counsel for the petitioner.

5. I do not think any relief is possible in the writ petition. The writ petition is dismissed.