
(2015) 07 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 27173 of 2013

Pardeep Kumar

APPELLANT

Vs

Indian Red Cross Society and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 07 P&H CK 0141

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Puneet Kansal, for the Appellant; Namit Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J—Through the present petition, the petitioner seeks quashing of order dated 19.11.2013 (Annexure P-23), whereby his services have been terminated.

2. The facts, in brevity, leading to the filing of the present writ petition, as culled out from the arguments raised at the bar, as also from the record of the case, are that through appointment order dated 22.02.2011, the petitioner was appointed as Salesman with the respondent - Indian Red Cross Society, Moga (hereinafter referred to as - the Society). The appointment was on contract basis and as per the terms of his appointment, if his work and conduct was not found satisfactory, his services could be terminated. Through the impugned order, the services of the petitioner have been terminated. It is the case of the petitioner that such termination is illegal as before such termination, no charge-sheet was ever served upon him and no regular inquiry was held. The petitioner further relies upon Rule 7 (1) of the Service Rules for Indian Red Cross Society, Moga (hereinafter referred to as - the Rules) to submit that as per the Rules, a charge-sheet was required to be issued and an inquiry held before his services could be terminated. In support of the plea raised on behalf of the petitioner, the following judgments of the Apex Court were relied upon :-

1. State Bank of India and Others Vs. Palak Modi and Another etc., (2013) 136 FLR 303 : (2012) 12 JT 321 : (2012) 11 SCALE 542 : (2013) 3 SCC 607 : (2013) 1 SCT 387 : (2013) 1 SLJ 264

2. Nirmala J. Jhala Vs. State of Gujarat and Another, (2013) 4 AD 144 : AIR 2013 SC 1513 : (2013) 138 FLR 227 : (2013) 6 JT 407 : (2013) LabIC 2113 : (2013) 2 LLN 25 : (2013) 4 SCALE 579 : (2013) 4 SCC 301 : (2013) 2 SCC(L&S) 270 : (2013) 2 SCT 740 : (2013) AIRSCW 1800

3. Learned counsel appearing on behalf of the respondent Society argued that the petitioner was appointed on contract basis and his services were terminated as per the terms of his contract. It was further submitted that before terminating the services of the petitioner, two preliminary inquiries were held, in which the petitioner also participated. The copies of the inquiry reports were supplied to the petitioner, to which his comments were invited and then after considering his comments, the order terminating the services of the petitioner was passed. It was submitted that the Rules would apply only in the case of regular employees, and would not apply in the case of the petitioner as his appointment was contractual in nature. In support of the stand taken on behalf of the respondents, reliance was placed on the following judgments of Apex Court :-

1. State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, (1991) 62 FLR 350 : (1991) 1 JT 108 : (1991) 1 SCALE 15 : (1991) 1 SCC 691 : (1991) 1 SCR 29 : (1991) 2 SLJ 96 : (1991) 1 UJ 731

2. Vidyavardhaka Sangha and Another Vs. Y.D. Deshpande and Others, (2006) 111 FLR 397 : (2006) 9 SCALE 641 : (2006) 12 SCC 482 : (2007) 2 SCC(L&S) 320 : (2006) 7 SCR 470 Supp : (2007) 2 SLJ 234

3. Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhaye and Another, AIR 2007 SC 192 : (2006) 9 JT 549 : (2006) 11 SCALE 353 : (2007) 1 SCC 283 : (2007) 1 SCC(L&S) 181 : (2006) 7 SCR 879 Supp : (2007) 3 SLJ 41 .

4. A Division Bench judgment of this Court in Rohtas Kumar vs. State of Haryana and others reported as 2012 (2) SLR 184 was also relied upon.

5. The petitioner was appointed by the respondent Society on contractual basis as a Salesman in the Jan Aushadhi 24x7 Generic Drug Store, Moga, inside Civil Hospital, Moga. On account of several complaints received against him, which primarily were to the effect that his brother was working for two stores selling medicine outside the Civil Hospital, Moga and as an employee of the Jan Aushadhi 24x7 Generic Drug Store, Moga, inside Civil Hospital, Moga, the petitioner was getting medicines from the two medical stores outside the premises of the Civil Hospital, Moga, where his brother was working and selling them through Jan Aushadhi 24x7 Generic Drug Store, Moga, inside Civil Hospital, Moga.

6. On these complaints, two preliminary inquiries were held. One under the orders of the Deputy Commissioner, Moga, by the Sub Divisional Magistrate,

Moga, and the other under the orders of Managing Director, Punjab Health Systems Corporation Ltd.

7. Vide report dated 06.09.2012, the Sub Divisional Magistrate found the petitioner guilty of the allegations levelled against him. It was found that there were two medical stores by the name of Mittal Medical Store and Rama Medical Store outside the premises of Civil Hospital, Moga, in which the brother of the petitioner namely Deepu was working. It is further found that the petitioner, as Salesman, was working against the interest of Jan Aushadhi 24x7 Generic Drug Store, Moga, by selling the medicines got from the above mentioned two stores. He was thus found misusing his position in the store within the premises of Civil Hospital, Moga and working against the interest of Jan Aushadhi 24x7 Generic Drug Store. The relevant part of the report of Sub Divisional Magistrate is reproduced as under :-

"The statements of complainants and respondent parties have been thoroughly perused. After viewing the CD submitted by complainant and after visiting the site, it was found that Sh. Pardeep Kumar, Salesman and Sh. Gurpreet Singh, Pharmacist do not work in favour of Jan Aushadhi. Report is forwarded to you for further necessary action."

8. Under orders of the Managing Director, Punjab Health Systems Corporation Limited, another preliminary inquiry was held by one Shri M.P. Singh. A detailed inquiry report was submitted by Shri M.P. Singh after he had personally visited the site. The relevant portion of the report is reproduced below for ready reference :-

"As per order of MD undersigned visited Jan Aushadhi Store Moga on 27.06.2012. A complaint from the office of Deputy Chief Minister Punjab was received in this office on 08.06.2012 and also a complaint forwarded by BPPI (Bureau of Pharma Public Sector Undertaking of India) from centre public grievance Redressal Machinery (CPGRAM) vide Registration Number DPHAM/E/2012/00029 dated 21st April, 2012 made by Sh. Sanjeev Kumar from Moga received in the office of MD on 22.06.2012.

1. Undersigned reached the Civil Hospital Moga at 9.10.A.M. & made OPD slips of medicines and Ortho OPD. In the mean time before visiting OPD as "Dummy Patient" also because there was good rush of patients in the OPD so I preferred to watch the activities of Jan Aushadhi Staff sitting opposite the shop under a tree which is just four feet away from the main counter of JAS. I watched the activities/goings on in the shop from a very close range. It was astonished to note as detailed below.

a) The person against whom the complaint is i.e. Mr. Pardeep Kumar salesman was seen frantically making mobile phone calls to some chemist to send the medicines which are not available in the JAS on seeing the prescriptions on the patients coming from OPD and IPD, and also seen ordering two salesmen/sales boys (sitting under the tree) seems to be "hired" by this Mr. Pardeep Kumar

salesman to bring medicines from the shop. I was watching this as I was sitting beside these salesmen disguising myself as a casual labourer so sensing little suspicion on me. So this aspect was clearly verified that he was giving clear orders/direction to bring medicines to these boys from Mittal Medicos as per allegations leveled in the complaint. These salesmen (unofficially hired) were virtually running to the Mittal medicos and were bringing medicines from M/s. Mittal Medicos & were getting sold at JAS continuously. It was seen that this sales boy (Pardeep Kumar) have the full control over the shop leaving the qualified person pharmacist to the side virtually.

b) In the mean time I also contacted patients who were getting medicines from this JAS & also the patients sitting in the OPD, it came out that they were so ill informed by this nexus of people comprising of these "hired" salesman and Mr. Pardeep Kumar that Mittal Medicos & Ram Medicos have been taken that shop (JAS) on rent. General Public is of the opinion that Mittal Medicos and Ram Medicos has taken the JAS from Red Cross. In the mean time I met a patient named Sh.Torawar Singh, under prescription No. 59344 dated 18.06.2012 & 27.06.2012 (of village Tarkhan Baaj, District Moga). Photo copy of prescription at F/X. I was continuously watching this patient getting medicines from JAS. Mr. Pardeep Kumar ordered the same salesmen sitting opposite the shop to bring medicines for this patient (which were not available at JAS) from "his" shop. The old gentleman aged 80 told me that this practice is daily going on in this manner. This brought medicines from Mittal medicos and sold to this old man.

c) Then I visited Mittal medicos & Ram Medicos. Pardeep's brother Mr. Deepu (as told by public and patients that his youngman is brother of the salesman Mr. Pardeep at JAS) was sitting in the counter of the Mittal Medicos. The salesmen and public standing there informed me that these people have three shops i.e. M/ S Mittal Medicos, M/s. Ram Medicos and a Jan Aushadhi Store in the Civil Hospital. I also enquired from the adjoining chemist shops about the situation regarding JAS in Civil Hospital, they virtually shouted by not taking any action by district authorities. They showed their helplessness to stop the gross violations going on at Jan Aushadhi store by these people.

d) xx xx xx

e) Next allegation that Mr. Pardeep Kumar is misusing the premises of JAS for Mittal Medicos & Ram Medicos. It appears that they Pardeep Kumar alongwith his brother is virtually running the above chemist shops although actual owner is a different person as per the report of Drug Inspector F/Z in which it was conveyed Mr. Pardeep Kumar has no connection with these shops. But on practical observation, watching video CD provided by complaint and by vast public opinion from the adjoining chemists here this fact is substantiated that Mr. Pardeep Kumar fully involved in the working of these shops i.e. Mittal medicos & Ram Medicos.

f) xx xx xx

xx xx xx

It is submitted that strict action against this "business man" turned salesman at Jas Mr. Pardeep Kumar may please be initiated immediately so that the image of JAS may not tarnish further and the confidence of public be reposed in the Jan Aushadhi Scheme."

9. When the above mentioned reports were not acted upon, writ petitions by the aggrieved Chemists were filed before this Court. After this Court took cognizance of the issue, the petitioner was issued show cause notice so as to why, as per the terms of his appointment, his services may not be terminated. On his asking, he was supplied the above referred inquiry reports, to which he submitted his comments. After considering the comments, as per the terms of his appointment, finding his work and conduct to be unsatisfactory, his services were dispensed with.

10. It is settled law that when appointments are contractual in nature, services of the appointee can be terminated as per the terms of his appointment. In this regard, the following observations made by the Apex Court in the case of Kaushal Kishore Shukla (supra) can be usefully referred to :-

"In the instant case the respondent was a temporary Government servant and there was adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in the allegations of improper conduct in carrying out unauthorised audit of Boys Fund of an educational institution, On result of the preliminary enquiry no charges were framed against the respondent, no officer was appointed for holding the departmental inquiry instead the competent authority chose to terminate the respondent's services in exercise of its power under the terms of contract as well as under the relevant rules applicable to a temporary Govt. servant. It never intended to dismiss the respondent from service. Holding of preliminary inquiry does not affect the nature of the termination order. The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination. The High Court failed to consider the question in proper perspective and it interfered with the order of termination in a casual manner."

11. Similarly, the Apex Court, in the case of Vidyavardhaka Sangha (supra), has observed as under :-

"It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in

the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc."

12. Again, in the case of Kendriya Vidyalaya Sangathan (supra), following observations have been made by Apex Court :-

"The question which arises for consideration is, whether the order of termination of services of the respondent had been passed by way of punishment or it had been passed in accordance with the conditions mentioned in the appointment order by which the respondent had been appointed on a temporary post of Physical Education Teacher. If it is found that the termination of services was by way of punishment, another question may arise whether a formal departmental enquiry was held prior to the passing of termination order and whether the respondent was given adequate opportunity to defend himself in the said enquiry. It will be seen that the complaint made by Capt. B.K. Balasubramanyam about forcing his son Master V.K. Srinivasalu to do six rounds (4 Kms.) around the school when he was having chest pain and was unwell and further forcing him to do PT and other exercises in spite of advice of the doctor and also giving him beating was forwarded by the Principal to the Regional Office of Kendriya Vidyalaya Sangathan, Bombay. The Assistant Commissioner of the Kendriya Vidyalaya Sangathan asked the Principal to submit a report along with original statements of the students, who had been subjected to beating by the respondent. The Principal was not an eye witness of the incident relating to Master V.K. Srinivasalu and also of the corporal punishment which was awarded by the respondent to the other students. Therefore, in order to ascertain the complete facts it was necessary to make enquiry from the concerned students. If in the course of this enquiry the respondent was allowed to participate and some queries were made from the students, it would not mean that the enquiry so conducted assumed the shape of a formal departmental enquiry. No articles of charges were served upon the respondent nor the students were asked to depose on oath. The High Court has misread the evidence on record in observing that articles of charges were served upon the respondent. The limited purpose of the enquiry was to ascertain the relevant facts so that a correct report could be sent to the Kendriya Vidyalaya Sangathan. The enquiry held can under no circumstances be held to be a formal departmental enquiry where the non-observance of the prescribed rules of procedure or a violation of principle of natural justice could have the result of vitiating the whole enquiry. There cannot be even a slightest doubt that the Assistant Commissioner, Kendriya Vidyalaya

Sangathan, Bombay Region, terminated the services of the respondent in accordance with the terms and conditions mentioned in his appointment order which expressly conferred power upon the appointing authority to terminate the respondent's services by one month's notice without assigning any reasons. The services of the respondent were, therefore, not terminated by way of punishment."

13. To the same effect are the following observations made by a Division Bench of this Court in the case of Rohtas Kumar (supra) :-

"The instant appeal under Clause X of the Letters Patent is directed against judgement dated 15.12.2011 rendered by the learned Single Judge holding that a contractual employee, like the appellant, has no right to continue in the employment beyond the term of agreement and his services could be terminated if his conduct is not above board. It was also found that the petitioner had furnished fake certificate and on that account also there was nothing wrong in terminating his services. Operative part of the order is as under:

"It is settled proposition of law that a contractual employee has no right to continue in employment beyond the terms of the agreement and the employers are always very well within their right to terminate his services if his conduct is not above board. Finding that the petitioner has furnished fake certificates, the respondents are very well within their right to terminate the service arrangement of the petitioner. In fact the respondents have gone ahead to suggest registration of an FIR against the petitioner. This petition, therefore, deserves dismissal on this ground alone. However, keeping in view purely the interest of justice and to examine as to on what basis the certificates of the petitioner have been held fake so as to invite such an allegation against him, learned Senior Deputy Advocate General, Haryana, who is present in Court, is directed to seek instructions. At this stage learned counsel for the petitioner states that an order of dismissal be passed instead of the aforesaid order. Accordingly, keeping in view the fact that the petitioner is unable to show from any material on record that the certificates which he had furnished were not appropriate and that the allegations of the respondents are incorrect, I am of the opinion that the petition deserves to be dismissed. Ordered accordingly."

2. We have heard learned counsel for the appellant at some length and are of the view that the opinion expressed by the learned Single Judge does not suffer from any legal infirmity warranting admission of the appeal. It is well settled that even if the order of termination of a contractual employee is based on allegation of fake certificate then it would not call for any regular departmental enquiry as such an employee will not have any right to hold any post. For the aforesaid proposition, we place reliance on a judgement of Hon"ble the Supreme Court rendered in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, (1991) 62 FLR 350 : (1991) 1 JT 108 : (1991) 1 SCALE 15 : (1991) 1 SCC 691 : (1991) 1 SCR 29 : (1991) 2 SLJ 96 : (1991) 1 UJ 731 . Accordingly the appeal is devoid of merit and does not warrant admission. Dismissed."

14. The judgments relied upon by learned counsel for the petitioner have been perused, but the same have no application on the facts of the case in hand. In the case of Palak Modi (supra), the case pertained to a probationer. Further, in that case, it was held that the services of the respondents therein were not terminated on account of any deficiency in their performance during their probation or failure to secure qualifying marks in confirmation test. The termination of service was on account of using unfair means in the confirmation examination, for which no inquiry was held. The facts in that case are thus completely distinguishable from the facts of the case in hand. In Nirmala J. Jhala (supra) also, the punishment order for compulsory retirement was under challenge. The facts in the case in hand are completely distinguishable.

15. So far as reliance on Rule 7 (1) of the Rules by the petitioner is concerned, it may be observed that services of only regular employees would be governed by the Rules and so far as the contractual employees like the petitioner are concerned, they would be governed by the terms of their contract.

16. In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

17. No costs.