

(2020) 10 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 385 Of 2020

Tabassum Ansar

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0133

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Owais Khan, Ashok Sharma, Vikas Rathore, Vinod thakur. Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur, Maonhar Lal Sharma

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the termination of her services, the petitioner has approached this Court for the grant of following substantive reliefs:-

(i) That the Annexures P-5 and P-6 may kindly be quashed and set aside.

(ii) That discontinuation of the services and contractual employment of the petitioner in pursuance of Annexures P-5 and P-6 by the respondents may kindly be quashed and set aside.

(iii) That the respondents may kindly be ordered/directed to continue the services and contractual employment of the petitioner on same terms and conditions, till the pendency of the present writ petition, subject to the outcome of the present writ petition.

2. The petitioner was deployed in the office of Deputy Commissioner, District Sirmaur (Respondent No. 1), as Data Entry Operator, by the third respondent i.e. Director In-charge, National Institute of Electronics and Information Technology (for short the 'NIELIT'), on out source basis and joined as such on 05.11.2014.

Thereafter, the contract was renewed from time to time and as per the latest contract executed in September, 2019 her services were to be continued up to September, 2020. However, her contract came to be discontinued vide order dated 07.01.2020 vide Annexure P-5.

3. It is vehemently argued by learned counsel for the petitioner that the termination of the petitioner cannot be sustained as she had every right to continue in employment during the subsistence of the contract, which was to expire on September, 2020. Learned counsel for the petitioner further argued that the respondents had no right to terminate the contractual employment of the petitioner, that too, for want of any valid reason and being whimsical and arbitrary, the order of termination deserves to be set aside.

4. Respondents No. 1 and 2 filed their short reply, wherein, it is specifically averred that it was due to the indifferent behaviour and indiscipline in her working, initially a show cause notice was issued to the petitioner and subsequently warned vide letter dated 10.1.2017 and 21.01.2017 (Annexures R-2 and R-3). Subsequently, a notice dated 23.08.2018 was again issued to the petitioner for her negligence in working and further a warning was issued to her vide letter dated 31.08.2018 to improve her working and behaviour.

5. However, despite the various verbal and written directions, the petitioner did not learn any lesson and nor improved her behaviour and working.

6. Again complaints have been received about her behaviour and working from Balbir Singh, Peon on 03.12.2019, from Yashpal Thakur, Sr. Assistant and Mukesh Thakur, PSO of the Deputy Commissioner dated 11.12.2019. Further a representation was received from the President, Deputy Commissioner Office Employees' Union, District Sirmaur on 16.12.2019, vide which a request had been made to terminate the services of the petitioner as she had tarnished the image of the office due to her behaviour.

7. Earlier to this, another complaint had been received from Smt. Anita Sharma, resident of Baijnath, on 26.08.2019 regarding fake calls being made by the petitioner to her family members, which has been creating day-to-day problems for her family.

8. Lastly, it is averred that despite various warnings issued to the petitioner, the contract agreement was renewed w.e.f. 01.10.2019 to 30.09.2020 by respondent No. 3, yet there was no improvement in the behaviour, discipline or working of the petitioner. The complaints received against the petitioner was then examined by respondent No.1 and it was found that the petitioner had breached the terms and conditions of the contract agreement and respondent No. 3 was requested to terminate the services of the petitioner.

9. Respondent No. 3 has filed his reply, wherein, it is averred that the petitioner has no right to maintain the present petition as her services have been terminated strictly in accordance with the terms and conditions of the agreement.

We have heard learned counsel for the parties and have gone through the material placed on record.

10. At the outset, we need to observe that the petitioner is an outsource employee and having sponsored by respondent No. 3, but that does not, however, mean that we are adjudicating on the question of jurisdiction and maintainability of this petition as this issue is still at large and is to be adjudicated in a batch of petitions which are listed on 05.11.2020. However, since interim direction was passed by the learned Single Judge of this Court during the vacation, we are required to adjudicate this petition on merits without going into the question of jurisdiction and maintainability.

11. It is not in dispute that the services of the petitioner were governed by her contract appointment, wherein Clause 13, reads as under:-

"13. The contractual employment is subject to verification of antecedents of the contractor as considered fit by this Centre. An adverse report on her/her character or conduct would render him/her ineligible for the appointment. Services of the contractor would be liable to termination in such an eventuality."

12. The petitioner has not controverted any of the allegations set out against her in the reply filed by respondents No. 1 and 2 by filing a rejoinder, therefore, the same are deemed to have been admitted.

13. Once that be so, we really fail to see how the petitioner can even maintain this petition, after all the petitioner while working in the office of respondents No. 1 and 2 would have to act like any employee strictly within the four corners of the law and her activities would be governed by the relevant rules, regulations, instructions etc.

14. Discipline is the hallmark of every employee and in case an employee is not ready to subject himself/herself to discipline, then obviously he/she is not only invites the wrath of her employer but is also liable to be proceeded against, including and not limited, to her services being terminated, depending on the contract of her services. Every employee must be loyal and disciplined towards his employer and colleagues. If an employee conducts himself/herself in a manner, which is alleged to have been done by the petitioner herein, the image in the mind of the public about Collectorate and its authority is totally shattered, the petitioner cannot vitiate the working as also the atmosphere of the Collectorate.

15. As observed above, the discipline is a hallmark of any administration and if that is given go-bye and that too by misbehaving or creating problems with the colleagues or their families or with the persons coming to the Collectorate office in connection with working, there can be no way to control such indiscipline in the Collectorate office, save and except, terminating the services of such employee.

16. The punishment, therefore, handed over to the petitioner is fully justified and

no lenient view can be taken in such like cases where the subordinate official misbehaves with her regular employees including senior employees of the Collectorate despite being appointed as an outsource employee. The Collectorate is an office which is probably most visited office in a District and, therefore, it can ill-afford to have employees like the petitioner.

17. What is more disturbing in this case is that the petitioner without disclosing any of the facts, as have been brought on record by respondents No. 1 and 2, has obtained a stay order and managed to complete the entire tenure of contract.

18. The case in hand shows that frivolous litigation is sought to be prolonged by the petitioner and the same is a calculated venture involving no risk situation. After all, one has only to engage professionals to prolong litigation so as to deprive the rights of the parties and enjoy the fruits of illegalities. It is on account of such frivolous litigation that the court dockets are over-flowing. Here it is apt to reproduce the observations made by the Hon'ble Supreme Court in paras 174, 175 and 197 of the judgment in *Indian Council for Enviro-Legal Action vs. Union of India and others*, 2011 8 SCC 161 , which are as under:

"174. In *Padmawati vs Harijan Sewak Sangh*, 2008 154 DLT 411 decided by the Delhi high Court on 6.11.2008, the court held as under: (DLT p.413, para 6)

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

We approve the findings of the High Court of Delhi in the aforementioned case.

175. The Court also stated: (*Padmawati case*, DLT pp. 414- 15, para 9)

"Before parting with this case, we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of

people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

197. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.
2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.
3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.
4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.
5. No litigant can derive benefit from the mere pendency of a case in a court of law.
6. A party cannot be allowed to take any benefit of his own wrongs.
7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.
8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."
19. It is because of such false and incoherent pleas by the parties due to which the judicial system in the country is choked and such litigants consuming courts time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. This clearly is the abuse of the process of the Court as the intent of the petitioner is to deceive and mislead the Court that too by taking shelter of

falsehood, misrepresentation and suppression facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains. This Court is required to maintain strictness, vigilance over the abuse of the process of the Court and curb such tendencies with iron hands.

20. In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, (2012) 5 SCC 370, the Hon'ble Supreme Court held that false claims and defences are serious problems with the litigation. The Hon'ble Supreme Court held as under:-

"False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."

21. In *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 , the Hon'ble Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

22. In *Satyender Singh Vs. Gulab Singh*, 2012 (129) DRJ, 128, the Division Bench of Delhi High Court following *Dalip Singh v. State of U.P.* (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and

tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts? time for a wrong cause."

The observations of Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts? time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."

23. Encouraging such kind of petitions would only embolden the unscrupulous and indisciplined litigants to abuse the process of the Court and conveniently get away with it.

24. In view of the aforesaid discussion, we not only do not find any merit in this case but find the same to be gross abuse of the process of the Court. Therefore, the petition is dismissed with the costs of Rs. 20,000/- to be deposited with the Deputy Commissioner, Nahan, within a period of two months from today. Pending application(s), if any, also stand(s) disposed of.

Interim orders are vacated.

For compliance, to come up on 15.12.2020.