

(2022-1)205 PLR 315

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Rajbir Sehrawat.

HARDIP SINGH – Petitioner,

versus

CENTRE OF INNOVATIVE & APPLIED BIO-PROCESSING and another – Respondents,

CM No. 14442-CWP of 2021 in/and CWP No. 19022 of 2020

(i) Service Matter - Capacity in which petitioner was working with the previous employer - Failed to show any any provision in the Rules (Centre of Innovative & Applied Bio-processing Recruitment Rules, 2017) under which the service of the petitioner could have been dispensed with on the ground that his previous employment with the previous employer was not in regular capacity - Not even any condition included in any recruitment process, has been referred to by the respondents in this regard - Hence, the capacity, in which the petitioner was working with his previous employer, is totally irrelevant for the purpose of present employment .

(ii) Service Matter - Although the service conditions were initially included in the form of an agreement, however, even the terms including the said agreement did not specify the appointment of the petitioner as contractual one - Rather the petitioner was put on probation even under those terms and conditions - Therefore, after completion of probation, the service of the petitioner became subject of the Recruitment Rules - Therefore, the service of the petitioner cannot be dispensed with except on the ground of mis-conduct, which has to be proved through a regular enquiry - Centre of Innovative & Applied Bio-processing Recruitment Rules, 2017.

Mr. R.K. Malik, Senior Advocate with Mr. Samrat Malik, for the petitioner. Mr. Shivoy Dhir, Senior Panel Counsel for respondents-UOI. (through VC)

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Rajbir Sehrawat, J. (Oral) - (29th September, 2021) -

CM No. 14442-CWP of 2021:

This is an application for placing on record short replication to the written statement filed by the respondents.

For the reasons mentioned in the application, the same is allowed.

Replication is taken on record.

CWP No. 19022 of 2020 :

1. This petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the order dated 23.1.2020 (Annexure P-6), vide which the service of the petitioner was terminated and order dated 27.10.2020 (Annexure P-9), vide which the statutory appeal of the petitioner was rejected. It is further prayed that the petitioner be reinstated into service with all consequential benefits.
2. It is submitted by counsel for the petitioner that the petitioner was appointed by the respondents on the post of Store Purchase Officer after a due process of selection. The petitioner was placed under probation for a period of two years. He successfully completed that probation period as well. His probation period was never extended. Even the performance of the petitioner was graded as 'Good' and above. However, vide the impugned orders, the service of the petitioner has been terminated on the ground that while submitting his application form for the present post, the petitioner had claimed that he was a regular employee with his previous employer, however, as per the respondents, the petitioner was not a regular employee with his previous employer. Counsel has submitted that, firstly; there was no such condition in the advertisement that the petitioner should have been in regular employment with his previous employer. Secondly, the petitioner had, in fact, been a regular employee with his previous employer. Counsel has referred to the certificate given by the previous employer, attached with the present petition as Annexure P-10, wherein it has been certified that the petitioner was a regular employee with his previous employer. Counsel has also referred to the details furnished by the petitioner in his application form while applying for the present post. In that also, the petitioner has mentioned all the details of his employment which show that he was a regular employee. Nothing was withheld by him. Hence, it is submitted that the action taken by the respondents is neither justified by any rule nor is based upon factually correct perspective. The petitioner has been a regular employee with his previous employer. He had rightly applied for the present post and was selected and appointed after having competed with all the competing candidates.
3. On the other hand, counsel for the respondents has referred to the written statement filed by the respondents and has submitted that the appointment of the petitioner was purely on [contract](#) basis. Therefore, under the terms of employment, the respondents had an absolute right to terminate the services of the petitioner just by giving three months notice. The petitioner suppressed the correct facts regarding his previous employment. Therefore, the authorities have rightly terminated the services of the petitioner. It is further submitted by counsel for the respondents that the name of the petitioner was involved in CBI Case No. RCCHG-2016-A-0005 dated 14.1.2016.
4. No other point was argued
5. As response to this, counsel for the petitioner has submitted that the petitioner was not

concerned with the criminal case in any manner. Even the CBI has already filed the closure report in the said FIR finding no connection of the petitioner with any incident involved in the said case. Hence, that aspect is totally irrelevant. .

6. Having considered the arguments of counsel for the parties and having gone through the record of the case, this Court finds substance in the arguments of counsel for the petitioner. It is not in dispute that the petitioner was selected and appointed on the present post after having undergone a due process of selection. The petitioner was put on a probation for a period of two years. It is not even disputed by the respondents that the probation period of the petitioner was not extended any further. Hence, for all intents and legal purposes, the probation period of the petitioner stood completed. Even a specific order dated 8.2.2016 was passed declaring that the petitioner had successfully completed the period of probation. Much reliance has been placed by the respondents on a condition, included in the appointment letter, which stipulates that an employee shall be continuously assessed by a Committee and if his performance is found to be upto the mark; only then such an employee shall be confirmed after a period of 5 years. However, even this aspect goes in favour of the petitioner. It is not disputed by the respondents that as per the record, the performance of the petitioner has been assessed to be 'Good' or above throughout. There has been no adverse performance report against the petitioner. The petitioner had already completed the initial period of 5 years.

7. Therefore, even as per this clause, the petitioner was entitled to be confirmed.

8. In any case, the confirmation does not have any relevance with the continuation of the petitioner in service. The confirmation is an eventuality which may happen at any time, not necessarily even on completion of 5 years.

9. The same can happen even after 5 years. But such a clause relating to assessment of performance, of an employee, cannot be read as an ipso facto extension of probation, as such, so as to create a ground for his termination from the service.

10. Otherwise also, the service of the petitioner is governed by the Rules called 'Centre of Innovative & Applied Bio-processing Recruitment Rules, 2017. The respondents have absolutely failed to show any any provision in the said Rules under which the service of the petitioner could have been dispensed with; on the ground that his previous employment with the previous employer was not in regular capacity. Not even any condition included in any recruitment process, has been referred to by the respondents in this regard. Hence, the capacity, in which the petitioner was working with his previous employer, is totally irrelevant for the purpose of present employment.

11. Needless to say, that it is not even the case of the respondents that the petitioner did not have the requisite experience of working as required by them in the advertisement. The only ground, which is put forward by the respondents is that the petitioner had not disclosed the fact correctly that he was not in regular employment. However, this fact, even if found to be correct against the petitioner, cannot be made a ground for termination of his service; unless this was a condition precedent at the time of recruitment going to the root

of the selection. Any aspect which does not go to the root of eligibility of a candidate, if not disclosed, cannot be made any ground for taking adverse action against him qua his selection and appointment in the present post.

12. Otherwise also, every material placed on record, including the certificate issued by the previous employer shows that the petitioner was in regular employment with his previous employer.

13. Although counsel for the respondents has submitted that there was an agreement of service between the petitioner and the respondent-Institute, therefore, it was a contractual employment, and under that agreement; the employer had an absolute right to terminate or dispensed with the services of the petitioner, at any time by giving notice for prescribed time, however, even this argument cannot be accepted. Although the service conditions were initially included in the form of an agreement, however, even the terms including the said agreement did not specify the appointment of the petitioner as contractual one. Rather the petitioner was put on probation even under those terms and conditions. Therefore, after completion of probation, the service of the petitioner became subject of the Recruitment Rules. Therefore, the service of the petitioner cannot be dispensed with except on the ground of mis-conduct, which has to be proved through a regular enquiry. It is not even the case of the respondents that throughout the service, there has been any misconduct or non-performance on the part of the petitioner. Needless to say, that an absolute discretion to terminate the services of an employee without even a valid reason has to be taken as non-existent in a system governed by rule of law. At the cost of repetition, it has to be pointed out that the respondents have failed to produce any rule, which grants any such power to the respondents to terminate the services of an employee on the ground that he had not disclosed correct facts at the time of initial appointment several years back.

14. Although the respondents have referred to some criminal case, however, it is not even disputed that a closure report already stood submitted by the CBI in that case. The petitioner has not been found involved in that matter.

15. In view of the above, the present petition is allowed. The impugned orders dated 23.1.2020 (Annexure P-6) and 27.10.2020 (Annexure P-9) are quashed. The petitioner is ordered to be reinstated into service with all consequential benefits; including the arrears of the wages, for the period for which he remained out of service.

R.M.S.

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Petition Allowed