CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00895/2016 Orders pronounced on :01.08.2018
(Orders reserved on: 25.07.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. P. GOPINATH, MEMBER (A)

Umesh Kumar

S/o Sh. Ashok Kumar

R/o House No. 300, Village Kansal,

District S.A.S. Nagar,

Mohali (Group-C), Age 34.

Applicant

By: **MR. BRAJESH MITTAL, ADVOCATE**.

Versus

1. Union Territory, Chandigarh
   through the Director Health Services,
   Health Department,
   Sector 16,
   Chandigarh.
2. The Director Health Department,
   Malaria Wing, Sector 9,
   Deluxe Building,
   Sector 9,
   Chandigarh.
3. State Tuberculosis Officer, State T.B. Cell, Ayuredic Dispensary, Sector 34, Chandigarh.

Respondents

By: **MR. MUKESH KAUSHIK, ADVOCATE.**

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 6.6.2016 (Annexure A-1), vide which his services as Tuberculosis Health Visitor, on contract basis, have been terminated, which claims to be in violation of the decision reported as 2011 (1) SCT 777 – **UNION TERRITORY OF CHANDIGARH AND OTHERS VS. C.A.T. CHANDIGARH ETC**.

2. The facts of the case, as culled out from the pleadings of the parties, are that applicant was appointed as Tuberculosis Health Visitor on contract basis vide letter dated 6.10.2003 (Annexure A-6), for a period of 13.10.2003 to 12.10.2004, which has been extended from time to time. He claims that his work and conduct is excellent and has also been issued an experience certificate dated 2.7.2010 (Annexure A-8), including appreciation certificates. However, an advertisement dated 4.8.2014 for recruitment of 10 posts of Multipurpose Health Worker (MHW) (Male) was issued by U.T. Chandigarh in which he was not considered being over-age, upon which he filed an O.A. and was afforded a consideration. However, due to this, the authorities started nurturing a grudge against him and started harassing him on one pretext or the other. A notice was issued to him on 29.4.2016 (Annexure A-10), asking his explanation in regard to certain errors, to which he submitted a reply, but vide order dated 6.6.2016 (Annexure A-1), his services have been terminated, without considering his defence and without conducting any enquiry as it was warranted as his termination has come about

due to a misconduct leveled against him and impugned order is stigmatic, hence the O.A.

3. The O.A has been resisted by the respondents. It is pleaded that as per clause 26 of the contract of engagement, the performance and conduct of the applicant was to be evaluated after completion of contract period and if found unsatisfactory, it will not be renewed and further as per clause 28 thereof, any breach of clause of contract, shall entitle the first party (respondents) to terminate contract, without assigning any reason, whatsoever, by giving 24 hours notice and further, no such notice is required, if the termination happens to be on the ground of work and conduct being not satisfactory. The work and conduct of applicant is not satisfactory, as he has been issued number of notices and ultimately his contract has been terminated vide impugned order, Annexure A-1, which is in terms of the contractual provisions.

4. We have heard the learned counsel for the parties at length and examined the pleadings minutely.

5. The learned counsel for the applicant vehemently argued that since the applicant's services have been terminated based on his misconduct or unsatisfactory service, it was required of them to have conducted a formal enquiry which has not been done and as such impugned order being stigmatic in nature, cannot be sustained in the eyes of law. But, learned counsel for the respondents argued that applicant was not working satisfactorily and as such the authorities were well within their power and authority to dispense with his services.

6. On a careful consideration of the arguments of learned counsel for the parties and pleadings on record, we find that applicant was engaged under a specific contract and he was supposed to abide by the terms and conditions contained therein. Clause 26 of the same does indicate that the performance and conduct of contractual employee was to be evaluated, after completion of the contract period and if found unsatisfactory, the contract was not to be renewed. Secondly, clause 28 also makes it clear that any breach of clause of the contract, empowered the first party (department) to terminate the contract, even without assigning any reason, whatsoever, by simply giving a 24 hours notice and in fact no such notice is required, if the termination is done on ground of work and conduct being not satisfactory.

7. The applicant has not even filed a rejoinder to contradict what has been pleaded by the respondents in their reply that the work and conduct of the applicant was not satisfactory and he was issued repeated notices etc. It was not a onetime unsatisfactory on the part of the applicant but he has become habitual. Ultimately, in exercise of powers vested in respondents in terms of clause 26 and 28 of contract agreement, the services of applicant have been terminated. In this case, the applicant was only a contract employee and is not entitled to protection like regular government servants under Article 311 of the Constitution of India. His nature and character of appointment is very specific and is governed by terms and conditions laid down in the contract. He cannot be allowed now to turn around and claim that there has been violation of principles of natural justice. In

fact, in this case, he has been duly served with a show cause notice and on consideration of his reply, the impugned order has been passed, with a clear mention that his services are unsatisfactory. Thus, one cannot find any fault with the action of the respondents. The law on this issue is very clear and stands well settled by now.

8. In the case of **DIRECTOR, INSTITUTE OF MANAGEMENT DEVELOPMENT, U.P. V. SMT. PUSHPA SRIVASTAV**: (1992) 4 SCC 33, the Hon'ble Supreme Court while considering the case of an employee appointed on a contractual basis held that "20..To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative." Similarly, in the case of **VIDYAVARDHAKA SANGHA AND ANOTHER V. Y.D. DESHPANDE AND OTHERS:** (2006) 12 SCC 482, it was held as under:-

> "4. 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 employee 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."

9. The Courts have held time and again held that though even in contractual appointments, a State cannot act whimsically and capriciously or in an arbitrary manner but this principle cannot be extended to support the view that in every case it would be incumbent upon the State to extend a contract of employment on its expiry. In such like cases, State is not required to give a show cause notice or hear a party in the event it decides not to extend a contract which has come to an end by efflux of time. A party to a contract has no right to claim that the contract with him be extended even if such right is not afforded to the party by the terms of the contract. Once the terms of the contract have been duly performed and the contract has come to an end, there would be no obligation on the part of the State to extend the same. Admittedly, case of the applicant was considered and competent authority decided not to extend his period of contract. Thus, it is not possible to conclude that the decision of the appellant not to extend the contract of respondent was arbitrary or illegal.

10. In so far as principles of natural justice are concerned, in the case of **STATE OF UTTAR PRADESH AND ANR. V. KAUSHAL KISHORE SHUKLA**: (1991) 1 SCC 691, the Hon'ble Apex Supreme Court considered the case of an employee who was appointed on an adhoc basis for a fixed period as an Assistant Auditor under the Local Funds Audit Examiner of the State of Uttar Pradesh. The order of appointment stated that the

appointment was adhoc, temporary for a fixed term and his services were liable to be terminated at any time without assigning any reason. The adhoc appointment of the employee was extended from time to time. During the course of his employment, it was alleged that the employee had acted in excess of his authority while conducting an audit of the "Boys Fund Account". After a preliminary inquiry into the said allegation, the respondent employee was relieved of his duties from his current posting at Sitapur and was directed to join his duties at Allahabad. He failed to do join his duties and his services were terminated. The employee preferred a writ petition challenging his termination orders as being illegal and in violation of Article 311 of the Constitution of India. A Division Bench of the Allahabad High Court at Lucknow allowed the writ petition. A Special Leave Petition was preferred on behalf of the State of Uttar Pradesh before the Supreme Court. The Supreme Court granted leave and held as under:-

> "6. .....Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.
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> 7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory of that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may

> decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant.
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> 8. Learned Counsel for the respondent urged that the allegations made against the respondent in respect of the audit of Boys Fund of an educational institution were incorrect and he was not given any opportunity of defence during the inquiry which was held ex-parte. Had he been given the opportunity, he would have placed correct facts before the inquiry officer. His services were terminated on allegation of misconduct founded on the basis of an ex-parte enquiry report. He further referred to the allegations made against the respondent in the counter-affidavit filed before the High Court and urged that these facts demonstrate that the order of termination was in substance, an order of termination founded on the allegations of misconduct, and the ex parte enquiry report. In order to determine this question, it is necessary to consider the nature of the respondent's right to hold the post and to ascertain the nature and purpose of the inquiry held against him. As already observed, the respondent being a temporary government servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules."

11. The Hon'ble Supreme Court in the case of **GRIDCO LIMITED AND ANR. V. SRI SADANANDA DOLOI AND ORS**.: AIR 2012 SC 729, in relation contractual employees held as under:-

> "27. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

> 28. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the Respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The Respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the Appellant and the Respondent to call for an over-sympathetic or protective approach towards the latter. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise."

12. In view of the law discussed above, the reliance placed by the applicant on the decision of **UNION TERRITORY OF CHANDIGARH AND OTHERS VS. C.A.T. CHANDIGARH ETC**, does not help him at all.

13. In the conspectus of the aforesaid factual position and legal principles laid down by Apex Dispensation from time to time, we are of the firm view that this O.A. lacks any merit and is dismissed accordingly, leaving the parties to bear their own respective costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: 01.08.2018

HC*