

06.10.09

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8/10/09
Dismissed

DA

Dasti No 26568
P. 4173-P.

Pending for/Decided W.12.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

State of Haryana through Secretary,
Education Department, Haryana, Civil
Secretariat, Chandigarh.

The Commissioner-cum-director General
of School Education, Haryana, 30 Bays Building,
Sector-17, Chandigarh.

3 The Distt Education officer, Mewat at
Nuh (Hry).

4 The Distt Elementary Education officer,
Mewat at Nuh (Hry).

Sub:- Civil Writ Petition No. 222
Hasco
Versus

of 2009
.....Petitioner

State of Punjab/Haryana & Ors.

....Respondents

Sir,

In continuation of this Courts order dated 9-1-09 I am directed to

forward herewith a copy of order dated 22-7-09 passed by this Court in

the above noted case for immediate strict compliance alongwith copy Annexure

P.

Given under the seal of this Court on this 14th day of Aug. 2009

SUPERINTENDENT (WRITS)
FOR ASSISTANT REGISTRAR (WRITS)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CIVIL WRIT PETITION NO. 222 /2008

Aasoo S/o Sh.Juhroo, Peon, O/o District Elementary
Education Officer/District Education Officer, Mewat
at Nuh (Haryana).

..Petitioner

Versus

1. State of Haryana through Secretary,
Education Department, Haryana, Civil
Secretariat, Chandigarh.
2. The Commissioner-cum-Director General of
School Education, Haryana, 30 Bays
Building, Sector 17, Chandigarh.
3. The District Education Officer, Mewat at
Nuh (Haryana).
4. The District Elementary Education Officer,
Mewat at Nuh (Haryana).

..Respondents

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| FILED TODAY |
| No. 158304 |
| 8 JAN 2008 |
| READER TO JOINT REGISTRAR |

CIVIL WRIT PETITION UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA
FOR THE ISSUANCE OF A WRIT IN THE
NATURE OF CERTIORARI BE ISSUED TO
QUASH THE IMPUGNED ORDER DATED
13.12.2007 (P/6) BY WHICH DIRECTION
HAS BEEN ISSUED TO THE APPOINTING
AUTHORITY TO TERMINATE THE SERVICES
OF THE PETITIONER AND PETITIONER BE
GRANTED ALL CONSEQUENTIAL BENEFITS.

-0-0-0-

RESPECTFULLY SHOWETH

1. That the petitioner is a resident of Haryana State and being the citizen of India, he is entitled to invoke the extra ordinary writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

2. That Govt. of Haryana vide letter dated 16.2.2006 has sanctioned 10 posts of Class-IV for the office of District Education Officer, Mewat and further decided that these posts of class-IV be filled up on contract basis. The detailed letter

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: July 22, 2009

Aasoo

...Petitioner

VERSUS

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.K.Malik, Senior Advocate with
Mr.Ashish Chaudhary, Advocate,
for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana,
for the State.

RANJIT SINGH, J.

The petitioner has approached this court against the order of his termination. The Government had sanctioned 10 posts of Class-IV in the office of District Elementary Education Officer/District Education Officer. As per the petitioner, the service conditions of Class-IV employees are governed by some statutory rules called "Haryana State Secondary Education Field Offices (Group-D) Service Rules, 1998". As per these rules, the appointing authority of the

petitioner is District Education Officer. On 5.10.2006 the petitioner was selected and appointed by the competent authority. However, no salary was paid to the petitioner. He accordingly approached this court through Civil Writ Petition No.10383 of 2007 which was disposed of with direction to respondent No.4 to decide the representation submitted by the petitioner within a period of six months from the date a certified copy of the said order was received.

The grievance of the petitioner is that instead of obeying the order, the respondents took action to terminate his services purportedly for approaching this court for demanding salary. The petitioner asserts so by referring to Annexure P-6, which is a communication issued by the Assistant Director on behalf of the Commissioner stating that employee be terminated as per the rules by giving him notice and after passing a speaking order and the Directorate be informed about the action taken. In Annexure P-4, reference is made to the writ petition filed by the petitioner. The petitioner has accordingly impugned this order.

While issuing notice of motion, this court stayed the termination. The petitioner, however, was not allowed to continue in the service despite the stay. The petitioner filed a contempt petition before this court. When faced with the contempt charge, the respondents have reinstated the petitioner into service. The contempt filed by the petitioner was, thus, rendered infructuous.

In response to notice of motion, reply has been filed. It is pointed out that the petitioner was appointed on contractual basis for a temporary period on a fixed salary of Rs.3040/- at D.C.rate. There was a condition in the letter of his appointment that the services of

the petitioner could be terminated without assigning any reason with 24 hours notice on either side. These terms and conditions were specifically accepted by the petitioner and he had, thus, joined the employment. It is, thus, stated that a person, who is employed on contractual basis, has no right to continue in service and his services could always be terminated, which was also the condition incorporated in his appointment letter. Reference is made to number of pronouncements in support of this, vide which it is held that temporary employee has no right to hold a post and his services are liable to be terminated in accordance with the relevant service rules and in terms of the contract of service. This is so stated in State of U.P. Vs. Kaushal Kishore Shukla, 1991(1) S.L.R. 606. This dicta has also been followed in the case of Sant Ram Bahal Vs. State of Haryana, 1991 S.L.R. 747 (FB) and Gautam Khanna Vs. Union of India & others, 2004(4) RSJ 402. It is held in this case that the petitioner accepted the appointment under the provisions of rules for which there is a clear sanction for making contractual appointment. There is no allegation of malafide or coercion and accordingly the termination of the contractual employee was upheld.

Mr. Rathee, while supporting the order of termination, has also drawn my attention to policy instructions, Annexure R-1, whereby the conscious decision has been taken to outsource those services, on which the petitioner was appointed on contractual basis. He would also point out that this policy was not in existence when the petitioner was employed on contractual basis and since the decision has now been taken to outsource the services in view of the policy

instructions, the contractual employment of the petitioner has been brought to an end.

Concededly, the petitioner was appointed on a contractual basis. The post may be sanctioned one, but as per the conditions of appointment, this could be terminated at any time within 24 hours with a notice on either side. Counsel for the petitioner has not been able to show that he would have any right to continue on the employment which is contractual. The contract could be terminated with notice from either side as was the terms of employment. The petitioner cannot have a right to continue in the service, especially in the background that the Government has taken a conscious decision to outsource the services on which the petitioner was earlier working. The fact that the termination order had followed after filing of the writ petition before this court for seeking salary may be made out from the order, Annexure P-6, but the petitioner has not been able to establish if this is only because of this reason and not due to the fact that the Government has taken a decision to outsource the services earlier rendered by the contractual employees. The petitioner would not have any right to continue on this contractual employment if the employer decides to terminate the contract. The petitioner has not been able to show any right to continue on this contractual employment. I am not inclined to interfere in the impugned order.

The writ petition is accordingly dismissed.

July 22, 2009
ramesh

Sd/-
(RANJIT SINGH)
JUDGE

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True copy
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19/7/09