

**Court No. - 20**

**Case :-** WRIT - A No. - 6027 of 2023

**Petitioner :-** Shekhar Gupta

**Respondent :-** State Of U.P. Thru. Prin. Secy. Medical And Health Deptt.  
Civil Sectt. Lko And 4 Others

**Counsel for Petitioner :-** Amit Kr. Singh Bhadauriya

**Counsel for Respondent :-** C.S.C.,Puneet Chandra

**Hon'ble Manish Mathur,J.**

1. Heard Shri Amit Kumar Singh Bhadauriya, learned counsel for petitioner, learned State Counsel for opposite party Nos.1, 4 and 5 and Shri Mohit Chandra, Advocate holding brief of Shri Puneet Chandra, learned counsel for opposite party No.2.

2. Under challenge is the order dated 11th July, 2023, whereby petitioner's services on contract basis has been dispensed with.

3. It has been submitted that earlier petitioner was engaged with opposite parties on contract basis in the year 2013. Although, initial period of contract was for one year, but the same was renewed subsequently and was enforced till 30th March, 2023. It has been submitted that even prior to expiry of contract period, petitioner's contract was cancelled vide order dated 25th January, 2023, which was challenged in Writ-A No.3268 of 2023 and was allowed vide order dated 2nd May, 2023 finding the order stigmatic and directing opposite parties to pass fresh order for terminating the engagement of petitioner simpliciter under Clause-7 of the contract.

4. The aforesaid order was thereafter challenged by petitioner in Special Appeal No.252 of 2023, which was disposed of vide order dated 24th May, 2023 modifying the judgement passed by learned Single Judge by providing that it would be open to authorities concerned to pass a fresh order strictly in accordance with law.

5. It has been submitted that since a specific finding has been recorded by learned Single Judge that order dated 25th January, 2023 was stigmatic in nature, petitioner was required to be granted an opportunity of hearing prior to passing of order impugned in the present writ petition. It has been asserted that although the contract period has come to an end by efflux of time on 30th March, 2023, but subsistence of the order dated 11th July, 2023 would hamper petitioner's re-engagement in service. He has placed reliance on the judgements rendered by the Hon'ble Supreme Court in case of ***State Bank of India and***

## VERDICTUM.IN

*others Vs. Palak Modi and another; (2013) 3 SCC 607 and K.C. Joshi Vs. Union of India and others; (1985) 3 SCC 153 .*

6. Learned counsel for opposite parties has refuted submission advanced by learned counsel for petitioner with submission that as per terms and conditions of contract entered between the parties, there is no provision of any renewal of contract and even otherwise opposite parties were within their rights and limits to issue the impugned order, which is ordered simpliciter and not punitive in nature. It is submitted that even otherwise, since period of contract has already ended on 30th March, 2023, without any clause for renewal therein, no benefit can be provided to petitioner and in effect, the petition has been rendered infructuous.

7. Upon consideration of submission advanced by learned counsel for parties and perusal of material on record, it is evident and admitted that the term of petitioner's contract of service was to come to an end on 30th March, 2023 but prior thereto, his services were dispensed with vide order dated 25th January, 2023. Material on record also makes it evident that aforesaid order dated 25th January, 2023 was passed pursuant to the disciplinary inquiry, which was held with regard to complaint made against petitioner. It is also evident that vide order dated 2nd May, 2023, a co-ordinate Bench of this Court in Writ-A No.3268 of 2023 has allowed the earlier petition filed by petitioner primarily on the ground that impugned order was stigmatic in nature. Although, a direction was issued to opposite parties to pass fresh orders for terminating services of petitioner simpliciter under Clause-7 of contract of engagement, but aforesaid portion of the order has been modified in Special Appeal vide order dated 24th May, 2023 as indicated herein-above. It is also obvious that liberty was granted to authorities to pass fresh orders strictly in accordance with law.

8. A perusal of impugned order dated 11th July, 2023 clearly indicates the fact that the authorities have passed a fresh order in pursuance of direction issued by the Division Bench terminating petitioner's contract of services in terms of paragraph 7 of the contract. The order has been passed in the nature of termination simpliciter.

9. However, the Hon'ble Supreme Court in the case of State Bank of India and others Vs. Palak Modi and another (supra) has placed reliance on the judgement rendered earlier by the Hon'ble Supreme Court in the case of ***Samsher Singh Vs. State of Punjab (1975) 2 SCC 831*** in the following manner:-

"18. In *Samsher Singh v. State of Punjab*, a seven-Judge Bench

## VERDICTUM.IN

*considered the legality of the discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers. A. N. Ray, CJ, who wrote opinion for himself and five other Judges made the following observations: (SCC pp. 851 & 855, paras 63 & 80)*

*63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.*

.....

*80. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may, in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside."*

10. The aforesaid judgement is clearly a proposition for the law that the form of an order is not decisive as to whether it has been passed simpliciter or is in a nature of a punitive order. Even an innocuously worded order terminating the services, which even otherwise inquires into allegations of serious and grave character of misconduct involved can be seen by this Court by adverting to the proposition of lifting of veil to see the nature of termination.

11. Applying aforesaid judgement in the present facts and circumstances, it is quite evident from material on record that earlier order terminating services of petitioner vide order dated 25th January, 2023 was passed after holding of preliminary inquiry. In the earlier round of litigation, this Court has allowed petitioner's writ petition, primarily on the findings that the order dated 25th January, 2023 was stigmatic in nature. Aforesaid finding has not been upset by Division Bench in Special Appeal and only the liberty was granted to opposite parties to pass a fresh orders strictly in accordance with law.

## VERDICTUM.IN

12. Once, the findings of learned Single Judge that the order dated 25th January, 2023 was punitive in nature stood substantiated even by Division Bench, it is clear that earlier termination of petitioner's contract was punitive in nature. In such circumstances, the only option available to opposite parties was to have held an inquiry and afforded an opportunity of hearing to petitioner with regard to allegations levelled against him as has been held in the judgement rendered by Hon'ble Supreme Court in the case of Palak Modi (supra) and K.C. Joshi Vs. Union of India (supra).

13. Aforesaid judgements are proposition for the law that even in the case of temporary or ad-hoc appointment, an opportunity of hearing is required to be granted to employee in case the termination is punitive in nature.

14. Such course of action has clearly not been followed by opposite parties while passing impugned order dated 11th July, 2023, which has been sought to be worded in terms of termination simpliciter. However, since the impugned order dated 11th July, 2023 in fact refers to the earlier termination order dated 25th January, 2023, it was incumbent upon opposite parties to have held an inquiry and afforded an opportunity of hearing to petitioner prior to passing of fresh orders in terms of directions issued by the Division Bench in Special Appeal.

15. Opposite parties having not followed the course of action, has clearly vitiated the impugned order dated 11th July, 2023, which is, accordingly, quashed by issuance of writ in the nature of certiorari.

14. Since admittedly petitioner's term of contract has already come to an end on 30th March, 2023 without there being any clause for renewal in the contract, no direction can be issued for renewal of contract. However, order dated 11th July, 2023 shall not preclude petitioner's fresh engagement on contractual basis, in case he so applies and is found eligible for same.

15. Consequently, the writ petition succeeds and is **allowed** to the said extent. Parties to bear their own cost.

**Order Date :-** 8.11.2023

Ashutosh Pandey