NC: 2024:KHC-D:4746
WP No. 104698 of 2023

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 1ST DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR

AMARANNAVAR

WRIT PETITION NO. 104698 OF 2023 (S-DIS)

BETWEEN:

MOULALI S/O RAJESAB NADAF,
AGE. 35 YEARS, OCC. LAB TECHNICIAN,
CHC KABBUR, ON DEPUTATION,
GENERAL HOSPITAL ATHANI,
R/O. SAI NAGAR, RAIBAG,
TQ. RAIBAG, DIST. BELAGAVI-591317.

... PETITIONER

(BY SRI. MAHANTESH R. PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
VIDHANAVEDHI, BENGALURU,
TQ. & DIST. BENGALURU-560 001.

2. CHEIF ADMINISTRATIVE OFFICER,
AROGYA SOUDHA, BENGALURU,
TQ. & DIST. BENGALURU-560 001.

3. DISTRICT HEALTH OFFICER (DHO),
DEPARTMENT OF DISTRICT HEALTH AND
FAMILY WELFARE VACCINE DEEPO,
TILAKWADI, BELAGAVI,
TQ. & DIST. BELAGAVI-590 004.

4. PROGRAM OFFICER & DISTRICT SUVERY OFFICER,
DEPARTMENT OF DISTRICT HEALTH AND FAMILY

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Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2024.03.06 12:23:27 +0530

WELFARE VACCINE DEEPO, TILAKWADI,
BELAGAVI, TQ. & DIST. BELAGAVI-590004.

5. CHEIF EXECUTIVE OFFICER,
ZILLA PANCHAYAT, BELAGAVI,
TQ. & DIST. BELAGAVI-590004.

6. CHEIF EXECUTIVE OFFICER,
ZILLA PANCHAYAT, BELAGAVI,
TQ. & DIST. BELAGAVI-590004.

7. CHEIF MEDICAL OFFICER,
COMMUNITY HEALTH CENTER, KABBUR
TQ. CHIKKODI, DIST. BELAGAVI-591222.

8. CHEIF MEDICAL OFFICER,
MEDICAL OFFICE, BELAGAVI,
TQ & DIST. BELAGAVI-590006.

…RESPONDENTS

(BY SMT. KIRTILATA R. PATIL, HCGP FOR R1-R3, R7 & R8)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT AND QUASH THE IMPUGNED ORDER DATED /07/2023 PASSED BY THE RESPONDENT NO.3 IN NO.D.S.U/N.C.D/63/2023-24 PRODUCED AT ANNEXURE-L, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has called in question the order dated __/07/2023 passed by respondent No.3 vide annexure-L, whereunder the petitioner was relived from his service.

2. Heard learned counsel for the petitioner and learned High Court Government Pleader for respondent Nos.1 to 4, 7 and 8.

3. The petitioner was working as Lab Technician in terms of Contractual Service Agreement. The said Contractual Service Agreement was renewed every year. The Contractual Service Agreement dated 16.04.2018 is at annexure-C, Assessment report by respondent No.6 for the year 2021-22 and 2022-23 is at annexure-D and E. The Contractual Service Agreement for the period from 02.04.2022 to 31.03.2023 dated 02.04.2022 is at annexure-F.

4. The petitioner was working as Lab Technician in Kabburu Primary Health Centre. The Asha workers of the

Kabburu Health Centre given a written complaint to respondent No.6 stating that petitioner had given sexual and mental torture to them at the time of entering the data in computer. Respondent No.6 forwarded the same to respondent No.3. Respondent No.3 on 19.01.2023 issued notice to the petitioner seeking his explanation. The petitioner gave reply to the said notice to respondent Nos.3 and 6 denying the allegations made by Asha workers against him. The petitioner came to be transferred by the order of respondent No.6 from Kabburu Primary Health Centre to Government Hospital, Athani vide annexure-K.

5. The contention of the petitioner is that without hearing the petitioner and without going into truthfulness of complaint given by Asha workers, respondent No.3 has passed an order of termination from the service of the petitioner in the middle of the Contractual Service Agreement vide annexure-L. He further contended that petitioner has not been given any opportunity and not held

any enquiry and simply relived the petitioner from the service vide annexure-L.

6. Learned High Court Government Pleader would contend that the petitioner is a contract employee and every year Contractual Service Agreement between the petitioner and department has been renewed. The terms of the said agreement vide annexure-F provide termination in clause-8 for improper conduct. She further contends that the agreement is not containing holding of any enquiry with regard to improper conduct of the petitioner.

7. The petitioner is a contract employee and working as Lab Technician in Kabburu Primary Heath Centre. Every year agreement came to be renewed on 02.04.2022 and contract was between 02.04.2022 to 31.03.2023. The termination clause contained in the said agreement is as under

"8. TERMINATION

In case of improper conduct by the designatory, having regards in particular to

Articles 12 & 13 State/District Health Society may terminate this agreement : no compensation shall be payable in such a case."

The above said clause provides for termination of the agreement for improper conduct by designator. It also states that designator is not entitled for any compensation in case of termination of the agreement. The terms of the said agreement does not contain any clause to hold any enquiry with regard to improper conduct alleged against the petitioner/designator.

8. Learned counsel for the petitioner would contend that reliving of the petitioner vide annexure-L is stigma on the petitioner. The Hon'ble Apex Court in the case of ***State of Uttar Pradesh and Another Vs Kaushal Kishore Shukla***[1] held as under:

"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*

[1] (1991) 1 SCC 691

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 or 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, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well-settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India, a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action

taken against the Government servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary Government servant is by way of punishment. It must be borne in mind that a temporary Government servant has no right to hold the post and termination of such a Government servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra case do not include the termination of services of a temporary Government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Bench decisions of this Court in the State of Orissa v. Ram Narayan Dass; R.C. Lacy v. The State of Bihar; Champaklal Chimanlal Shah v. Union of India; Jagdish Mitter v. Union of India; A.G. Benjamin v. Union of India; Shamsher Singh v. State of Punjab. These decisions have been discussed and followed by a three Judge Bench in State of Punjab v. Sukh Raj Bahadur."

The Hon'ble Apex Court has observed that a temporary government servant has no right to hold the post and termination of such a government servant does

not visit him with any evil consequences. The evil consequences do not include the termination of service of a temporary government servant in accordance with terms and conditions of service. Therefore, the said contention of learned counsel for the petitioner that reliving the petitioner is stigma cannot be accepted. The said annexure-L order of reliving, the petitioner does not put any stigma for further employment.

9. In view of the above, the writ petition is ***dismissed.***

Sd/-
JUDGE

DSP/CT:BCK
List No.: 1 Sl No.: 17