

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13.10.2014
Pronounced on: 03.11.2014

+ W.P.(C) 1741/2014, C.M. NO.3645/2014

NARINDER SINGH AHUJA AND ORS. Petitioners

Through: Sh. K. Venkatraman, Advocate.

versus

**THE SECRETARY, MINISTRY OF HEALTH AND FAMILY
WELFARE AND ORS. Respondents**

Through: Sh. Ajay Digpaul, CGSC.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI**

MR. JUSTICE S. RAVINDRA BHAT

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1. In these proceedings under Article 226 of the Constitution, the petitioners are aggrieved by an order of the Central Administrative Tribunal (CAT) dated 10.01.2014 in OA No.1016/2013. Their application for a direction to continue them in the respondents' employment was dismissed by the said impugned order.

2. The applicants were aggrieved by the non-extension of their contractual appointment. They complain that the respondents' action in discontinuing such contracts is contrary to the decision to appoint all contractual employees for one year at a time with annual renewal every year till the project existed. Contractual appointments could be discontinued for non-performance/under performance/abolition of the post. This was to be preceded by show-cause notice and in case no satisfactory response was

received during the previous contract period, there could be termination of contract. The petitioners represented for continuation of their contracts but no decision was communicated to them. Their contracts thus expired on 31.03.2013. They have urged that there has been violation of the terms and conditions mentioned in the appointments letters and ignoring the cases of the applicants, respondents took a decision to conduct a meeting on 21.03.2013 for selection of contractual employees against the guidelines mentioned in their own letters and in disregard of the Financial Budget decision without any justification. No justification was given for discontinuing their contracts. The petitioners had also relied on the judgment of the Punjab and Haryana High Court in C.W.P. No.5269/2012, dated 21.03.2012 in similar circumstances.

3. The respondents initially appointed persons (including the petitioners) with approval of the Central Ministry of Health and Family Welfare for hiring the services of Data Entry Operators and Secretariat Assistants on purely contractual basis for the World Bank/GFATM assisted Revised Nation T.B. Control Programme (RNTCP) project at the Central T.B. Division. In terms of the office Memorandum dated 23.10.2002, respondents issued an appointment letter in favour of the first petitioner with certain stipulations, including that the contract could be terminated by either side on fifteen days' notice. The basis of the applicants' initial contractual appointment was to handle the work under the said programme for one year. The petitioners' contracts were extended by the competent authority from time to time for a further period of one year. The extension letters contained conditions of contractual engagement such as that they would be treated as Non-Official and would be neither entitled to any other service benefit of the Central Government nor could claim regularization. The contractual appointment was subject to the execution of an Agreement between the CTD and the employee as per the TOR. This was a full time

engagement and the contract could be terminated by either side at fifteen days' notice. Reliance was placed on the Budget and Financial Management too, to say that the condition for appointing contractual staff was a time period of one year at a time, with annual renewal every year to be done till the project existed. It was alleged by the Petitioners that during transition from RNTCP II to RNTCP 2012-2017, all contractual staff shifted on the post on new salary norms, retaining the actual increments amount received after the last revision of salaries. The respondents issued the order dated 04.01.2010, consequent upon approval of the Cabinet Committee on Economic Affairs to the proposal of RCC (GFATM) assisted RNTCP, with financial norms from 01.04.2009 to 31.03.2015.

4. The Petitioners secured the information under RTI Act, 2005 that two new persons, namely Mr. Zubar and Mrs. Gyan Prakash were posted as Executive Assistant on 28.04.2011 and that these two contractual staff were hired through the agency of DGHS/Ministry because of which two contractual employees had lost their jobs, despite the assurance being given by the Ministry that outsourcing policy would never get implemented and that petitioners would be exempted from that decision. However, a decision for outsourcing was taken resulting in discontinuance of the petitioners' contracts, as on 31.03.2013. The petitioners alleged that this was arbitrary, and in violation of Articles 14 and 16 of the Constitution of India. They also argued that the respondents violated the DOP&T instructions dated 11.12.2006, issued in compliance with directions Supreme Court in *Secretary, State of Karnataka & Ors v. Uma Devi and others* 2006 (4) SCC 1. The policy of outsourcing was made in the year 2010 whereas its implementation in 2013 was discriminatory, because the outsourcing policy had been exempted as far as the petitioners were concerned in 2011.

5. The petitioners relied on the fact that National Strategic Plan (NSP) and revised salary had been approved by the Central Government from 2012 to 2017 and sanction/funding had been received from the Departmental Budget. Therefore, the contracts should have been extended, which was not done in their cases. Having regard to the fact that the respondents are bound by DOP&T instructions dated 11.12.2006, those having 10 years of service should be considered for regularization without any condition. Some of the petitioners with more than 10 years continuous services without any break, are legally entitled for regularization in terms of DOP&T instructions dated 11.12.2006.

6. The respondents argued the RNTCP was started in 1993 as a Pilot Project and funding was obtained from various international sources including the Global Fund against AIDS, TB and Malaria (GFATM) for different periods of time for different areas. Phase II RNTCP of the World Bank Project was approved by the CCEA for the period from October 2006 to September 2011 and the World Bank support to the Programme was extended up to September 2012. The funding from GFATM was approved up to March 2013. Thereafter, no funding support from any external agency was available for RNTCP. Under the RNTCP scheme/project, there was provision for some contractual (non-official) positions for Central level monitoring unit of the RNTCP project. Different persons were engaged on purely contract basis on yearly/half yearly basis on mutually agreed terms and conditions. In the meanwhile, the terms and conditions of the contracts were revised in tune with the terms of financial assistance of the donor agency and some persons who agreed on revised terms and conditions were again engaged on fresh yearly/half yearly basis. The petitioners' services were hired on contractual basis from time to time by entering fresh contract each time for a specific period, the last contract of each petitioner being for 9 months w.e.f. 01.07.2012 to 31.03.2013. The petitioners were aware that

they would be treated as Non-Official and would be neither entitled to any service benefit of the Central Government nor could claim regularization. Their contracts could be terminated by either side after giving fifteen days' notice. The payment of salaries of such staff till 31.03.2013 from October 2012 was paid from the Domestic Budget in order to honour the contract, instead of terminating the contract simultaneously with the expiry of World Bank support. The contract of two of the petitioners continued till 31.03.2013 co-terminus with funding with the support from GFATM.

7. The respondents urged that the National Strategic Plan for 2012-17 for RNTCP is a Plan document. A decision to engage contractual staff for Central Level Monitoring Unit of RNTCP under GFR 2005 i.e. GFR-178-185 was taken, through outsourced agency of the Directorate General of Health Services (DGHS). DGHS finalized an agency for providing contractual staff. The remuneration of such outsourced staff for contractual service was much less than that which was being paid under the World Bank/GFATM assisted project RNTCP. Thus, the respondents engaged contractual staff from the outsourcing agency because of the lower remuneration payable to such staff. Once the petitioners' contracts ended on 31.03.2013, they had no right to continue their services. They had agreed to and accepted the terms of the contract up to 31.03.2013 on mutually agreed terms. There are no sanctioned regular posts of DEO or Secretarial Assistants for implementation of the project RNTCP, to enable the petitioners to claim regularization.

8. The CAT, by its impugned judgment, was of the opinion that the decision of the respondents not to continue the contractual employment of the petitioners could not be held to be illegal. The CAT held that the argument about violation of the *ratio* in *Uma Devi (supra)* was not sound

and that the decision of the respondents was based on a policy, which was not arbitrary. The CAT held that:

“The decision of the respondents to engage contractual staff for Central Level Monitoring Unit of RNTCP under FIR 2005 through outsourced agency of Directorate General of Health Services is a policy matter. Apart from the consideration of reduction of cost because of lower remuneration being paid under the outsourcing scheme, it is also to be considered whether in such matters of judicial review, there should or should not be any intervention in matters relating to “policy” of the respondents. We would feel that in all such policy matters the competent authority is to take a decision regarding the modality of implementation of the scheme. There can be no intervention in such matters by the Tribunal. One of the considerations in the present case for submitting to the outsourcing scheme is a lower cost involved in implementing the project by way of reduced remuneration to contractual employees. We are not, therefore, impressed with the argument of the applicant that the outsourcing policy for engaging employees on contract should not be implemented.”

9. The petitioners argue that the CAT fell into error in holding that the decision to discontinue their employment and employ some others instead on contractual basis, by paying lower salary is arbitrary. Reliance is placed on *Uma Devi (supra)* to say that one set of contractual employees cannot be replaced by others. It was also submitted that the reply to queries made under the RTI Act amply clarify that the funding to the TB project would continue till 2017 and therefore, the impugned action is arbitrary. Counsel also relied on the decision in *Babita Rani and Ors. v. Govt. of NCT of Delhi and Anr.* 124 (2005) DLT 97.

10. Learned counsel for the respondents argued that the contractual employment of the petitioners was on consciously agreed terms; when the tenure of employment ended, they had no enforceable right to insist on extension or continuance. It was urged that the decision of the Central Government was that though the project might continue in modified form,

the structure of contractual employment was to be different; the DGHS had outsourced the task to an agency that provided employees on contractual basis. This eliminated its (DGHS) function in engaging its contractual employees.

Analysis and Conclusions

11. The above facts would reveal that the petitioners were initially engaged on contractual basis to man a project for eradication of TB. The project received renewed funding from foreign donor agencies, including World Bank. The nature of contractual employment was that the initial tenure was for nine months or one year, renewed from time to time annually. The last renewal was sometime in 2012. Their grievance is that though the TB eradication project continues and even receives funding, the latest policy to discontinue their employment and instead leave it to a contractor (i.e. outsourcing agency) to provide employees to do the same work is arbitrary.

12. To appreciate the controversy better, it would be useful to extract the relevant queries made to the respondents, by the Petitioners, under the Right to Information Act (RTI) together with the answers furnished. The same is reproduced in a tabular form, as follows:

	<u>RTI QUESTIONS</u>	<u>RTI ANSWERS</u>
<i>Q. NO.16</i>	<i>For how long, Revised National TB Programme will continue?</i>	<i>The Revised National TB Control Programme has Government's commitment and planning Commission's projection currently indicate that the Programme will be funded</i>

		<i>at least till XII Plan period (2012-17).</i>
<i>Q. NO.17</i>	<i>By when (kindly mention year) Tuberculosis Disease will get Eradicated?</i>	<i>Eradication of Tuberculosis can not be predicted, as it is an infectious disease, with a large reservoir of infection.</i>
<i>Q.NO. 18</i>	<i>Will this Tuberculosis Programme continue to run, in the interest of citizens of India even if foreign funding from World Bank, GFATM, USAID or other foreign donor agencies will got stopped? Yes or No?</i>	<i>Yes, the Revised National TB Control Programme is also supported by the Government, and it is likely that the Programme will continue. At the current planning Commission's projections, Program will be funded at least till XII Plan period (2012-17).</i>
<i>Q.NO. 19</i>	<i>Has the World Bank funding or loan from World Bank to run Tuberculosis Programme got stopped in September 2012? Yes or No?</i>	<i>Yes, the World Banks loan to the Revised National TB Control Programme was tenured till September 2012.</i>
<i>Q. NO.20</i>	<i>Will the RNTCP will run after funding/loan got stopped in September 2012? If yes, will it be from GOI (Government of India) funds now? If no, kindly inform the source of funding, if programme will get run, if not from GOI funds.</i>	<i>Yes, the Government of India is committed to run the RNTCP using Domestic Budgetary Sources, as also, the Government's funds are supplemented by funding from GFATM (Global Fund Against Aids Tuberculosis, and Malaria) as well.</i>
<i>Q.</i>	<i>If the RNTCP will run</i>	<i>Yes, the approval of budget</i>

NO.21	<i>from GOI funds has the sanctioning of funds been made by Ministry of Health till year 2017? Yes or No?</i>	<i>outlay for 2012-17 been done in principle by Bureau of Planning, the actual financial approval are done from year to year basis, depending on the current fiscal year.</i>
Q. NO.22	<i>If DOPT guidelines in r/o contractual employees will get breached by Division. Is Tuberculosis Division, what action could be taken against negligent on duty part official in this regard and who will be held responsible for same in Tuberculosis Division? Kindly provide copy of rule informing Action Taken on negligence in r/o breaching DOPT guidelines?</i>	<i>The question is hypothetical, applicant is requested to seek information on factual questions. However, all government employees are subject to departmental regulations under the CSS (Central Secretariat Services) Rules. The rules can be found on the Dept. of Personnel and Training website. http://www.persmin.nic.in/DOPT/CSWing/CSDivision/CSS/CSS%20RULES-2009.pdf</i>
Q.NO. 23	<i>After World Bank stopped funding in September 12 from which Budget, Head, salaries of contractual employees got released till 31st March 13 whose salaries were reimbursable through world Bank earlier till Sept 2012 but whose service contracts were till 31st March 2013. Kindly indicate the Budget Head</i>	<i>The Budget head for releasing salaries in aforementioned period was Domestic Budgetary Sources (DBS), prior to this period the salaries were accounted to Externally Aided Component, since the tenure of World Banks loan was completed in September 2012, it was</i>

	<i>of releasing their salaries from Oct 2012 to 31st March 2013. Was the Budget Head belongs to Government of India.</i>	<i>done to honor the contractual obligations to employees.</i>
<i>Q.24</i>	<i>Was Budget Head from which salaries of contractual employees (Secretarial Assistant/DTOs) filed court case in Hon'ble CAT in March 2013, whose salaries are/were being paid from their recruitment in TB Division till 31st March 2013 from the Budget Head is or GOI? Yes or No? If yes, kindly indicate the Budget Head.</i>	<i>The budget head for salaries of contractual employees is 'major head-2210'.</i>
<i>Q.25</i>	<i>After World Bank funding got stopped in Sept 2012 on which date further Sanctioning of funds was made under GOI and who has sanctioned the same till year 2017.</i>	<i>The funds have been sanctioned on 1st of October 2012.</i>
<i>Q.31</i>	<i>As mentioned in "Budget and Financial Management of National strategic Plan 2012-2017 which has been approved by Ministry of Health is it true "During transition from Revised National TB Control Programme</i>	<i>Yes, the National Strategic Plan is applicable to all.</i>

	(RNTCP) to RNTCP 2012-17, all the contractual staff shifts on new salary norms and retaining all actual increments amount received after last revision of salaries” Yes or No? If yes, is this extract applicable on all the contractual employees (including Data Entry Operators and Secretarial Assistants) mentioned in Budget and Financial Management of NSP placed before Ministry of Health for approval and which got approved by Ministry from 2012-2017. If no, mentioned reasons for not being applicable.	
Q.32	As per the reply provided under RTI Approval dated 7.5.2013 (copy enclosed), it was informed that outsourcing policy vide circular No.I-17014/7/2009-IWSU dated 12.1.2010 is available for Data Entry Operators, Stenographer, routine secretarial Assistance and basic accounting functions etc, however, only secretarial staff and Data Entry	COMMON ANSWER TO Q.NOS.32,33,34, 35, 45 AND 46: It has been a considered policy that the contractual staff including the Data Entry Operator and Secretarial Assistants are to be replaced by the regular employees, over a period of time. Accordingly, regular employees have been

	<i>Operator were to replaced which is why secretarial staff and Data Entry Operators took help of Judiciary (Hon'ble CAT) in March 2013 and judgment of which is pending. Kindly provide/mention reasons or copy of sanctioning for not implementing outsourcing policy (I-17014/7/2009-IWSU dated 12.1.2010) on basic Accounts functioning staff who were again given extension of Direct Basis w.e.f. 20.5.2013 (copy enclosed).</i>	<i>posted at the Division.</i>
Q.33	<i>If sanctioning for not implementing outsourcing policy (I-17014/7/2009-IWSU) dated 12.1.2010 has been taken in r/o basic accounting staff working CTD, kindly provide copy of sanctioning including notings since it is subject to "Audit" and action on negligent on duty part officials could be recommended in this regard to high authorities including Central Vigilance Commission/CBI as</i>	

	<i>inspite of policy (outsourcing) available, the contract of staff doing routine accounting work got renewed from 20.5.13 onwards on direct basis.</i>	
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13. The relevant part of the RNTCP, which contains the structural guidelines for operation of the project, in regard to contractual employment reads as follows:

“10. Contractual Service : *Central Level monitoring unit strengthening is to include Technical officer and Technical assistants to each function of the technical unit, five data entry operators and four secretarial assistants and one statistician. The administrative section is to have one post of administrative officer and two administrative assistant. Finance section is to have three consultant finance, one finance manager, four accountants and one account officer. The procurement and logistics management section is to have one consultant, one logistic manager, one supply chain manager and ten assistants. Each NRL can be provided upto three microbiologists and four senior LTs for EQA. The national institute for tuberculosis to have one HR officer, two training facilitators, two epi-centre experts (one filed expert and one computer expert), one epidemiologist, two research officers, one librarian and one documentation assistant with a view to strength and promote research and its dissemination.*

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The existing contractual staff posts and persons, if in line with the above norms will continue as per the guidelines. The relocation of posts and person is to be undertaken as per the need and approval by appropriate authority. All the contractual staff will be appointed for 1 year at a time and annual, renewal every year to be done till the project exists, except discontinued for non-performance/ under-performance/ abolish of the post/show-cause notice issued and satisfactory response not received during previous contract period. During transition

from RNTCP II to RNTCP 2012-17, all the contractual staff shifts on the posts on new salary norms and retaining all the actual increments amount received after last revision of salaries.”

14. The respondents’ clear stand – apart from the petitioners not possessing any right to claim extension of contract, is that the changed policy no longer enables the Central Government to enter into contract with individuals, even if work exists, but that such contracts are to be entered through an “outsourcing” agency (read contractor). This is apparent from the following averments in the counter affidavit filed before CAT:

“7. The National Strategic Plan (NSP) for 2012-17 for RNTCP is a plan document. All relevant rules/ instructions are required to be followed for each activity/expenditure for implementing the NSP. It has been decided to engage contractual staff for Central Level Monitoring Unit of RNTCP under GFR 2005 i.e. GFR-178-185 through outsourced agency of Directorate General of Health Services (Dte.GHS), GOI. Dte.GHS/GOI has finalized an agency for providing contractual staff viz. Administrative Assistants, Stenographers & Typist-cum-DEO w.e.f. 01.01.2013. The remuneration of Rs.10942/- & Rs.11461/- per month per person for contractual staff being provided by outsourcing agency of Dte. G.H.S. is much less than that was being paid i.e. Rs.16500/- per month per person under World Bank/GFATM assisted project RNTCP. The Respondents are bound to take contractual staff from outsourced Agency of the Dte. G.H.S. as they are provided on lower remuneration than was provided under World Bank/GF funding. The decision economises as public exchequer.

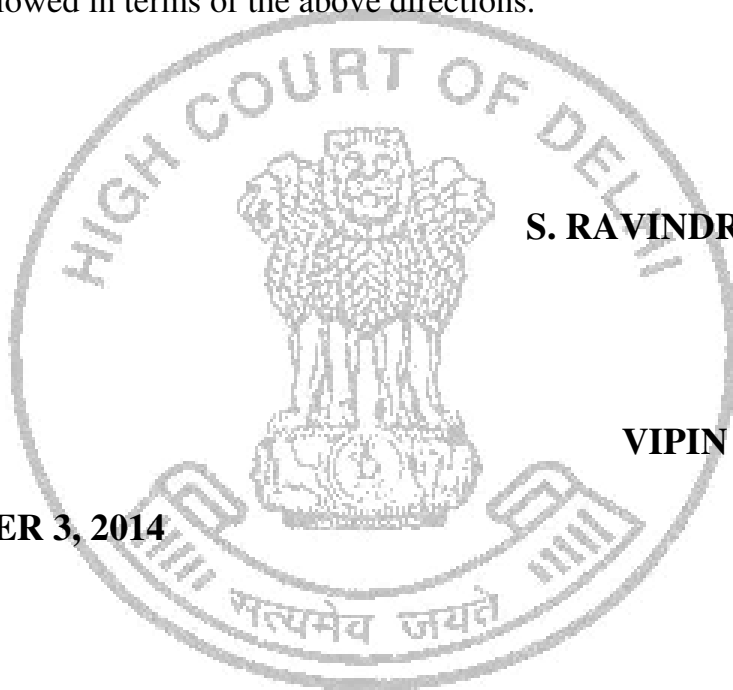
8. Once the contract with applicants came to an end on 31.3.13, right of applicants to continue their contract also ended. No orders/ Rules/ regulations in this case have been violated. The contract which was up to 31.3.13 was signed on mutually agreed terms and conditions and the applicants have accepted the terms and conditions of hiring of their services on contract basis with open eyes. Their services cannot be continued after 31st March, 2013 as all these applicants were working under a project funded by World Bank/ GFATM. The World Bank Project ended on 30th Sept, 2012 and GF support ended on

31.3.13 and therefore Central TB Division (CTD) can not engage any contractual staff on World Bank/GF remuneration which is much higher than the remuneration charged by outsourcing agency. Even for World Bank/GFATM support, the remuneration of contractual positions is to be lowest. There are no sanctioned regular posts of DEO or Secretarial Assistants for implementation of the project RNTCP and therefore, the request of applicants for regularization does not arise. Further as per last agreement with the applicants which ended on 31.3.2013, the applicants cannot demand for regularization of their services.”

15. In the opinion of this Court, since the respondents nowhere dispute that there is need for the performance of the work that the petitioners were discharging all along and there is also no dispute that the project and funding (for the project) would continue till 2017, the decision to discontinue the petitioners' engagement is based only on the policy to outsource the contractual employment to a third party. The petitioners are not insisting on regularization, given the nature of the employment or engagement, which is project based. However apart from the decision to “outsource” engagement of contract employment to a third agency, there is no *rationale* to discontinue the petitioners' contracts. The justification that the employees engaged through the contractor are paid lower wages is arbitrary, because the “outsourced” or outsourcing agency would have to be paid its service charges. The lower wages paid, therefore, is, in effect, because of the charges/fees paid to the contractor/outsourced agency. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is not their replacement with regular appointees, but instead, with another set of contractual employees. The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended.

16. For the above reasons, this court is of opinion that the CAT erred in law, in holding that the petitioners could not complain against the discontinuance of their contractual employment. Accordingly, a direction is issued to the respondents to continue the petitioners in contractual employment on annual renewal basis, till the currency of the RNTCP scheme/project in 2017. An appropriate consequential order shall be issued by the respondents within eight weeks from today.

17. The impugned order of the CAT is accordingly set aside; the writ petition is allowed in terms of the above directions.



S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

NOVEMBER 3, 2014