

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 433 of 2014**

Rajkishor Mishra, Aged about 25 years, S/o Shri Santosh Prasad Mishra, R/o C/o Satya Sai Kripa Niwas, Raja Talab, Near Pandri Bus Stand, Raipur, P.S. Pandri Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, New Mantralaya, Zero Point, Post and P.S. Mandir Hasaud, RAipur, Chhattisgarh.
2. Director, Medical Education Directorate, Government of Chhattisgarh, New Mantralaya Raipur Chhattisgarh.
3. Pt. Jawahar Lal Nehru Memorial Medical College, Through the Dean, Post and P.S. Raipur Chhattisgarh.
4. Head of Department, Department of ENT (Ear, Nose and Throat) Pt. Jawahar Lal Nehru Memorial Medical College, Through the Dean, Post and P.S. Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Jitendra Pali, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble The Chief Justice,
Hon'ble Shri Justice P. Sam Koshy.

Judgment on Board**Per Navin Sinha, Chief Justice****11/05/2015**

1. The present appeal arises from order dated 17.11.2014 dismissing Writ Petition (S) No. 5840 of 2014. The Learned Single Judge held that the Appellant having been appointed on contract, the duration of the same having expired, no mandamus could be issued for extension of the contract.

2. Learned Counsel for the Appellant submits that even if he was appointed on contract, Rule 11 of the Chattisgarh Civil Services (Contract

Appointment) Rules, 2012 (hereinafter called 'the Rules') provides for a contract appointment for a period of three years. The Appellant had only completed one year. The Rule itself envisages annual renewal of the contract. The Appellant has been arbitrarily discriminated against as others also issued a show cause notice are continuing in service by extension of their contract. The Appellant has alone been singled out for discriminatory treatment.

3. Learned Counsel for the State opposing the appeal submitted that the Appellant was appointed on contract for a period of one year. The Learned Single Judge has rightly held that there is no vested right to renewal of the contract. Renewal has to be the subjective decision of the employer depending on a host of factors. No discrimination has been meted out to the Petitioner. An explanation had been called for from the Appellant and which has been duly considered but not found acceptable.

4. In this appeal, we are primarily concerned if there are any infirmities in the decision making process. The power of judicial review does not vest in us the authority to take over the role of the Respondents to decide whether a contract should be renewed or not. If there is any infirmity in the decision making process or the Appellant has been singled out for hostile discrimination with others similarly situated without any justifiable reason, rendering such decision arbitrary, only then in exercise of powers for judicial review can any further directions be issued by us for consideration of the candidature of the Appellant. In no event can we issue a mandamus for renewal of the contract.

5. The Appellant was appointed on 16.9.2013 on the post of Speech Pathologist/Audiologist Grade I on contract for a period of one year. He could also be removed during the duration of the contract after giving him one months notice or pay in lieu thereof, the option also equally available to him. Therefore, he did not have any vested legal right to demand continuance even for the

duration of the contract. But, that power also could not have been exercised by the Respondents arbitrarily and if questioned, valid and germane reasons would have been required to be furnished.

6. A person appointed on contract has a limited right to continue in service during the duration of the contract. On expiry of the duration, the order of appointment runs itself out by efflux of time and no formal orders for its annulment are required. A person appointed on contract has no vested legal right to demand renewal even if there be a clause for renewal of the contract. Even if the contract visualises a renewal it is an inchoate right which may or may not fructify based on several reasons and no mandamus can be issued with regard to the same.

7. Rule 11 provides for contract appointments for a period of three years with regard to certain posts in clause 4(1) of the Rules. Even then, the contract has to be initially for one year extendable for the same duration at intervals subject to assessment of suitability. Rule 11(1) cannot be interpreted in a manner that a person has a vested right to continue in service for three years. Rule 11(2) provides that contract appointment on posts mentioned in Rule 4(2) and 4(3) would be made for a period of one year and the decision to renew the contract may be taken after assessing the suitability of the person appointed. Rule 11(4) of the Rules provides that the contract appointment shall stand terminated automatically on expiry of period of contract and there was no need to issue separate order terminating the service.

8. The order for appointment of the Appellant states that it was being made for one year or till regular appointment, whichever is earlier. The duration of the contract having run its course, renewal not being a matter of right, rules reserving the right in the Respondents to assess suitability, no mandamus can be issued by us to consider renewal of the contract of the Appellant. To that

extent, we find no infirmity in the order under appeal.

9. Learned Counsel for the Appellant next strenuously urged hostile discrimination and arbitrariness in denying renewal while other similarly situated have been granted renewal of the contract. An explanation had been called for from the Appellant on 23.8.2014 stating that he had made interpolations and corrections in the provisional diagnosis report of a patient affecting the image of the department. The Appellant replied stating that the patient was feeling pain sensation on the mastoid bone on the right side because of which the bone conduction test could not be obtained. Hence, comparison between two specified tests was not made and the diagnosis was made as a case of mild hearing loss after incorporating necessary corrections. No further discussion is required that the Appellant acknowledged the corrections made by him in the final report.

10. The question for our consideration would be whether there was material before the Respondents when they took a decision not to renew the contract of the Appellant. It is not our jurisdiction to go into the sufficiency of the materials. We find it difficult to hold that the Respondents have acted arbitrarily without reason to deny him renewal of the contract.

11. That leaves another question for our consideration with regard to hostile discrimination for which an affidavit has been filed today enclosing a show cause notice issued to certain others on grounds of taking students outside for a trip without proper authorisation and for unauthorised absence. It will not be proper for us to make a comparative assessment of the grounds mentioned in the show cause notice to arrive at our own subjective assesment by substituting our views for that of the Respondents. Suffice it to observe that if the grounds calling for explanation are different and it is accepted in one case and not in the other, the grounds itself being sufficient classification, the mere fact that it was

accepted in one and not in another, cannot amount to hostile discrimination. We may only observe that the materials of the two show cause notices cannot be at put at par.

12. Needless to state that if the Respondents publish any fresh advertisement for contract appointments and the Appellant applies in response to the same, his application is required to be considered on its own merits in accordance with law without being prejudiced by our reluctance to entertain the appeal.

13. The writ appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Subbu