

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**C. W. P. No. 20113 of 2013 (O&M)
and connected matters**

Reserved On : 26.05.2015

Pronounced On : 30.06.2015

Dr. Sukhpreet Singh Petitioner

vs.

Union of India and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Ramneek Vasudeva, Advocate
for the petitioners.

Mr. Chetan Mittal, Senior Advocate
as Assistant Solicitor General of India
with Mr. Udit Garg, Senior Panel Counsel
for the respondents – Union of India.

* * *

DEEPAK SIBAL, J. :

These petitions being C. W. P. No. 20113 of 2013, C. W. P.
No. 23505 of 2013, C. W. P. No. 6315 of 2014, C. W. P. No. 8779 of
2014, C. W. P. No. 10084 of 2014, C. W. P. No. 10106 of 2014, C. W. P.
No. 10802 of 2014, C. W. P. No. 15708 of 2014, C. W. P. No. 24006 of

2014 and **C. W. P. No. 1955 of 2015** involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from **C. W. P. No. 20113 of 2013 – Dr. Sukhpreet Singh vs. Union of India and others.**

In the year 2003, the Ministry of Defence, Government of India introduced the Ex-Servicemen Contributory Health Scheme (hereinafter referred to as – the Scheme).

The Scheme aimed to provide medicare to ex-servicemen and their dependents through a network of polyclinics and service medical facilities spread across the country. The Scheme was a contributory Scheme and was to extend the earlier referred benefits on payment of contribution. The appointment of the staff, under the Scheme, was to be on contractual basis.

As per Appendix-A attached to the Scheme, for the category of Medical Officers/Specialists, Dental Officers and Officers Incharge of Poly Clinics, the age limit for contractual appointments was 65 years. So far as Nursing Assistants/Laboratory Assistants and Dental Assistants/Hygienists were concerned, the prescribed age limit for them was 55 years.

It is in pursuance to the Scheme that all the petitioners were appointed on different dates on contractual basis, but before such appointments, an Agreement of service was duly entered into between the

petitioners and respondents. The relevant portion of such Agreement in the case of one of the petitioners (**C. W. P. No. 10802 of 2014 – Dr. Swapandeep Kaur vs. Union of India and others**) is reproduced below :-

**“NOW THIS AGREEMENT WITNESSETH AS
FOLLOWS :-**

- 1. The ECHS hires the professional service of **Dr. Swapandeep Kaur** Engaged Person, as the **Dental Officer** (designation or nature of work) for its Polyclinic at **Ludhiana (Pb.)** and **Dr. Swapandeep Kaur** has agreed to provide his/her professional services in that capacity at the above mentioned Polyclinic for a period of 12 months from the date he/she join duties.*
- 2. The engagement of the Engaged person for rendering his/her professional services shall be entirely contractual in nature and will be for a period of 12 months initially and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/ indicated in Appendix A to Government of India, Ministry of Defence letter No. 24(6)/03/US(WE) D (Res) dated 22 Sep 2003 or as amended from time*

to time. The renewal of contract will be subject to continued good conduct and performance of the Engager Person during the proceeding 12 months and existence of the requirement for services of the Engager person at the ECHS Polyclinic. A fresh contract will be executed for each renewal.”

xx xx xx xx

“11. *The ECHS shall have the right to terminate this agreement by giving one month's notice to the Engaged person or one month's consideration as compensation in lieu thereof without prejudice to the generality of the right of termination may be on any of the following grounds for which an opportunity to show cause will be afforded to him/her:-*

(a) Professional incompetence or misconduct or an act of moral turpitude.

(b) Unsatisfactory performance of duty.

(c) Arrest of conviction by a court of law for any offence.

(d) Any act prejudicial to security or interest of the Organization (ECHS).

- (e) Absence of leave beyond 60 days.*
- (f) Prolonged or habitual absence from duty without prior permission of the competent authority including prolonged absence due to medical illness.*
- (g) Inadequate work load.*
- (h) Breach/ violation of any provision of this agreement by the Engaged Persons.*
- (i) Any other ground warranting his/her removal from the contractual arrangement.*

12. *The Engaged person will also have the right to terminate this agreement before the expiry of tenure of contractual appointment by giving one month's notice or by foregoing one month/s contractual amount as consideration for engagement of services.”*

From a perusal of the above terms and conditions governing the services of the petitioners, it is clear that all appointments were initially to be for a period of 12 months. However, as per clause 2, the services were renewable for a further period of 12 months at a time up to attainment of the maximum age, as prescribed in Appendix-A attached to the Scheme dated 22.09.2003 (as amended from time to time). As per clause 2 of the

Agreement, the renewal in services was subject only to two riders i.e. good performance and existence of work which would require the services of the appointed person.

As per the above terms, all the petitioners were initially appointed for 12 months. Their services were renewed on the same terms and conditions from time to time for 12 months at a time.

All the petitioners have put in more than five years of service. For the year in question, their services were not renewed. Instead, the respondents got issued an advertisement inviting applications for appointment on contractual basis, to the posts being held by the petitioners. Aggrieved by the above action on the part of the respondents, the petitioners have approached this Court through the present writ petitions.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

The preliminary reliance of the respondents in not extending the service of the petitioners beyond the period of five years is on a letter dated 11.10.2013, which reads as thus :-

*“Central Organisation ECHS
Army Headquarters
Adjutant General's Branch
Maude Lines
Delhi Cantt – 110010*

B/49760/AG/ECHS (WC)

11 Oct, 2013

Headquarters Western Command

*Adjutant General's Branch (ECHS)
Pin – 908 543
c/o 56 APO*

TENURE OF CONTRACTUAL STAFF AT ECHS POLYCLINICS

1. *Ref your letter No. 46153/3/ECHS dt 15 July 2013.*
2. *In this regard, the following clarification to be ensured:-*
 - (a) *Employee who has completed five years of contractual employment should not be considered for the same polyclinic again.*
 - (b) *The ESM should be considered in the reserve category quota of 60%, however, the board of Offrs should be convinced of the efficiency of the ESM in case his selection is made.*

*(DS Khangarot)
Lt. Col.
Offg. Jt. Dir (Pers)
for MD ECHS*

Copy to:

*HQ PH & HP (I) Sub Area
Pin – 900 241
c/o 56 APO”*

Reliance of the respondents on the above quoted letter for non-renewal of the service of the petitioners beyond a period of five years is misplaced. The conditions of service of the petitioners are governed by the agreement duly entered into by them with the respondents. These

conditions of service cannot be allowed to be changed without there being any amendment in the Scheme or the agreement itself, which bind the parties to the same, especially when the Scheme or the agreement remain unchallenged by either side. As per Clause 2 of the agreement of service, as reproduced earlier, is clear that all appointees like the petitioners, though initially appointed for a period of 12 months, their services could be renewed for 12 months at a time from time to time till the maximum age so specified in Appendix-A attached to the Scheme, subject only to good performance by them and existence of work.

It is the admitted position that neither of the petitioners have attained the maximum age so prescribed in Appendix-A attached to the Scheme. It is further not disputed that there is no complaint with regard to the work and conduct of the petitioners and that work exists.

The agreement provides that the terms and conditions of service of the petitioners are subject to any amendment to the Scheme. The above reproduced letter dated 11.10.2013 cannot, by any length of imagination, be considered to be an amendment to the Scheme. As observed earlier, the Scheme was introduced by the Ministry of Defence, Government of India, whereas the letter dated 11.10.2013 is merely an intra departmental communication between two officers of the respondents.

Undisputably, there is no amendment to the agreement of service entered into between the parties. The letter dated 11.10.2013 thus

could not be made the basis for non-renewal of the services of the petitioners.

There is yet another issue, which needs to be noticed, which is that the letter dated 11.10.2013 was itself withdrawn by the respondents vide their subsequent letter dated 18.09.2014, which reads as under :-

*“Tele : 25684946
ASCON: 36832*

*Central Organisation ECHS
Adjutant General's Branch
IHQ of MoD (Army)
Maude Lines
Delhi Cantt – 110 010*

B/49760/AG/ECHS (R)

18 Sep 2014

(All Regional Centres ECHS)

**CANCELLATION OF LETTER: SELECTION OF MEDICAL/ DENTAL
OFFERS FOR POLYCLINICS IN MIL STNS**

- 1. Policy guidelines on tenure of contractual employees issue vide Central Org ECHS letter No. B/49760/AG/ECHS (R) dt 24 May 2011 will be followed for selection of candidates.*
- 2. This HQ letter No. B/49760/AG/ECHS (CC) dt 11 Oct 2013 be treated as cancelled. The contractual staff is emp on yearly basis with a clear gap of two days between each successive employment.*
- 3. For info and necessary implementation pl.*

Sd/-

(CK Nayak)
Lt. Col.
Jt. Dir (Pers)
for MD ECHS

Copy to:-

HQ Western Comd (A/ECHS)
PIN - 908543

*This office letter No.B/49760/AG/ECHS (WC) C/o 56 APO dt 11 Oct 2013
may please be treated as cancelled.*

HQ PH & HP (I) Sub Area
Pin – 900241
c/o 56 APO”

Learned counsel for the respondents argued that the petitioners have no right to claim renewal of their services as a matter of right and for that proposition, reliance has been placed on two judgments – one of Apex Court in **State of Uttar Pradesh and others vs. Rakesh Kumar Keshari and another** reported as **(2011) 5 SCC 341** and another of this Court in **S. K. Verma and others vs. State of Punjab and others (F.B.)** reported as **1979 (2) S. L. R. 164.**

After going through the above referred judgments, I am of the opinion that the same would not apply to the facts of the case in hand. So far as the case of **Rakesh Kumar Keshari (supra)** is concerned, in that case, there was no clause in the agreement of service between the parties,

which provided for renewal of the service on the basis of certain conditions, which were also stipulated. This is a basic fact which would distinguish that case from the present one.

So far as **S. K. Verma's** case (*supra*) is concerned, in that case, it has been held that services of the employees can be terminated as per terms of their appointment. As observed earlier, the right of renewal of each of the petitioners is enshrined in terms of their appointment, which governs the services of not only the petitioners, but is also binding on the respondents. No such right of renewal was in existence in the terms of appointment in **S. K. Verma's** case (*supra*).

The respondents have further relied upon Clause 8 of the Scheme to project that the period of service of the appointees like the petitioners was for two years at the maximum. Clause 8 (d) is reproduced below for ready reference :-

***“8. (d) Duration of employment : The
employment of the staff will be entirely
contractual in nature and will be normally
for a period of two years at the maximum
subject to review of their conduct and
performance after 12 months.”***

A perusal of the above quoted clause of the Scheme shows that the maximum period of service of the appointees is 'normally' for a period

of two years. No specific period is stipulated. Even otherwise, the record reveals that the respondents themselves have allowed all the petitioners to put in much more than two years of service, clearly bringing out the fact that the respondents themselves are relying upon Clause 2 of the agreement and not Clause 8(d) of the Scheme. The respondents are thus estopped from taking such a stand. Clause 2 of the agreement clearly provides for renewal in the period of service of the appointees like the petitioners for 12 months at a time till they attain the maximum age, as provided in Appendix-A attached to the Scheme, subject only to good performance and existence of work.

In **C. W. P. No. 24006 of 2014**, an additional stand has been taken on behalf of the respondents that the petitioner, having participated in the process of selection, cannot be allowed to challenge the same. The action of the respondents has been found to be arbitrary and thus violative of Articles 14 and 16 of the Constitution of India as the same is against the agreement duly entered into between the parties. It is settled law that no estoppel can be pleaded qua a person whose fundamental rights are being infringed. In this regard, the following observations of the Constitution Bench of the Apex Court in **Olga Tellis and others vs. Bombay Municipal Corporation** reported as **1986 AIR (SC) 180** may usefully be referred to :-

“29. *The plea of estoppel is closely*

connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions. [In Basheshar Nath v. The Commissioner of Income Tax Delhi](#), [1959] Supp. 1 S.C.R. 528 a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental right founded on [Article 14](#) of the Constitution. Two others (N.H.Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by [Article 14](#), but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy.”

Learned counsel for the petitioners have strenuously urged before me that the petitioners, who were contractual employees, could not be replaced by another set of contractual employees. To support their submission, they have relied upon several judgments of the Apex Court, this Court, as also other High Courts. In the case in hand, the posts in question are contractual in nature and as per the Scheme, are required to be filled up only on contractual basis. This part of the Scheme is not under challenge by the petitioners. That being so, posts, which are contractual in nature, would necessarily be filled up through contractual employees, of course, subject to the terms and conditions of the agreement of service or service contract. The judgments cited by the counsel for the petitioners pertain to posts, which are regular in nature, wherein directions have been issued not to replace employees appointed on contract basis by another set of contractual employees till regular appointments are made. In view of the facts of the case in hand, this situation could not arise herein.

In view of the above, the respondents, on the basis of letter dated 11.10.2013, cannot restrict the term of service of the petitioners to five years. Hence, the petitioners are held entitled to continue in service strictly as per the terms and conditions of the agreement of service duly entered into and agreed upon between the parties i.e. subject to good performance and existence of work.

All these writ petitions i.e. **C. W. P. No. 20113 of 2013**, **C.**

W. P. No. 23505 of 2013, C. W. P. No. 6315 of 2014, C. W. P. No. 8779 of 2014, C. W. P. No. 10084 of 2014, C. W. P. No. 10106 of 2014, C. W. P. No. 10802 of 2014, C. W. P. No. 15708 of 2014, C. W. P. No. 24006 of 2014 and C. W. P. No. 1955 of 2015 stand allowed in the above terms.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 30.06.2015

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