

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 24321 of 2014 (O&M)

Date of decision : December 8, 2015

Tirath Singh Kanwar

.....Petitioner

Versus

Union of India and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Gupta, Advocate and
Ms. Parminder Kaur, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate, Assistant Solicitor
General with Mr. Vivek Singal, Senior Panel Counsel
for the respondents-Union of India.

LISA GILL, J.

Petitioner, who was appointed on contract basis on the post of Officer-in-Charge, ECHS Polyclinic Ropar, seeks a direction to the respondents for not replacing him with another contractual employee. In fact, petitioner seeks renewal of his contract.

Facts of the case are that Ex-servicemen Contributory Health Scheme (ECHS) was framed by Government of India. Said scheme, which is a contributory scheme, is meant to provide medical aid and care to Ex-servicemen and their dependants through polyclinics and medical facilities across the country. Appointment of staff under the scheme is on contractual basis. Post of Officer-in-Charge, Polyclinic is reserved for Ex-serviceman.

Petitioner was engaged vide agreement dated 04.12.2012 on contractual basis as Officer-in-charge in respect of polyclinic at Ropar for a period of one year on consolidated salary of ₹46,000/- per month. He was re-appointed on contractual basis for the period 04.12.2013 to 03.12.2014 vide agreement dated 04.12.2013 (Annexure P-1).

Advertisement dated 31.07.2013 (Annexure P-3) was issued by the respondents seeking to engage staff for ECHS polyclinic on contractual basis i.e. Medical Specialist, Gynaecologist, Medical Officer etc. This writ petition has been preferred by the petitioner on an apprehension that though his extension has been recommended by the competent authority on 10.10.2014 but his contract has not been renewed till date, therefore, he apprehends that he would be replaced with another contractual employee. It is further argued that one set of contractual employees cannot be replaced by another set of contractual employees.

Present writ petition was directed to be heard alongwith **CWP No. 17836 of 2013** titled **Joginder Singh and others versus Union of India and others**, which admittedly stands dismissed by this Court on 30.06.2015. It has been specifically held in Joginder Singh's case (supra) that the posts in question are purely contractual in nature, therefore, they necessarily have to be filled up through employees to be appointed on contract. Petitioners therein had been put to adequate notice with regard to their poor performance but there was no palpable improvement, therefore, extension was not granted to them.

In the present case, respondents are on affidavit to state that number of complaints were received against the petitioner. Complaint, Annexure R-5 by Senior Lady Medical Officer was investigated by none other but the Station Commander, Chandimandir. Before any action could be taken, petitioner approached this Court and status quo was directed to be maintained on 28.11.2014. Though extension of petitioner's tenure was earlier recommended, fresh assessment was carried out due to complaints against him. Finding him unsatisfactory for extension in tenure, contract with petitioner was not renewed. Contention of learned counsel for the petitioner that his case was in fact recommended for extension and, therefore, different from the petitioners in Joginder Singh's case (*supra*) is clearly untenable, hence rejected.

This Court while being cognisant of the recommendation in petitioner's favour directed the respondents to file an affidavit as to why petitioner's contract was not renewed subsequent to the recommendation made by the Station Commander on 10.10.2014 and being accepted by the General Officer, Commanding on 29.11.2014.

Pursuant thereto, affidavit dated 16.09.2015 was filed explaining the entire sequence of events, which was found to be plausible as reflected in detailed order dated 16.09.2015 of this Court.

It is specifically mentioned in affidavit dated 16.09.2015 that complaint dated 15.11.2014 was submitted by Dr. Minu Sabharwal against the petitioner, attached as Annexure B.

Petitioner was summoned on 24.11.2014 by the then Station Commander keeping in view the gravity of allegations. He was made aware of the serious allegations levelled against him on 24.11.2014. Subsequent complaints dated 11.12.2014 and 12.12.2014 (Annexures C and D) addressed to the General Officer, Commanding-in-Chief, Western Command, Chandigarh were submitted. Col. R.K. Sharma, Additional Officer HQ 37 Inf. Bde. was asked to personally enquire. On his report, Station Commander, feeling the need to review the functioning of the polyclinic in view of earlier complaint against the petitioner, visited polyclinic, Ropar. In respect to grant of extension of tenure of the petitioner fresh assessment was made and ultimately put up before the GOC, Sub Area. Details of other complaints against the petitioner also find mention in the annexures attached with abovesaid affidavit. On re-assessment petitioner was found unsatisfactory for grant of extension in his tenure by all the officers in the chain i.e. Station Commander (Initiating Officer), Regional Director (ECHS) (First Technical Officer) and GOC Sub Area (Reviewing Officer). Thus, no vested right accrues to the petitioner in the peculiar facts of the case by the earlier recommendation for extension which had admittedly not culminated in a fresh contract between the petitioner and respondents.

There is no dispute that term of contractual employment of the petitioner has come to an end. There is no ground for directing the respondents to continue with his services once his performance is found to be unsatisfactory. It is specifically held by this Court in

Joginder Singh's case (supra) that once the posts in question are admittedly contractual in nature, they necessarily have to be filled up by employees on contractual basis. No right whatsoever vests with the petitioner for renewal of his appointment on contract in such a situation.

This Court on 18.08.2015 in LPA No. 1205 of 2015 titled as Ex. Hav. Jaspal Singh and others versus Union of India and others has upheld decision dated 30.06.2015 passed in Joginder Singh's case (supra).

Keeping in view the entire facts and circumstances of the case, no interference is called for by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

Writ petition is, accordingly, dismissed.

December 08, 2015
rts

(Lisa Gill)
Judge