

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 1205 of 2015 (O&M)

DATE OF DECISION : 18.08.02015

Ex. Hav. Jaspal Singh and others

.... APPELLANTS

Versus

Union of India and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

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

Mr. Vivek Singla, Advocate,
Senior Panel Counsel for Government of India,
for the caveators-Union of India.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 30.06.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 17836 of 2013) filed by the appellants challenging the advertisement dated 31.07.2013 (Annexure P-5) inviting applications to engage Medical Specialists/Medical Officers on contractual basis for a period of one year, renewable for additional period, and for restraining the respondents from making the said engagement, has been dismissed.

After hearing learned counsel for the appellants and going

through the impugned order, we do not find any substance in the instant appeal.

In this case, the respondents introduced the Ex-Servicemen Contributory Health Scheme with an aim to provide medicare to ex-servicemen and their dependents through a network of polyclinics. Under the said Scheme, appointment/engagement of the staff was to be made on contractual basis for one year to be extended for further period based upon their performance. Under the said Scheme, all the appellants were appointed on different dates on contractual basis. As per the contract agreement, entered into between the petitioners and the respondents, the relevant portion of which has been re-produced in the impugned order, engagement of the engaged staff was contractual in nature 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, and also 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.

In the present case, engagement of the appellants was renewed for a few years, but thereafter it was not renewed because of their poor performance during the relevant year. It is the case of the respondents that in spite of the repeated demands, the appellants did not improve their performance, therefore, they were not granted renewal in the period of their

service. After declining renewal to the appellants, the respondents issued the advertisement inviting applications to engage Medical Specialists/Medical Officers. The appellants challenged the said advertisement by filing the writ petition, but did not challenge the order of declining renewal of their contract of engagement. The learned Single Judge, after considering the stand taken by both the parties and hearing their respective counsel, dismissed the writ petition vide the impugned order, while holding that in terms of the engagement letter, engagement of the appellants were not renewed keeping in view their poor performance. In this regard, the learned Single Judge made the following observations :

“Per contra, learned counsel for the respondents submitted that the posts in question were contractual in nature and that renewal of the period of service could not be claimed by the petitioners as a matter of right. Even otherwise, renewal of the period of service was subject to good performance and so far as petitioners no. 2 to 4 were concerned, in spite of repeated warnings, they had not improved their performance, and therefore, were not granted renewal in their services. The series of letters, written to petitioners no. 2 to 4, asking them to improve their performance, have been appended with the written statement and were highlighted by learned counsel for the respondents at the time of hearing.

The terms of the Scheme, under which the petitioners have been appointed and the Agreement of service entered into between the parties bind them, especially when the same remains unchallenged by either side. Clause 2 of the

Agreement of service, as reproduced above, clearly stipulates that the services of all the appointees like the petitioners, initially appointed for a period of 12 months, could be renewed, subject to good performance and existence of work warranting such extension. The record of the case shows that the petitioners' work and conduct has not been up to the mark. The record further reveals that the petitioners were put to adequate notice with regard to their poor performance on several occasions, but to no avail. The streak of bad performance continued. Resultantly, the petitioners had not been granted renewal in the period of their service. This is as per the Scheme under which they had been appointed and the Agreement of service which binds them.”

Learned counsel for the appellants made two-fold submissions.

Firstly, that before declining to renew the period of service of the appellants, no notice was issued to them, therefore, the principle of natural justice has been violated. We do not find any substance in this submission. The present case is not a case of termination of services, but it is a case of non-grant of renewal of engagement on contractual basis. Undisputedly, several letters were written by the respondents to the appellants asking them to improve their performance. In spite of that, their performance did not improve. Keeping in view these facts, as per Clause 2 of the agreement governing the engagement of the appellants on contractual basis was not renewed. Therefore, it cannot be said that the appellants were not given an opportunity to explain the situation or the fact on the basis of which renewal

of their engagement on contractual basis was not granted.

Secondly, learned counsel for the appellants argued that renewal of engagement of the appellants on contractual basis was not granted at the instance of respondent No.5, against whom certain allegations of malafide have been levelled. The learned Single Judge has also examined this aspect of the matter and recorded the following finding in this regard :

“The allegations of mala fide raised by the petitioners against respondent no. 5 have been gone into by me and I find them to be absolutely vague. The petitioners allege that respondent no. 5 connived with respondent no. 4 resulting in non-renewal of services of the petitioners. This fact remains unsubstantiated. Further, the record reveals that even the services of respondent no. 4 were also not renewed by respondent no. 5 showing that there was no connivance between the two.”

Learned counsel for the appellants could not successfully assail the aforesaid finding. Thus, we do not find any ground to interfere in the impugned order passed by the learned Single Judge.

No merit. Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

August 18, 2015
ndj

**(MAHAVIR S. CHAUHAN)
JUDGE**