

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) Nos.6483/2014 & 4488/2014**
% **19th March, 2015**

1. **W.P.(C) No.6483/2014**

SHRI BHOOP SINGH & ORS. Petitioners

Through: Mr. R.K. Shukla, Advocate.

versus

CHAIRMAN-CUM-MANAGING DIRECTOR NORTH EASTERN
ELECTRIC POWER CORPORATION LTD. & ANR. Respondents

Through: Mr. V.K. Jindal, Senior Advocate
with Mr. Anant Parkash, Advocate for
respondent No.1.
Mr. Vivek Goyal, CGSC for
respondent No.2.

2. **W.P.(C) No.4488/2014**

SH. BHOOP SINGH & ORS. Petitioners

Through: Mr. R.K. Shukla, Advocate.

versus

CHAIRMAN CUM MANAGING DIRECTOR NORTH EASTERN
ELECTRIC POWER CORPORATION LTD. & ANR. Respondents

Through: Mr. V.K. Jindal, Senior Advocate
with Mr. Anant Parkash, Advocate for
respondent No.1.
Mr. Vivek Goyal, CGSC for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.6483/2014

1. By this writ petition filed under Article 226 of the Constitution of India, petitioners who were appointed as security guards by the respondent no.1/North Eastern Electric Power Corporation Ltd (NEEPCO Ltd.), seek the relief that they be taken back in service and that the orders of the respondent no.1 not to extend the contractual appointments of the petitioners are to be quashed as being illegal. It is the contention of the petitioners that respondent no.1 is bound to keep on extending the contract and services of the petitioners cannot be replaced by outsourcing the work of security to an outside agency.

2. Essentially reliance is placed by the petitioners upon the judgment of the Supreme Court in the case of *State of Haryana and Ors. etc. etc. Vs. Piara Singh and Ors. etc. etc. (1992) 4 SCC 118* which states that one contractual employee or one casual labourer cannot be replaced by another contractual employee or casual labourer. Reliance is also placed by

the petitioners upon a Division Bench judgment of this Court in the case of ***Narinder Singh Ahuja and Ors. Vs. The Secretary, Ministry of Health and Family Welfare and Ors.*** in W.P.(C) No.1741/2014 decided on 3.11.2014 to argue that contractual employees cannot be replaced by outsourcing the contractual jobs.

3. There is no dispute to the proposition of law that one set of contractual employees cannot be replaced by another set of contractual employees on similar terms, however, there is no law that if petitioners are only contractual employees, petitioners cannot be replaced by other employees whose terms of engagement are wholly different inasmuch as appointment of security guards by the respondent no.1 is not now on contractual basis but by employing a security agency to do the security work.

4.(i). The Supreme Court in the judgment in the case of ***Mohd. Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors. (2009) 6 SCC 611*** has held that employees appointed for a project have to be necessarily continued till the project continues although such employees are contractually appointed and such contractual employees cannot be

terminated from services merely on account of completion of the contractual period of employment although the project itself continues. In the present case admittedly it is not the factual position that the petitioners were employed in a project and the project is continuing, and only in which case petitioners would have claimed extension of contractual tenure till completion of the project.

(ii). In the case of *Narinder Singh Ahuja (supra)* which is relied upon by the petitioners, it is noted that the petitioners in that case were specifically appointed for a project for World Bank/GFATM assisted Revised Nation T.B. Control Programme (RNTCP) project. Such employees in that case had worked from the year 2002 onwards by their contracts being renewed every year, and, their contracts were sought to be terminated after the extended contractual period after many years on the ground of outsourcing the work, although the project was continuing and the funding of the project continued. In these facts, the Division Bench of this Court held that once the project continues and the petitioners had for many years got regular renewals for contractual terms because the project had continued, therefore, petitioners in that case could not have been terminated from services by being replaced by outsourced employees. In fact, the

Division Bench of this Court in para 13 of the judgment in the case of *Narinder Singh Ahuja (supra)* has referred to the policy of the project under which it is clearly specified that all the contractual staff appointed for one year at a time will have their contracts renewed year to year till the project existed unless of course the services of the employees were found to be not satisfactory.

(iii) In fact, even in the case of *Mohd. Abdul Kadir and Anr. (supra)* the Supreme Court has said that employees have to continue in the project although they are only contractually employed for terms, however, on ground of indiscipline etc such employee can always be removed even if the project continues.

5. As already stated, in the present case, the petitioners are not employed against a project. The petitioners were also appointed only for contractual terms from 1.4.2009 till extensions expired on 27.8.2014. Therefore, the present case is not a case where one set of contractual employees are being replaced by another set of contractual employees on identical terms, and, the present is also not a case where employees have been appointed for a project and their services are terminated although the

project and the funding of the project continues. Therefore, petitioners cannot claim continuation of their employment and cannot force the respondent no.1 to grant them contracts of employment and thus effectively stating that the respondent no.1 cannot change its method of security by giving security of its organization to a security agency.

6. Learned counsel for the petitioners argues that the services of the petitioners have not been terminated by one month's notice as was prescribed in the original term of engagement, however, this argument is without any substance for the reason that termination by one month's notice will apply during the period of contract and not when the contract comes to an end automatically on expiry of the term of the contract.

7. In view of the above, reliefs which are prayed for by the petitioners cannot be granted.

8. Dismissed.

W.P.(C) No.4488/2014

9. In this writ petition filed under Article 226 of the Constitution of India, a similar prayer which was sought with respect to petitioners'

continuation of services cannot be granted in view of the discussion given while dismissing W.P.(C) No.6483/2014. Petitioners have admittedly claimed that they are entitled to a higher salary than as paid to them as per their terms of engagement. Petitioners pray that higher salary be given inasmuch as the respondent no.2 being the Joint Director (Employment), Director General of Recruitment, Government of India, Ministry of Defence (*sic*: Directorate General of Resettlement, Government of India, Ministry of Defence) through whom petitioners' names were forwarded for employment to the respondent no.1, has issued guidelines for a particular package of monetary emoluments.

10. On a query put to the counsel for the petitioners, counsel for the petitioners could not point out as to how any terms which are fixed by the respondent no.2 are binding upon the respondent no.1 once the petitioners have taken engagement on specific terms with the respondent no.1 in terms of their appointment letters which gave a particular monetary package. It is not as if that the respondent no.2 is a statutory body, performing statutory duties of fixing pay scales under a statute such as the Minimum Wages Act, 1948 and it is not the case of the petitioners that the respondent no.1 is not paying to the petitioners minimum wages which are

payable under the Minimum Wages Act, 1948. Therefore since the petitioners can only enforce either a contract or law to claim a particular amount of monetary emoluments, and petitioners are already otherwise getting monetary emoluments as per the contracts and no law is pointed out which the respondent no.1 has violated as per which the petitioners were to be given a higher monetary package, the reliefs prayed with respect to higher monetary emoluments hence cannot be granted.

11. No other issue is pressed.

12. Dismissed.

MARCH 19, 2015
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VALMIKI J. MEHTA, J