

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.37868 OF 2014

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to declare that the proceedings issued by the third respondent bearing No.18246 /Ser.II/2011 dated 08.11.2012 is illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and to declare that the petitioner is continuing as teaching assistant in the second respondent as per proceedings of the third respondent dated 08.11.2012 by issuing a writ of Mandamus.

02. The petitioner is a Master Degree holder in Micro Biology, in pursuance of the notification issued for recruitment of Veterinary Teachers in the year 2007, he had applied for the said post. The petitioner was selected as Veterinary Teacher though sanctioned post was available by then, he was appointed on contract basis in the year 2007. The petitioner has been discharging his duties to the satisfaction of the superiors and no adverse remark was recorded against him.

03. When the Management of NTR College of Veterinary Science, Gannavaram, Krishna District, made an attempt to dis-engage the services of the petitioner in the year 2012, Sri Venkateswara Veterinary University issued proceedings No.18246/Ser.II/2011 dated 18.11.2012 directing the Associate Dean, NTR College of Veterinary Science, Gannavaram, Krishna District, to continue the petitioner as teaching faculty on hourly basis in Department of Veterinary Micro Biology to assist in conducting the UG practical classes on payment of Rs.500/- per hour, subject to a maximum of Rs.16,000/- per month. In pursuance of the proceedings, services of the petitioners were engaged up to April, 2013. Thereafter, without issuing any notice or intimation, his services were dis-engaged from May, 2013.

04. It is the contention of the petitioner that his juniors has been

continued as Teaching Assistants and that when he met the second respondent to make request and to continue him as Teaching Assistant in pursuance of the proceedings of Sri Venkateswara Veterinary University, Tirupati, he was orally informed that he take back the petitioner within short time as Teaching Assistant, but no action was taken till today, thereupon the petitioner made representations dated 25.08.2013, 22.12.2013, 15.06.2014, but no useful purpose was served.

05. Again the petitioner met the second respondent to take him into service as per the proceedings of the third respondent dated 08.11.2012, but no action was taken on the oral request of the petitioner, by the second respondent. Hence, dis-engaging the services of the petitioner is wholly arbitrary and violative of Articles 14, 16 and 21 of the Constitution and therefore prayed to pass appropriate order granting aforesaid relief.

06. The first respondent filed counter denying the material allegations, admitting the engagement of the petitioner initially on contract basis as Assistant Professor in Veterinary Faculty and later engaged his services on hourly basis at Rs.500/- per hour, subject to maximum at Rs.16,000/- per month, inter alia contending that the basic qualification for any post of Assistant Professor in Veterinary faculty is that one should be Veterinary Graduate, whereas the petitioner is a Science Graduate (Micro Biology). Hence he was not eligible to appoint as Assistant Professor in Veterinary faculty. The contention of the petitioner that he was selected in a tough competition is not true and that no junior to the petitioner is continued in the service on the part time/ contract basis in department of Micro Biology NTR College of Veterinary Science, Gannavaram, and the second respondent engaged the services of the petitioner on contract basis as teaching faculty on part time for a period of 175 days with the permission of Associate Dean, NTR CVSC., Gannavaram, or as and when the posts are filled up on regular basis the petitioner service is deemed to have been terminated automatically. Even if the petitioner worked for a few years on contract

basis, the same will not confer any right on the petitioner to seek regularization/ absorption. Therefore, the petitioner is not entitled to continue in service. It is further contended that there is no need/ workload or exigency to engage the petitioner even on contract/ part time basis, therefore the question of taking him back does not arise. The head of the department of Veterinary Micro Biology, NTR CVSc., Gannavaram, clearly stated in his letter No.20 dated 27.05.2013 that the petitioner's performance was lower than the required levels.

07. At the time of engaging services of the petitioner on contract basis, he has executed a bond stating that ***"the contract of the petitioner is purely temporary and does not confer any right whosoever for seeking regularization/ continuation/ seniority of his services in the office where he was engaged"***. Therefore, he has no legal right to claim relief for engaging his services. There is no arbitrariness or illegality in dis-engaging the services of the petitioner from April, 2013 onwards. Further, the sanctioned strength of the posts in the cadre of Associate Professor were filled, except one post of Professor. Therefore, question of engaging the services of the petitioner as on the date of issuing the proceedings under challenge does not arise and consequently prayed to dismiss the writ petition with costs.

08. During hearing, Sri Ravi Kondaveeti, learned counsel for the petitioner, mainly contended that when the petitioner worked for a long period as Assistant Professor in Micro Biology in the second respondent College, though, on contract basis his services cannot be dis-engaged without any notice or intimation, such act would amount to illegality or irrational. On account of termination of services of the petitioner, he is put to inconvenience and such action of the respondents is depriving the petitioner to eke-out his livelihood. Therefore, prayed to set aside the order passed by the second respondent and engage the services of the petitioner as Assistant Professor in Veterinary Micro Biology.

09. Per contra, Sri Y. Anil Kumar, learned Government Pleader for

Animal Husbandry representing the respondents, would contend that the petitioner's service was engaged purely on contract basis for a period of 175 days, it was being extended from time to time and later the second respondent disengaged the services of the petitioner as his services are no more required, but in pursuance of the proceedings dated 18.11.2012 engaged the services of the petitioner on hourly basis on payment of Rs.500/- per hour, subject to maximum of Rs.16,000/- per month and such engagement would not confer any right on the petitioner to claim any right to continue/ regularize/ absorption in the second Respondent college. Therefore, he is not entitled to claim any relief in the writ petition and prayed for dismissal.

10. Considering rival contentions, perusing the material available on record, the point that arise for consideration is,

“Whether the petitioner is entitled to claim continuation in services, declaring the proceeding No.18246/Ser.II/2011, dated 08.11.2012 as arbitrary and illegal?”

POINT:

11. Undisputedly the second respondent engaged the services of the petitioner as Assistant Professor in Veterinary Micro Biology in the year 2007 on contract basis and later, his services were dis-engaged in the year 2012, but the third respondent permitted the second respondent to engage the services of the petitioner on hourly basis on payment of Rs.500/- per hour subject to maximum Rs.16,000/- per month. Thus, undisputedly, the services of the petitioner were dis-engaged in the year 2012 itself by proceeding No. 18246/Ser.II/2011 dated 08.11.2012, but the present petition is filed on 08.12.2014 almost after lapse of two years having maintained silence for all these days and thus the petitioner is guilty of laches on this ground alone the petition is liable to be dismissed.

12. The petitioner admitted that his services were engaged on

contract basis and executed an agreement on a stamp paper worth Rs.100/-. Photostat copy of the contract/ bond dated 01.10.2011 is placed on record by the counsel for the respondents for perusal of this Court. A bare look at the contents of the said contract dated 01.10.2011, the service of the petitioners were engaged for 175 days commencing from 01.10.2011 ended on 23.03.2012. It is also specifically mentioned that the parties to the contract agreed to terminate the services of the petitioner on the last working day of the contract i.e. 23.03.2012 without any information or notice and it is purely temporary and not entitled to absorption/continuation/ seniority of the services of the petitioner in the second respondent. The second respondent also reserved its right to terminate or to dis-engage the services of the petitioner, if the second respondent is not satisfied with the performance of the petitioner and that the services of the petitioner shall be liable to be terminated at any time before expiry of 175 days, i.e. contract period, without any intimation, whenever a regular Assistant Professor was appointed. Thus the terms of the contract are clear that the services of the petitioner were engaged on contract basis subject to the terms contained in the contract. When the petitioner agreed for the terms contained in the contract, he is bound by the terms, therein and it is not a standard form of contract. Therefore, it is evident from the contract that the services of the petitioner were engaged only on contract basis for a period of 175 days and without conferring any right to claim absorption/ continuation/ regularization and liable for termination at any time even during contractual period. Apart from that the petitioner unequivocally agreed not to claim his regularization/ continuation/ absorption. Therefore, the petitioner having agreed not to claim absorption/ regularization/ continuation in services by the second respondent, approached this Court seeking the aforesaid relief. Curiously the services of the petitioner were disengaged in the year 2012 by impugned proceedings and later his services were engaged on hourly basis as admitted by the petitioner at Rs.500/- per hour subject to maximum payment of

Rs.16,000/- per month.

13. When the petitioner is entitled to claim continuation of his services in the second respondent college, why the petitioner kept quiet for all these years while rendering the services on hourly basis in the second respondent was not explained. Therefore, when the services of the petitioner were engaged on contract basis on payment of honorarium of Rs.16,000/- per month, dis-engaged the services of the petitioner long back, he is not entitled to claim relief in the writ petition.

14. Though the services of the petitioner were engaged by the second respondent, it is purely a contract governed by law of contracts and when the contract is for specific period, he is not entitled to claim for continuation of the contract beyond the period of the contract. Though there was *ad idem* regarding the tenure of appointment given to the petitioner and that while the initial contract was limited for 175 days and later entered into a fresh contract by way of renewal, such contract would not confer any right on the petitioner to claim continuation of service in the second respondent college. The parties having clearly understood that the appointment was a tenure appointment, extendable at the discretion of the second and third respondents, these extensions, it is noteworthy, were themselves subject to the terms and conditions stipulated in the appointment letter which, *inter-alia* provided that the contract could be terminated by either party without notice and it would automatically terminate on 23.03.2012 as per the contract, and whenever a regular Assistant Professor was appointed, the services of the petitioner shall automatically be terminated. Therefore, when the parties agreed for such terms, the petitioner is bound by the terms of the contract and not entitled to claim any relief.

15. A similar question came up before the Apex Court in **STATE OF ORISSA V. CHANDRA SEKHAR MISHRA**^[1] wherein the respondents had been appointed as a Homeopathic Medical Officer whose services were subsequently terminated by issue of a notice.

While rejecting the challenge to the termination order, the Court observed: “when the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee.”

16. In **SATISH CHANDRA ANAND V. UNION OF INDIA**^[2] the Apex Court held as follows:

“where the petitioner, an employee of the Directorate General of Resettlement and Employment, was removed from contractual employment after being served a notice of termination, the contract of service in that case was initially for a period of five years which was later extended. A five-Judge Bench hearing the matter, dismissed the petition, challenging the termination primarily on the ground that the petitioner could not prove a breach of a fundamental right since no right accrued to him as the whole matter rested in contract and termination of the contract did not amount to dismissal, or removal from service nor was it a reduction in rank. The Court found it to be an ordinary case of a contract being terminated by notice under one of its clauses. The Court observed:

10. There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or reject the offer which was made to him. Having accepted, he still had open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract, which has been denied to him, assuming there are any, and to pursue in the ordinary Courts of the land, such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim....

11.... The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance when analysed, not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But **of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound**

by them, even as the State is bound.

(emphasis supplied)

17. Similarly in **PARSHOTAM LAL DHINGRA V. UNION OF INDIA**^[3], following the principle laid down in **SATISH CHANDRA ANAND** case held that,

“26. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/ compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by the public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

18. In **GRIDCO Limited and Another v. Sri Sadananda Dolio and others**^[4] placing reliance on the judgment in **Shrilekha Vidyarthi and Others v. State of U.P. and Others**^[5], held as follows:

“17.....the question of reviewability of administrative action in the realm of contract was in that backdrop examined by this Court. The Court also examined whether the personality of the State Government undergoes a change after

the initial appointment of government counsels so as to render its action immune from judicial scrutiny. The answer was in the negative. The Court held that even after the initial appointment had been made and even when the matter is in the realm of contract, the State could not cast off its personality and exercise a power unfettered by the requirements of Article 14 or claim to be governed only by private law principles applicable to private individuals. The court observed:..... we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring Regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.”

19. Thus in view of the principles laid down in the above judgment, there is no enigma in the legal position that a contract employee is not entitled to claim to engage the services, in view of the specific clause contained in the contract and the said contract was entered with *consensus-ad-idem*, i.e. understanding the terms contained therein and such contract would have confer any fundamental right to continue in service and when there is no violation of fundamental right under Chapter III of Constitution of India. Thus, the court cannot interfere while exercising the power of judicial review under Article 226 of the Constitution of India with the administrative order sitting in the arm chair of administrator to come to any different conclusion.

20. On close examination of the terms of the contract and other material on record, it is evident that the services of the petitioner were

entered on contract basis and entered into a written contract to that effect, after expiry of contract period, the parties entered into another contract as a fresh engagement fixing commencement and termination of the period of contract and consideration to be paid to the petitioner incorporating the other usual terms.

21. Therefore, engagement of services of the petitioner is purely for a limited period since engagement of services of the petitioner is governed by the law of contract. As on today there is no contractual relationship between the petitioner and respondent in view of clause of termination of contract automatically, on the date of expiry of period of contract. In **Secretary, State of Karnataka and others v. Umadevi (3) and Others** ^[6] the Apex Court discussed about the scope of interference of the High Court under Article 226 of the Constitution of India, more particularly, dealing with the absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad-hoc employees appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment which is not permissible.

22. In para 43 of the said judgment, the Apex Court held as follows:

“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of the Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

23. In view of the principle laid down by the larger Bench in Umadevi's case, the petitioner is not entitled to claim continuation of his service.

24. One of the contentions of the counsel for the respondents is that the petitioner is not qualified to be appointed as Assistant Professor as he was only a Science Post Graduate in Micro Biology, but the required qualification for appointment as Assistant Professor in Department of Veterinary Epidemiology and Preventive Medicine is Veterinary science in Micro Biology. Since the petitioner did not

possess the required qualification, dis-engagement of his services either on contract basis or on hourly basis would not amount to violation of principles of natural justice and the same cannot be held to be arbitrary and illegal by interfering with the administrative orders of the second respondent.

25. Viewed from any angle, the petitioner is not entitled for engagement of his services for the following reasons:

- a) Delay and latches in challenging the impugned proceedings issued by the third respondent bearing No.18246/ Ser.II/2011 dated 08.11.2012.
- b) Engaging the services of the petitioner is purely governed by the law of contract, terminable in terms of contract.
- c) The contract did not confer any right to claim continuation of engaging the services of the petitioner.
- d) The petitioner is not qualified to work as Assistant Professor in Department of Veterinary Epidemiology and Preventive Medicine as he possessed only a Post graduate Science Degree in Micro Biology not in Veterinary Science in Micro Biology.

26. For all the above grounds, the writ petition is liable to be dismissed, since, I find no illegality in the administrative order under challenge.

27. Accordingly, the point is answered in favour of the respondents and against the petitioner.

28. In the result, the writ petition is dismissed but without costs in the circumstances.

29. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

.06.2016

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[\[1\]](#) (2002) 10 SCC 583

[\[2\]](#) AIR 1953 SC 250

[\[3\]](#) AIR 1958 SC 36

[\[4\]](#) AIR 2012 SC 729

[\[5\]](#) (1991) 1 SCC 212

[\[6\]](#) (2006) 4 SCC 1