

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 20117 of 2015 (O&M)

Date of decision :3.6.2016

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All India LIC SMEs Group/Association (Regd.)

.....Petitioner

vs.

Life Insurance Corporation of India and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Tejpal Singh Dhull Advocate and
Mr. R.K. Malik, Advocate for the petitioner.

Mr. Anupam Gupta, Senior Advocate with
Mr. Akshay Jain, Advocate for respondents-LIC

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1. *Whether Reporters of local papers may be allowed to see the judgment?*]
]yes
2. *To be referred to the Reporters or not?*]
3. *Whether the judgment should be reported in the Digest?*]

P.B. Bajanthri, J.

The instant writ petition presented by the Registered Association called All India LIC SMEs Group/Association (Registered) (hereinafter referred as “Association”).

2) The Association have prayed for writ of prohibition restraining respondents from terminating the services of the members of the petitioner-Association by taking recourse to unfair terms and conditions imposed in the engagement letter dated 12.4.2010

(Annexure P-5), particularly Clause 2 and 4, direction to the respondents to absorb/regularize the services of the members of the petitioner-Association as employees of the LIC and direction to the respondents to pay the members of the petitioner-Association minimum of regular pay scale from the date of engagement.

(3) Respondent-Life Insurance Corporation of India (hereinafter referred as “LIC”) in the Minutes of 537th Meeting of LIC held on 5.12.2008, the Board considered and authorized the Chairman to work out and administer the Scheme relating to recruitment in the cadre of Administrative Officer/Branch Manager (contractual appointments) with reference to competitors to LIC have resorted to manning insurance channels by poaching from other organizations or going for very aggressive recruitment drives at senior levels, the LIC have tried to place marketing officials in these channels through promotion and job rotation from internal resources with reference to experience of LIC they are not getting adequate number of officers who are able to manage the challenges offered by the other organizations. In the meeting there was a proposal to take about 100 people initially in the cadre of Branch Manager on contractual basis. The number may be increased subsequently based on the experience. The initial period of contract would be for 3 years etc. Pursuant to the authorization by the Board, LIC formulated a scheme called “LIC of India Senior Marketing Executives (On Contract Basis) Scheme, 2009 (hereinafter referred as “Scheme 2009”).

4) Scheme 2009 consists of definitions. Clause 2. b),

defines that Scheme means the LIC of India Senior Marketing Executives (On Contract Basis) Scheme, 2009. Clause 3 relates to Nature of Engagement. An extract of Clause 3. a) and b) are reproduced hereunder:-

“3. Nature of Engagement

a) Engagement shall be for the marketing assignment and it shall be purely on contractual basis for a period of 3 years.

b) Renewal of Contract

The contract may be further renewed for a period of three years subject to the satisfactory performance, suitability of the person during the contractual period and needs of the Corporation. In no case the contractual engagement shall be more than three terms.

Clause 4 relates to Termination of Contractual Period, an extract of which is reproduced herein:-

4. Termination of Contractual Period

The Contractual period can be terminated by either party by giving 30 days notice in writing or by payment of proportionate remuneration in lieu thereof without assigning any reasons whatsoever.”

5) In terms of Scheme 2009, respondents advertised posts of Senior Marketing Executives (hereinafter referred as “SMEs”).

Applications were invited from eligible Indian citizens with a flair for

marketing for engagement as SMEs on contract basis for a period of three years. On 3.1.2010 recruitment of SMEs (On Contract Basis) test was conducted.

6) Members of the Association are stated to have been selected and appointed for the post of SMEs. Individual appointment letters have been issued in the month of April 2010. One such letter dated 12.4.2010 of the petitioner's Association President (Mr. Pankaj Nayyar) is produced as Annexure P-5. Appointment is for a period of 3 years. After completion of 3 years of service among others President of the petitioner-Association, tenure was extended for 3 more years on 23.5.2013.

7) Before completion of the extended tenure members of SMEs formed an Association and it was registered. On 6.9.2015 office bearers of the Association authorized Mr. Pankaj Nayyar President of the Association to air the grievances of the members of the Association before the appropriate forum etc. Thus, the Association has presented this petition. The learned counsel for Association contended that Association petition is maintainable to seek their collective grievance like restraining the respondents to not to terminate their services, since in the appointment letter Clause 2 and 4 are violative of Article 14 of the Constitution. Such clauses are incorporated to each of the appointees. They have common grievance like regularization and grant of minimum scale of the post. Hence writ by Association is very much maintainable.

8) Learned counsel for the petitioner submitted that members of the Association apprehend that their extended tenure on

contract basis may not be extended, even though they are entitled for one more extension period of appointment as per Clause 3. b) of the Scheme 2009 vide Annexure P-2. Scheme 2009 provides for initial appointment for a period of 3 years and it is extendable 3 years for two terms i.e. total Scheme provides for appointment of SMEs for 9 years with certain riders like subject to satisfactory performance, suitability of the person during the contractual period and needs of the Corporation. In view of the aforesaid clause, members of the Association are entitled for continuing them as SMEs for another term. Hence, the proposal of the respondent to terminate services of the SMEs as and when they complete the 2nd tenure (6 years) would be in violation of 3. b) of the Scheme 2009 and it is in violation of Section 23 of the Contract Act and Article 14 of the Constitution of India.

9) Learned counsel for the petitioner further contended that Clause 2 and 4 in Annexure P-5 dated 12.4.2010 is illegal and arbitrary, so also contrary to the decision of the Apex Court rendered in **Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguli and another (1986) 3 SCC 156.**

10) The members of the Association are seeking regularization/absorption of their services in respondent-LIC as they have completed 6 years of service and their initial appointment is after due advertisement and selection procedure. Learned counsel for the petitioner also submitted that the respondents have exploited work from the members of the Association for 6 years. In view of the decision rendered by this Court in **Avtar Singh vs. State of Punjab**

and others 2011 (4) RSJ 522. They are entitled for minimum of the regular pay scale from the date of their initial appointment.

11) It was further contended that the petitioner-Association are entitled for minimum pay scale from the date of initial appointment for the reasons that the respondents have exploited the members of the Association and they are working for the last 6 years, in view of the Supreme Court decision in the case of **Mohd. Abdul Kadir and another vs. Director General of Police, Assam and others 2009 (6) SCC 611** (Paragraph 17).

12) During pendency of this petition, the respondents have taken a policy decision to terminate SMEs extended contractual period on 15.12.2015 vide Annexure P-13, which is an internal communication from the Executive Director (Personnel) to the Zonal Manager, LIC of India, to all the Zonal Officers. Therefore, the petitioners apprehend as and when member of Association completes his tenure, his/her services would be terminated. Such termination is arbitrary, illegal and contrary to Scheme 2009.

13) Per contra, the learned counsel for the respondents submitted that the writ petition by Association itself is not maintainable having regard to the prayer made in the writ petition. The petitioners are aggrieved by certain service conditions in respect of discharging the duties of the post of SMEs (Contract basis). Members of the Association, their service particulars would vary like date of appointment, date of extension of contract appointment and date of termination etc. therefore, writ by the Association is impermissible. That apart, mandatory requirement of co-petitioner to

the Association is not forthcoming in the writ petition. It was submitted that the petitioner-Association have no locus standi since some of the members filed writ petition in various High Courts, like Mr. K. Lakshmipathi (Sr. No. 20 of the list), Shiv Kumar Dewangan (Sr. No. 4), T. Shyam (Sr. No. 22) and S. Jai Ganesh Sankar (Sr. No.25), on the apprehension that their services would be terminated. Originally, there were 36 members of the petitioner-Association, but now all members other than those who are posted in Punjab and Haryana, have got deleted their names from the list of members of the petitioner-Association. At present there are only four members, namely, Mr. Harvinder Dhiman, Mr. Ashwani Kumar, Mr. Vishal Gupta and Mr. Pankaj Nayyar. All these four persons were appointed on different dates like 21.4.2010, 24.4.2010, 26.4.2010 and 20.4.2010. They have been relieved on 20.4.2016, 23.4.2016, 25.4.2016 and 19.4.2016, respectively as per the condition imposed in the order of renewal of appointment as SMEs on contract basis. Mr. Pankaj Nayyar and another filed CWP No.23201 of 2014. the same was disposed of on 24.2.2016 in view of the termination order dated 19.4.2016. Having regard to these facts and circumstances, the petitioner-Association have no locus standi to seek the relief sought in the present petition, which are related to service conditions of each individual. In support of this contention, learned counsel for the respondents relied on the decision of Supreme Court reported in i) **Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others (1998) 7 Supreme Court Cases 273** and ii) **Hari Bansh Lal vs. Sahodar Prasad Mahto and others 2010 (9) SCC 655**, contending

that in the aforesaid decisions of the Supreme Court, it is held that in service matters, there would not be public interest litigation except for quo warranto. Hence the present petition by an Association seeking writ of prohibition to not to terminate from service, regularization/absorption and to grant of minimum pay scale etc., is liable to be rejected.

14) On merits of the case, learned counsel for the respondents submitted that the petitioners have questioned Clause 2 and 4 of the engagement letter dated 12.4.2010 (Annexure P-5). LIC has taken policy decision, how these SMEs are to be recruited, under what circumstances SMEs are to be terminated under Scheme 2009, Clause 3. b), namely Renewal of Contract, the word used is “the contract may be further renewed for a period of three years subject to the satisfactory performance, suitability of the person during the contractual period and needs of the Corporation. In no case the contractual engagement shall be more than three terms”. For the purpose of renewal of contract, the word used is 'may be' and 'needs of corporation'. It is the discretion of the LIC and Clause 4 of the Scheme 2009-Termination of Contractual Period, stipulate that contractual period can be terminated by either party by giving 30 days notice in writing or by payment of proportionate remuneration in lieu thereof without assigning any reasons whatsoever. Even under the said Clause, the LIC reserves right to terminate without assigning the reasons. On 15.12.2015, LIC have taken policy decision, which reads as follows :-

“ CONFIDENTIAL ”

Ref:Per/MPPR/SME/2015-16/L1530 RM(PGIR)

Date 15.12.2015

The Zonal Manager,
LIC of India,
Zonal Office,
Mumbai / New Delhi/Chennai/Kolkata/Bhopal/
Hyderabad/Kanpur/Patna

Dear Sir,

Re: Contract of Senior Marketing
Executives.

The Senior Marketing Executives were engaged as per the Senior Marketing Executives (On contract basis) Scheme, 2009 in the year 2010 for the period of three years. As per the provision of the aforesaid Scheme, the contract was extended for further period of three years. The extended terms of the contract is coming to an end in March/April 2016.

As per the Senior Marketing Executives (On Contract Basis) Scheme 2009, the contractual period can be terminated by either party by giving 30 days notice in writing. The Competent Authority has decided not to extend the contract of Senior Marketing Executives further. Hence, you are requested to issue notice at the proper time for termination of contract so that the services of the Senior Marketing Executives are

terminated from the last date of their extended contractual period.

Kindly take necessary action at your end and inform us accordingly.

Yours faithfully,

Executive Director (Personnel)”

15) In view of the policy decision taken by the LIC, the petitioner-Association have no right whatsoever to seek writ of prohibition restraining the respondents to not to terminate the services of the members of the petitioner-Association/SMEs.

16) Learned counsel for the respondents further contended that the petitioner's members are not entitled for regularization/absorption and minimum pay scale of the post as they are working on contract basis under Scheme 2009, advertisement and the letter of appointment and renewal of appointment, it is crystal clear that they were appointed on contract basis. Contract employee is not entitled for regularization/absorption and minimum scale of pay as claimed by the members of the petitioner-Association. In so far as exploitation contention is concerned, members of petitioner-Association are well aware that their appointment is for a limited period. They have no right to seek sympathy alleging that they have been exploited for 6 years. Transparent mode of selection, appointment and termination is on record. Hence the aforesaid contentions are liable to be rejected.

17) Learned counsel for the respondents cited following decisions:-

1) Secretary, State of Karnataka and others vs.

Umadevi and others (2006) 4 SCC 1;

2) Gridco Limited and another vs. Sri

Sadananda Doloi and others 2011 (15) SCC

16;

3) Pankaj Nayyar and another vs. Life

Insurance Corporation of India and others in

CWP No.23201 of 2014, decided by this Court

on 22.4.2016 and

4) Bikram Singh Kohli vs. Life Insurance

Corporation of India and others, in CWP

No.6754 of 2016, decided by this Court on

29.4.2016.

In the aforesaid decisions principle laid down by the Courts that contract employee has no legal right to seek continuation, minimum pay scale, absorption and regularization. Learned counsel for respondent relied on **Umadevi's case (Supra)**, paragraphs 43, 45, 47 and 48 wherein it is held as under:

In paragraph 43 it is observed as follows:

“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.”

In paragraph 45 it is observed as follows :-

“It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that

employee.”

Extract of paragraph 47 reads as under:-

“the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.” Extract of paragraph 48 reads “There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.”

18) Supreme Court in Umadevi's case (Supra) interpreted Articles 16, 14, 309 and 38 & 39 (a) of Constitution of India, namely, public employment and absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment and issuance of directions for, and for stay of regular recruitment process for the posts concerned, are impermissible. In view of the principle laid down by the Supreme Court in Umadevi's cse (Supra) petitioner-Association are not entitled to regularization. That apart members of the Association who are before this Court as on today, they are not in service. In other words their services were terminated in the month of April 2016. Thus the petitioner-Association have not made out a case even on merits. Hence the petition is liable to be rejected.

19) Heard learned counsel for the parties.

20) The petitioner-Association has no locus standi to present

this writ petition seeking for the relief of writ of prohibition restraining the respondents to not to terminate service of the members of the Association, questioning Clause 2 and 4 of engagement letter dated 12.4.2010 (Annexure P-5), to regularize/absorption and seeking regular pay scale from the initial date of appointment on the ground that there is an element of exploitation in appointing the members of the petitioner-Association as SMEs and renewal of appointment for limited period. Relief sought by the members of the petitioner-Association is relating to each and individual grievance. For the reasons that each of the members were appointed on different dates and their extension of contractual period for further period of 3 years was on different date and even date of their termination are different. During pendency of this petition, services of the petitioners have been terminated on 19.4.2016, 20.4.2016, 23.4.2016 and 25.4.2016. The date of termination is with reference of the date of their appointment in the year 2010. Hence petition by Association is not maintainable. That apart, those SMEs whose services are terminated in the month of April 2016 have not assailed order of termination till date. Cause of action would be on different date for each of the member. Therefore, petitioner-Association have no locus standi to present this petition. Supreme Court in **Dr. Duryodhan Sahu's case (Supra)** and **Hari Bansh Lal's case (Supra)** held that in service matter there would not be public interest litigation. On this preliminary issue itself, the writ petition stands rejected.

21) Learned counsel for the petitioner-Association contended that the respondents cannot impose the conditions like Clause 2 and 4

of the engagement letter dated 12.4.2010 (Annexure P-5). Clause 2 and 4 read as under:-

“2. Your engagement shall initially be for a period of three years from your date of reporting for duties. Depending upon your performance and needs of the Corporation, your contract may be extended for a further period of three years. Further, if your performance is not satisfactory as per the performance criteria annexed herewith, your contractual engagement is liable to be terminated. However, in no case, the contractual engagement shall be for more than three terms of three years each or exceed 60 years of your age.

XXX XXX XXX

4. The contractual engagement can be terminated by either party by giving 30 clear days of notice in writing or by payment of proportionate remuneration in lieu thereof without assigning any reasons whatsoever.”

In support of this contention, learned counsel for the petitioner relied on **Central Inland Water Transport Corporation Ltd.'s case (Supra)**. Imposition of above clauses is based on the Scheme 2009 (Annexure P-2). In the absence of challenge to Scheme 2009, in particularly Clauses 2, 3 and 4, challenge to the clauses imposed in appointment letter dated 12.4.2010 (Annexure P-5), is impermissible.

The petitioner-Association have not made out a case as to how the

aforesaid clauses are offending Article 14 of the Constitution and Section 23 of the Indian Contract Act, 1872, when Scheme 2009 provides for imposing such conditions, members of the petitioner-Association have accepted conditions on 12.4.2010 and discharged the duties of the posts from 12.4.2010 till April 2016, they cannot now contend that clauses imposed in the appointment letter are illegal and arbitrary. Petitioner counsel relied on **Central Inland Water Transport Corporation Ltd.'s case (Supra)**. It is a case of permanent employee and decision is not applicable in the present case. Hence, there is no infirmity in imposing clause 2 and 4 in the appointment letter with reference to Scheme 2009. Petitioners have not questioned those Clauses which are in Scheme 2009, which is the foundation. Even Clause 2 and 4 are set aside same would remain in Scheme 2009.

22) Learned counsel for the petitioner contended that the members of the petitioner-Association are entitled for regularization/absorption and regular pay scale from the initial date of appointment. Question of regularization/absorption is concerned in number of decisions it is answered that contractual appointee has no right to seek for regularization. Recently, Division Bench of this Court in CWP No.16157 of 2015 titled as **Shilpa Jindal vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others** decided on 29.4.2016, held that contractual appointee is not entitled to regularization/absorption. Learned counsel for petitioner-Association cited decision in **Mohd. Abdul Kadir's case (Supra)** and **Avtar Singh's case (Supra)** that adhoc employee is entitled to

minimum pay scale. Question of equal pay for equal work would arise only as and when employee was appointed on adhoc basis against a sanctioned post and for longer period. In the present case, there is no cadre post called Senior Marketing Executives, so as to claim minimum pay scale of the post. The petitioner's contention that as per Annexure P-1 initially the respondents proposed to recruit in the cadre of Administrative Officer/Branch Manager (Contractual Appointments), with reference to Board decision. However, while framing Scheme, they have renamed the post of Administrative Officer/Branch Manager, as Senior Marketing Executives (On Contract Basis) Scheme 2009. Therefore, petitioners contention is that they are entitled to minimum scale of the post of Branch Manager. The petitioner's appointment on contract basis is for a limited period. They have accepted the appointment without protest. Therefore, they cannot contend that they are entitled for regular pay scale attached to the post of Administrative Officer/Branch Manager and they have been exploited etc. The post of SMEs is not part and parcel of regular recruitment regulation and in the absence of creation of post and scale of pay is fixed for SMEs. Question of granting minimum scale on par with Branch Manager would not arise. The Supreme Court in **Umadevi's case (Supra)** considered each and every aspect, like adhoc appointment, temporary employees, contractual employees, regularization and absorption, that all such employees who were appointed on adhoc basis either temporarily or contractual, have no right to seek for continuation and regularization/absorption.

This Court in the case of **Shilpa Jindal (Supra)** and **Bikram Singh**

Kohli (Supra), elaborately considered status of a contractual appointee with reference to the post of Lecturer College of Engineering and Technology, Chandigarh and post of Financial Service Executive in the respondent LIC. While considering the decision of the Supreme Court, namely, in **Umadevi's case (Supra)** and **Gridco Limited's case (Supra)** held that extension of contractual appointment would depend upon capability, efficiency and suitability, as adjudged by the employer. Contract appointee cannot claim as a matter of right.

24) In view of these facts and circumstances and the legal position, the writ petition stands dismissed.

25) No order as to costs.

June 3rd, 2016
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(P.B. Bajanthri)
Judge