

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 1992 of 2016 (O&M)

Date of Decision : 28.9.2016

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Dr. Harbhajneek Kaur

.....Petitioner

vs.

Union of India and others

.....Respondents

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

Present: Mr. Ramaneeek Vasudeva, Advocate
for the petitioner

Mr. Vivek Singla, Advocate
for the respondents – Union of India.

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P.B. Bajanthri, J.

In the instant writ petition, the petitioner has questioned the validity of the advertisement dated 10.12.2015 for the post of Dental Officer – 01, on contractual basis in ECHS Poly Clinics, Faridkot for the period of one year, renewable for five years, vide Annexure P-8

2) The respondents formulated a Scheme called – Ex-servicemen Contributory Health Scheme (hereinafter, for short 'ECHS'), on 22.9.2003. For the purpose of running ECHS Poly Clinics, Procedure for Contractual Health Scheme and Procedure for Contractual Employment of Staff was also formulated. Since the title

of the Scheme itself is ex-servicemen, thus Scheme provides for giving preference to ex-servicemen for all employment in the ECHS. In the present case, the matter relates to Dental Officer. As per the Scheme Medical Officers/Specialists/Dental Officers percentage of vacancies are reserved for 60% to ex-servicemen and 40% vacancies to open; i.e., other than ex-servicemen category. The employment of civilian staff on contract would be valid for a period of 11 months only and during that period efforts would be made to appoint a suitable ex-serviceman as per para 4 of the Scheme. Extract of para 4 of the Scheme reads as under :-

“4. When requisite percentage of ex-servicemen under the reservation quota are not available, specific certificate signed by GOC Area to that effect should be placed on record and thereafter the vacancies utilized by employing a suitable civilian. The GOC Area's sanction for employment of the civilian staff on contract will be valid for a period of eleven months only. During this period efforts will be made to appoint a suitable Ex-Serviceman.”

Under the terms and conditions of the contractual appointment, para 8 (d) stipulates duration of employment which reads as under :-

**“TERMS AND CONDITIONS FOR
CONTRACTUAL EMPLOYMENT”**

8. The detailed criteria are listed in Appendix A

and B. The general terms and conditions for employment of the Medical/Para medical/Non medical staff under the ECHS are listed below:-

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(d) **Duration of employment.** The employment of the staff will be entirely contractual in nature and will be normally for a period of two years at the maximum subject to review of their conduct and performance after eleven months.”

Para 14 relates to contract, wherein tenure of contract appointment has been stated that it is for 2 years and review of appointment after 11 months. Extract of para 14 reads as under :-

“CONTRACT

14. Contractual agreements in the prescribed format will be signed by the Station headquarters with the individual candidates and the contracting agency as the case may be :-

(a) Contract with individual employee. The contractual agreement between the contractual employees and the Station Headquarters will include the following :-

(i) Designation of Appointment.

(ii) Place of appointment.

(iii) Contractual nature of appointment for period of two years.

(iv) Review of appointment after 11 months.”

The Scheme also provides for procedure for disciplinary action. Para

15 to 17 reads as under :-

**“PROCEDURE FOR DISCIPLINARY
ACTION**

15. In case an ECHS contractual employee is involved in any act of professional misconduct, unethical practices, medical negligence or administrative negligence, disciplinary action be initiated against the employee and his contract may be terminated after giving a show cause notice without prejudice to any further action that may be deemed fit and initiated and considering the nature of the offence committed.

16. The Station Commander will initiate the action for termination of contract on recommendations of the concerned O I/C Polyclinic. A show cause notice will be given top the employee detailing the nature of offences an inquiry ordered by the Stn Cdr will go into details of the case including the replies to the show cause notice of the employee. The Station Commander may also take legal action under the existing laws of the land for any act listed in para 15 above.

17. The Appointing authority will be the authority for termination of contract.”

3) In this background the petitioner was appointed on contractual basis as a Dental Officer. Accordingly an agreement was executed. Clause 2 of the agreement provides for tenure of contract, appointment and renewal of contract. Clause 2 reads as under :-

“2. The agreement of the Engaged person for rendering his/her professional services shall be entirely contractual in nature and will be 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/indicated in Appendix A to government of India, Ministry of Defence Letter No. 24 (6)/03/US/ (WE)/D (Res) dated 22 Sep 2003 or as amended from time to time. The renewal of contract will be subject to continued good conduct and requirement for services performance of the Engaged person at the ECHS Polyclinic. A fresh contract will be executed for each renewal.”

In para 6 and 7, certain conditions have been imposed, which is abide by the contractee like the petitioner. Para 6 and 7 reads as under :-

“6. During his/her tenure of contractual agreement engagement with the ECHS

Polyclinic the Engaged person shall NOT have any association or dealing, direct or indirect, in any manner with any ECHS empanelled hospital/Nursing Homes, Diagnostic Centre and Supreme of goods or services of facilities etc.

7. During the period of contract, the Engaged Person shall not engage in any private (Medical) practice or professional consultation during working hours on working days.”

4) The petitioner's appointment made on 15.9.2004, was continued from time to time on yearly basis. The respondents issued employment notice on 10.12.2015 to fill up one Dental Officer in the ECHS Poly Clinics, Faridkot, for a period of 1 year, renewable for 5 years vide Annexure P-8. The petitioner participated in the process of selection and she was not selected. The petitioner is aggrieved by the advertisement dated 10.12.2015 - proposal to recruit Dental Officer – 01 post, in ECHS Poly Clinics, Faridkot, where the petitioner is working.

5) Learned counsel for the petitioner contended that she is already working as Dental Officer on contract basis at the ECHS Poly Clinic, Faridkot. Respondents cannot resort to fill up the post of Dental Officer for the reasons that the petitioner's contract appointment is to be renewed from time to time till she attained the age of superannuation and retired. In support of the said contention, learned counsel for the petitioner relied on Appendix 'A' to the

Scheme of contractual appointment dated 22.9.2003, wherein items No. 3 and 4 stipulates age of retirement of a Dental Officer as 63 for employment and 65 for contractual. It was further contended that as per the agreement Clause 2, vide Annexure P-1, dated 6.2.2015, gives right to the petitioner to continue to hold the post of Dental Officer on contractual basis till she attains age of superannuation. Clause 2 refers to Appendix 'A' to the ECHS Scheme for contractual employment.

6) Further, the learned counsel for the petitioner submitted that issuance of advertisement is contradictory to decision dated 30.6.2015 passed in CWP No. 20113 of 2013 vide Annexure P-10, so also decision of Himachal Pradesh High Court passed in CWP No. 4446 of 2014 dated 16.12.2015 titled as **Govind Ram and Others vs. Union of India and others.** Further he relied on Supreme Court decision reported as **Mohd. Abdul Kadir and another vs. Director General of Police, Assam and others 2009 (7) SLR 212**, wherein para 17 it has held as under :-

“17. When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on

medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.”

Therefore, impugned advertisement to fill up one post of Dental Officer in ECHS Poly Clinics, Faridkot, is impermissible.

7) On the other hand, learned counsel for the respondents submitted that contract appointee can seek renewal, provided his/her conduct is good while discharging duties of the post. In the present case, petitioner's conduct is not good for the reasons that respondents have received number of complaints which are produced vide Annexure R-1 (colly). Learned counsel for the respondents cited decision dated 30.6.2015 in CWP No. 17836 of 2013 titled as **Joginder Singh and others vs. Union of India and others** and also relied on Annexure R-7 decision dated 8.12.2015 in CWP No. 24321

of 2014 titled as *Tirath Singh Kanwar vs. Union of India and others*, wherein it is held that contract employee has no right to seek renewal of his/her contract appointment. In *Tirath Singh Kanwar's case (Supra)*, this Court has taken note of *Joginder Singh's case (Supra)*. The present case is squarely covered by *Tirath Singh Kanwar's case (Supra)*, as well as, *Joginder Singh's case (Supra)*. Therefore, the petitioner has not made out a case, so as to seek quashing of advertisement dated 10.12.2015.

8) Learned counsel for the respondents further submitted that the petitioner was appointed only on contract basis for a period of 2 years as per para 14 of the Scheme, relating to contract, which reads “(iii) Contractual nature of appointment for period of two years, (iv) Review of appointment after 11 months”.

9) Whereas in the agreement, in para 2 it is a condition that contractual appointment is initially for 12 months and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/indicated in Appendix 'A' of the Scheme. However, the agreement in particularly, Clause 2, is contradictory to the Scheme. Whereas the Scheme provides for contractual nature of appointment for period of 2 years and it would be reviewed after 11 months. Thus the petitioner whose status is contractual in nature, it would be ended every year as and when petitioner completes. The latest renewal is for the period from February 2015 to February 2016. Thus the petitioner has no right whatsoever to question the advertisement dated 10.12.2015. It was further submitted that

pursuant to the advertisement dated 10.12.2015, the petitioner is one of the candidate who had applied for the post. She could not succeed in the recruitment. She has questioned the validity of the advertisement having participated in the process of recruitment, she is estopped in questioning the process of recruitment to the post of Dental Officer dated 10.12.2015. Thus the petition is not maintainable and the same is liable to be dismissed.

10) Counsel for the respondents further submitted that petitioner relied on the decision of this Court in CWP No. 20113 of 2013 to contend that advertisement is in violation of said judgment. In the said judgment, subject matter was relating to issuance of letter, relating to tenure of the contract appointees, which was stated to be contradictory to the policy. Whereas in the present case, matter is relating to advertisement to the post of Dental Officer. Therefore, respondents have not violated any directions or order passed in CWP No. 20113 of 2013. It was further contended that decision passed in **Govind Ram's case (Supra)** is not applicable to the present case for the reasons that in that decision petitioners did not participate in the process of recruitment. Whereas in the present petition, petitioner having participated in the process of recruitment, she is estopped from challenging the advertisement. Thus factual aspects are entirely different and the same are not applicable to the present case.

11) Heard learned counsel for the parties.

12) The petitioner is a contract appointee. Perusal of the Scheme, it is evident that it was for a limited period, as is evident

from the fact that the petitioner's appointment as a Dental Officer on contract basis is being renewed on yearly basis. Perusal of para 4 of the Scheme, it is evident that GOC Area's sanction for employment of the civilian staff on contract will be valid for a period of eleven months only. During this period efforts will be made to appoint a suitable ex-serviceman. Whereas petitioner is not ex-serviceman and she is civilian staff. Therefore, the petitioner has no right to question the advertisement. It was noticed that petitioner is one of the candidate for the recruitment to the post of Dental Officer, pursuant to the advertisement dated 10.12.2015. Thus she is estopped in challenging the advertisement dated 10.12.2015, having failed to select herself in the process of recruitment to the post of Dental Officer. On this preliminary issue, the writ petition is liable to be rejected.

13) Learned counsel for the petitioner relied on Clause 2 of the agreement entered by her with the respondents pointing out that she is entitled to continue to hold the post of Dental Officer on contract basis till she attains the age of superannuation, with reference to Appendix 'A' to the Government letter dated 22.9.2003. Whereas, the Scheme provides contractual nature of appointment for a period of 2 years and review of appointment after 11 months. No doubt Appendix 'A' stipulates “Sr. No. 3 category Dental Officer for employment 63, for contractual 65”. Merely mentioning 63 for employment and 65 for contractual, does not give any right to the petitioner to hold the post of Dental Officer on contract basis till she

attains 65 years. She being a civil staff. If that be the intention of the Scheme, then question of renewal of contract appointment on yearly basis would not have been one of the condition for civil staff. In other words Scheme is for ex-servicemen and in the absence of ex-servicemen, civilians are accommodated. Therefore, the petitioner's contract appointment would be for a period of 1 year since her appointment on contract is over in the month of February 2016. The petitioner has no right to hold the post of Dental Officer beyond the prescribed period unless and until she gets right under any statutory provision. Even reading of the Scheme, it is provided that duration of employment is for a period of 2 years and it would be reviewed after assessing performance for 11 months. During eleven months period competent authority to make efforts to fill up the post by appointing ex-serviceman. It is not mandatory for the respondents to continue the petitioner till she attains age of superannuation, attain age of 65 years.

14) Learned counsel for the respondents pointed out that petitioner's conduct while discharging the duties of the post of Dental Officer is not up to the mark. He has pointed out from Annexure R-1 (colly) which is contrary to para 6 and 7 of the Scheme. The contention of the respondents that the petitioner's conduct is not good while discharging the post of Dental Officer, cannot be accepted for the reasons that the respondents have not complied para 15 to 17, of the Scheme, so as to apprise this Court that her conduct in discharging the duties of the post of Dental Officer, she cannot question the validity of the advertisement.

15) This Court in the case of *Shilpa Jindal vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others*, CWP No. 16157 of 2015 decided on 29.4.2016, held as follows:-

(18) The decision in *Tutu Das (Dutta)'s case (Supra)*, relied upon by the respondent's counsel is relevant to the present case, wherein Supreme Court has referred to number of judgments including *Umadevi's case (Supra)*, to hold that regularisation of daily wagers is not permissible. It is necessary to take note of paragraph 12 of the judgment, which reads as follows:-

“12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably the situation has completely changed in view of a large number of decisions rendered by this Court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that

behalf under a statute or the proviso appended to [Article 309](#) of the Constitution of India.”

In *Nanuram Yadav's case (Supra)* though matter relates to adhoc appointment and regularisation, the facts of the case are entirely different. Therefore, it is not a relevant to the present case. The decision in *Mamata Mohanty's case (Supra)* of the year 2011, is also not relevant, since the matter pertains to grant of UGC pay scales with reference to lack of qualification etc.

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(20) In *Umadevi's case (Supra)* it was held that adherence to the rule of equality in Public Employment is a basic feature of our Constitution. Court would certainly be disabled from passing an order upholding of Article 14 in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The Court further rejected the prayer that adhoc appointees working for long to be considered for regularisation as such a course only

encourages the State to flout its own rules of recruitment and would confer undue benefits on some at the cost of many waiting to compete.

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(33) The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered for appointment on permanent posts in

accordance with the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility criteria from being considered as Lecturer/Assistant Professor.”

16) The petitioner's contract appointment is for a limited purpose. If the respondents resort for fresh advertisement, as a contract appointee she cannot question for the reasons that her appointment on contract was only for a limited purpose. She has participated in the process of recruitment and she is estopped in challenging the same. It is to be noted that Dental Officer's post is a public post. If it is to be filled up, Articles 14 and 16 of the Constitution are required to be complied by the respondents.

Therefore, there is no infirmity in the advertisement. Thus the petitioner has not made out a case so as to interfere with the advertisement.

17) The petitioner relied on decision in CWP No. 20113 of 2013 by this Court, **Govind Ram's case (Supra)** and **Mohd. Abdul Kadir's case (Supra)**. Those decisions are distinguishable for the reasons that CWP No. 20113 of 2013, decided by this Court, relates to a communication/letter by which tenure of contract appointee was altered by means of a letter. So far as, **Govind Ram's case (Supra)**, is concerned, the same is not relevant to the present case, since in that case, petitioners have not participated in the process of recruitment and advertisement. Whereas in the present case, the petitioner, has participated in the process of recruitment. Therefore, on facts, it is distinguishable. Further decision of Apex Court passed in **Uma Devi's case (Supra)**, has not been discussed in **Govind Ram's case (Supra)**. Therefore, decision in **Govind Ram's case (Supra)** is distinguishable.

18) Reliance on **Joginder Singh's case (Supra)** and **Tirath Singh Kanwar's case (Supra)** by the respondents, are also distinguishable for the reasons that conduct of the petitioner therein has been taken note of and refused to grant relief to them. Whereas in the present case, conduct of the petitioner has not been taken note of for the purpose of advertising the post of Dental Officer in ECHS Poly Clinics, Faridkot. Moreover, the respondents have not complied para 6, 7, 15 to 17 of the Scheme, so as to hold that petitioner's

conduct, while discharging the duties of post of Dental Officer, is not up to the mark and further petitioner has not been terminated from service as on the date of advertisement. Therefore, contention of the respondents in respect of conduct of the petitioner is not tenable. However, conduct of the petitioner would not be a hurdle to the respondents to take further action in the matter in accordance with para 6, 7, 15 to 17 of the Scheme.

19) In view of the above facts and circumstances, the petitioner has not made out a case, so as to interfere with the advertisement dated 10.12.2015 vide Annexure P-8.

20) The petition stands dismissed.

September 28th, 2016
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(P.B. Bajanthri)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No