

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4588-CWP of 2016 in/and
CWP-5235-2016
Date of decision: April 27, 2016

PAWAN KUMAR

....Petitioner

VERSUS

SAINIK SCHOOL KUNJPURA & ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. B.S. Bedi, Advocate
for the applicant/respondents.

Mr. Govind Chauhan, Advocate
for the non-applicant/petitioner.

P.B. BAJANTHRI, J.(ORAL)

In the instant petition, the petitioner has questioned the validity of the communication dated 29.02.2016 by which it was made known to him that his service would be terminated from 31.03.2016.

1. The petitioner was appointed as Assistant Master (Hindi) on contractual/temporary basis w.e.f. 01.11.2014, vide letter No.SSK/1401/Estt, dated 22.10.2014 for a limited period. Thereafter, from time to time after a gap of service of one or two months he was re-appointed on contract basis. The last order was issued w.e.f. 15.01.2016 till 31.03.2016. The respondents issued advertisement for regular recruitment to the post of Assistant Master (Hindi) in the month of July, 2015. For some reasons the recruitment was not completed. Once again in the month of December, 2015, the post of Assistant Master (Hindi) was advertised in which the petitioner also participated by attending interview on 19.02.2016. Before completion of the regular recruitment notified on December, 2015, the respondents issued one more advertisement for

appointing Assistant Master (Hindi) on contractual basis on 09.03.2016 and the same was withdrawn on 01.04.2016.

2. Learned counsel for the respondents submitted that on 02.04.2016 as per the regular recruitment, advertised in the month of December, 2015 one Sh. Abhinav Pandey was selected and appointed.

3. Learned counsel for the petitioner submitted that in order to deny extension of contractual appointment, the respondents have resorted to contractual appointment as well as regular recruitment from July, 2015 to 9th March, 2016. The petitioner was made known that his initial appointment is only for a particular period and it was *ad hoc* and contractual, therefore, he has no right to question the communication dated 29.02.2016. In judgment rendered in State of Karnataka and others vs. Umadevi and others, 2006(4) SCC 1, the Hon'ble Supreme Court has held as under (Para 43 & 45):-

43. 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.

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and

in some cases for a considerable length of time. 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 open eyes. It may be true that he is not in a position to bargain - not at arm's 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. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that

since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in [Article 14](#) of the Constitution.

4. In yet another decision of the Supreme Court, which is reported in **Gridco Limited and another vs. Sadananda Doloi and others (2011) 15 Supreme Court Cases 16**, it has been held as follows:-

“24. It was contended that the decision to terminate the contractual employment was not a fair and reasonable decision having regard to the fact that the respondent had performed well during his tenure and the requirement of the Corporation to have a Chief General Manager (HR) continued to subsist. In substance, the contention urged on behalf of the respondent was that this Court should reappraise and review the material touching the question of performance of the respondent as Chief General Manager (HR) as also the question whether the Corporation's need for a General Manager (HR) had continued to subsist. We regret our inability to do so.

25. It is true that judicial review of matters that fall in the realm of contracts is also available before the superior courts, but the scope of any such review is not all pervasive. It does not extend to the Court substituting its own view for that taken by the decision-making authority. Judicial review and resultant interference is permissible where the action of the authority is mala fide, arbitrary, irrational, disproportionate or unreasonable but impermissible if the petitioner's challenge is based only on the ground that the view taken by the authority may be less reasonable than what is a possible alternative. The legal position is settled that judicial review is not so much concerned with the correctness of the ultimate decision as it is with the

decision-making process unless of course the decision itself is so perverse or irrational or in such outrageous defiance of logic that the person taking the decision can be said to have taken leave of his senses.

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28. Recognizing the difference between public and private law activities of the State, this Court reasoned that unlike private individuals, the State while exercising its powers and discharging its functions, acts for public good and in public interest. Consequently every State action has an impact on the public interest which would in turn bring in the minimal requirements of public law obligations in the discharge of such functions. The Court declared that to the extent, the challenge to State action is made on the ground of being arbitrary, unfair and unreasonable hence offensive to [Article 14](#) of the Constitution, judicial review is permissible. The fact that the dispute fell within the domain of contractual obligations did not, declared this Court, relieve the State of its obligation to comply with the basic requirements of [Article 14](#).

29. The court said : (Shrilekha Vidyarthi case, SCC pp 236-37, para 22)

"22.....This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of [Article 14](#) by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply

with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions."

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40. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

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42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise."

14) Extension of contract appointment would depend upon capability, efficiently and suitability as adjudged by the employer. Appointee cannot claim as a matter of right. In view of the facts and circumstances, as well as legal position, the petitioner has not make out a case, so as to interfere with the impugned communication dated 29.02.2016.

5. The petitioner has questioned the advertisement dated 09.03.2016 (Annexure P-14). Insofar as challenge to Annexure P-14 is concerned, learned counsel for the respondents submitted that it has been withdrawn on 01.04.2016, therefore, question of appointing him as

Assistant Master (Hindi) on contract basis, do not arise, for the reasons that regular recruitment has taken place to the post of Assistant Master (Hindi) pursuant to the regular recruitment notified in the month of December, 2015, while appointing Sh. Abhinav Pandey on 02.04.2016. Even the petitioner was a candidate for the recruitment and he was unsuccessful.

6. The petitioner has not made out a case so as to interfere with order dated 29.02.2016 (Annexure P-13).

Accordingly, petition is dismissed.

27.04.2016
m.sharma

**(P.B. BAJANTHRI)
JUDGE**