

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 6754 of 2016 (O&M)

Date of decision : 29.4.2016

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Bikram Singh Kohli

.....Petitioner

vs.

Life Insurance Corporation of India and others

.....Respondents

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

Present: Mr. Rajesh Arora, Advocate for the petitioner.

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

P.B. Bajanthri, J.

In this petition, the petitioner has questioned the order dated 29.3.2016 (Annexure P-9), vide which it is communicated that contractual engagement as Financial Service Executive (for short “FSE”) will be liable for termination after the completion of the 8th year i.e. on 30.4.2016.

2) The Ist respondent, Life Insurance Corporation of India introduced a Scheme called LIC of India (Financial Services Executives) Scheme, 2007. Under the said Scheme LIC engaged eligible candidates purely on contractual basis initially for a period of 3 years. Relevant paragraphs of the said Scheme are paragraph Nos.

3, 6, 23 and 26, which are reproduced herein:-

“ 3. Nature of Engagement:

The engagement shall be purely on Contractual Basis initially for a period of three years. The terms and conditions of engagement will be governed by LIC of India (financial Services Executives) Scheme, 2007.

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6. Mode of Selection

- 1) Selection of Financial Services Executives shall be made by the Zonal Manager by inviting applications through notifications in at least two newspapers having circulation in the area in which the Divisional Officers are situated. Zonal Managers may also circulate the notification to the Employment Exchange of the concerned Divisions.
- 2) The eligible candidates shall appear for a written test, if required and on being declared successful in the same, for an interview by a committee constituted for the purpose by the Zonal Manager and consisting of one officer not below the rank of Asst. Divisional Manager and two officers not below the rank of Administrative Officer. The Zonal Manager shall decide whether to hold the written test or

not. If no written test is required, then, short listed candidates shall be called for interview. The Zonal Manager shall have absolute discretion in the matter of prescription of minimum marks for a candidate to be declared successful in the written test and to stipulate the number of candidates to be called for the interview. The candidates shall be ranked in the order of the aggregate of their marks in the written test and the interview and selection shall be made from among them by the Zonal Manager in the order of their merit having regard to the number of Financial Services Executives (FSE) proposed to be engaged. Where the Zonal Manager does not accept the evaluation of a candidate by the Interview Committee, he shall record the reasons for such disagreement and after, interviewing the candidate himself, pass such orders as he deems fit.

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23. Termination of Contract

In case a Financial Services Executive does not procure the stipulated minimum New Business in two successive quarters, then his/her contract

shall be terminated forthwith without giving any notice to him/her. The Contract shall also be liable for being terminated, if the Financial Services Executive commits breach of any Statutory Provisions or is found to be indulging in activities detrimental to the interests of the Corporation provided however that, before termination of contract for reasons other than for minimum business parameters as stipulated elsewhere in the scheme, a Show Cause Notice shall be issued to the FSE. The engagement of FSE shall remain suspended during the period of issuance of Show Cause Notice and final decision on the reply thereof. The Sr./Divisional Manager-in-charge of the Division shall be the Competent Authority for termination of contract on any of the grounds mentioned herein.

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26. Renewal of Contract

The contract can be extended for another term of one year and again for another year subject to performance and suitability. The minimum requirement of performance shall be that the Financial Services Executives should have received New Business Incentive for at least 1

Year out of 3 years. Once a Financial Services Executive procures the minimum New Business during the three year contact period as per stipulated norms and is other wise found suitable, the period of Contract may be renewed with some increase in incentive and remuneration, which Chairman is authorized to decide.”

(3) Pursuant to the above Scheme, an advertisement was issued in the year 2007 (Annexure P-1). The petitioner is one of the candidate for the post of Financial Service Executive (contract basis for 3 years). He was selected and appointed as FSE in the year 2008 for a period of three years. It is stated that his contract appointment as FSE was extended from time to time. The latest extension of contract appointment is dated 19.5.2015 (Annexure P-8). Terms of extension reads as follows :-

“1. Terms of Extension : Contractual period extension for 1 (one) year (for 8th year) as a Financial Services Executive at the sole discretion of the Corporation.”

4) In the extension of contractual period to 8th year as FSE, it was made clear that “the contract will automatically cease on 30.4.2016 without any further notice”. The respondents informed the petitioner on 29.3.2016 that the 8th year of the petitioner's contractual engagement tenure as per the FSE Scheme will automatically come to an end on 30.4.2016 (Annexure P-9). The petitioner feeling aggrieved by the communication dated 29.3.2016 (Annexure P-9)

presented this petition.

5) Learned counsel for the petitioner vehemently contended that the petitioner's services were extended from time to time from 2011 as and when the contractual period ceased. Therefore, communication dated 29.3.2016 is arbitrary and illegal. It was contended that the Scheme is still existing for appointment of FSE, therefore denial of continuation of the petitioner's services as FSE is not fair.

6) Learned counsel for the petitioner relied on two interim orders, one granted by Madras High Court dated 28.1.2016 (Annexure P-10) and the other by Bombay High Court dated 29.2.2016 (Annexure P-11), as well as interim order dated 4.4.2016 passed by this Court in CWP No. 5917 of 2016 titled as Daljeet Singh vs. Life Insurance Corporation of India and others. That apart, the decision of the Apex Court dated 19.8.2015 passed in Special Leave to Appeal (C) No.(s). 23809-23810/2010 in case titled as **Radha Dubey vs. Govt. of NCT of Delhi and others**, was cited in support of the prayer in the petition.

(7) Heard learned counsel for the petitioner.

(8) The interim orders granted by two High Courts and this High Court are not final and it is a discretionary power that has been exercised in granting interim relief. In so far as decision of the Supreme Court is concerned, Radha Dubey - petitioner before the Supreme Court was appointed in the year 1996 as a Medical Officer on contract basis and her services were terminated on 23.11.2007. It

seems that petitioner therein was continued on the basis of interim order of Court. When the matter was taken up for disposal on 19.8.2015, Government of Delhi issued Rules, called Delhi Health Services (Allopathy) Rules, 2009. One of the contention of the respondent in that petition, was that petitioner Radha Dubey's name has been considered and declared that she was suitable for appointment, under the above cited rules. Consequently, it was disposed of reserving liberty to the petitioner to make representation for any claim and the same will be disposed of by passing a speaking order. Keeping in view these facts and circumstances, the said judgment is not at all relevant to the present case.

9) The petitioner was made known that his initial appointment, as well as renewal of his appointment was contractual, consequently he has no legal vested right to seek continuation of contract appointment. Cause of action accrued to the petitioner on 19.5.2015, the date on which one more year was extended i.e. upto 30.4.2016. Reading of Annexure P-8 is also crystal clear that petitioner's contractual appointment would be over on 30.4.2016. Therefore, the petitioner has no legal right so as to question the validity of communication dated 29.3.2016 (Annexure P-9), by which the respondents have communicated that his contractual appointment as a FSE would be over on 30.4.2016.

10) The petitioner contended that no notice was issued and there is violation of para 23 of the FSE Scheme 1987. Appointment order itself states that **“contract will automatically cease on**

30.4.2016 without any further notice”. In so far as violation of para 23 of the Scheme is concerned, it is not applicable to the facts of the present case. Para 23 is attracted in a situation where an FSE's service is to be terminated before expiry of contract appointment.

11) In the following decisions of the Supreme court, it has been held that contract appointee has no right and appointment was for a particular period and as and when the period is over, relationship between the employer and employee ceases. Scope of judicial review is observed.

12) The Hon'ble Supreme Court in *Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1*, in paragraphs 43 and 45, has held as follows:-

“ 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. High Courts acting under [Article 226](#) of the

Constitution of India, 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 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.

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45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person 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 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. 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 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.”

- 13) Similarly, 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 29.3.2016.

15) The petition stands dismissed.

16) No order as to costs.

April 29, 2016
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(P.B. Bajanthri)
Judge