

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

1. LPA No.1691 of 2015 (O&M)

Union of India & Ors.	...Appellants
VERSUS	
Paramjit Kaur	Respondent

2. LPA No.1692 of 2015 (O&M)

Union of India & Ors.	...Appellants
VERSUS	
Sushma Devi & Anr.	Respondents

3. LPA No.1693 of 2015 (O&M)

Union of India & Ors.	...Appellants
VERSUS	
Ranjit Kaur	Respondent

4. LPA No.1694 of 2015 (O&M)

Union of India & Ors.	...Appellants
VERSUS	
Gurjit Singh & Ors.	Respondents

5. LPA No.1695 of 2015 (O&M)

Union of India & Ors.	...Appellants
VERSUS	
Satish Kumar & Anr.	Respondents

6. LPA No.1696 of 2015 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Onkar Singh

....Respondent

7. LPA No.1706 of 2015 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Kiran Bala

....Respondent

8. LPA No.1709 of 2015 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Dr. Shalini Mehta

....Respondent

9. LPA No.1718 of 2015 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Dr. Sukhpreet Singh

....Respondent

10. LPA No.1730 of 2015 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Hans Raj

....Respondent

11. LPA No.179 of 2016 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Gurdeep Kaur

....Respondent

12. LPA No.200 of 2016 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Gurtej Kaur

....Respondent

13. LPA No.229 of 2016 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Dr. Randeep Kamal

....Respondent

14. LPA No.326 of 2016 (O&M)

Union of India & Ors.

...Appellants

VERSUS

Ex. Naik Chiman Singh

....Respondent

Date of Decision: 19.12.2016

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Varun Issar Advocate (in LPA-1709 & 1730-2015).

Mr. Puneet Gupta, Advocate (in LPA Nos.1691,1692 &
1693-2015)

Mr. Udit Garg, Advocate (in LPA-1706 & 1718-2015).

Mr. Nimanpreet Sidhu, Advocate (in LPA-179-2016)

Mr. Deepak Malhotra, Advocate (in LPA-200 & 326-2016).

Mr. Dheeraj Jain, Advocate (in LPA-1694, 1695 & 1696-2015)

Mr. Vivek Singla, Advocate (in LPA-229-2016)
for the appellant-UI.

Mr. Pradeep Sharma, Advocate for
Mr. Ramaneeek Vasu, Advocate;
Mr. J.S.Jaidka, Advocate for the respondent(s).

SUDIP AHLUWALIA, J.

These Letters Patent Appeals have been filed by the appellants including appellant No.1, being Union of India through its Secretary, Ministry of Defence and its other concerned officers. The appeals are directed against the common judgment passed by the Ld. Single Judge on 30.6.2015 in the relevant CWP No.20113 of 2013 and other connected matters. For the sake of convenience, the facts of LPA No.1691 of 2015 are being referred to in this judgment, which shall cover all the other clubbed appeals.

2. In 2003, the Ministry of Defence, Government of India introduced the Ex-Servicemen Contributory Health Scheme. The same was meant to provide medicare to Ex-servicemen and their dependents through a Network of Polyclinics and medical service facilities spread across the country. It was a contributory Scheme in which the medical benefits were sought to be extended on payment of contribution. The appointment of the staff under the Scheme was to be on a contractual basis. The age limit for Medical Officers/Specialists, Dental Officers and Officers In charge of Polyclinics for such contractual appointments was 65 years, while it was 55 years for various other categories of 'Assistants', such as Nursing Assistants, Laboratory Assistants, Dental Assistants/Hygienists etc. All the

respondents, who were the Writ Petitioners, had been appointed on different dates on contractual basis, but an identical Format of Agreement of Service in each case was duly entered into between the relevant parties. In relation to the agreement of the respondent in LPA No.1691 of 2015, the relevant extracts are reproduced as below -

“1. The ECHS hires the professional service of Smt. Paramjit Kaur the Engaged Person, as the FEMALE ATTENDANT (designation or nature of work) for its Polyclinic at Hoshiarpur (Pb.) and Smt. Paramjit Kaur has agreed to provide his/her professional services in that capacity at the above mentioned Polyclinic for a period of 12 months from the date he/she join duties.

2. The engagement 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/ indicate in Appendix A to Government of India, Ministry of Defence letter No. 24(6)/03/US(WE)D(Res) dated 22nd September 2003 or as amended from time to time. The renewal of contract will be subject to continued good conduct and performance of the Engager Person during the proceeding 12 months and existence of the requirement for services of the Engager person at the ECHS Polyclinic. A fresh contract will be executed for each renewal.”

Xxxx Xxxxx Xxxxx Xxxxx

11. The ECHS shall have the right to terminate this agreement by giving one month's notice to the Engaged person or one month's consideration as compensation in lieu thereof without prejudice to the generality of the right of termination may be on any of the following grounds for which an opportunity to show cause will be afforded to him:-

- (a) Professional incompetence or misconduct or an act of moral turpitude.*
- (b) Unsatisfactory performance of duty.*
- (c) Arrest or conviction by a court of law for any offence.*
- (d) Any act prejudicial to security or interest of the Organization (ECHS).*
- (e) Absence of leave beyond 60 days.*

- (f) Prolonged or habitual absence from duty without prior permission of the competent authority including prolonged absence due to medical illness.*
- (g) Inadequate work load.*
- (h) Breach/violation of any provision of this agreement by the Engaged Persons.*
- (i) Any other ground warranting his removal from the contractual arrangement.*

12. The Engaged person will also have the right to terminate this agreement before the expiry of tenure of contractual appointment by giving one month's notice or by foregoing one month's contractual amount as consideration for engagement of services.”

3. The Ld. Single Judge has noted in the impugned judgment that according to the above terms & conditions governing the services of the respondents/Writ Petitioners, clearly all appointments were initially to be for a period of 12 months and as per clause 2, the services were to be renewed for a further period of 12 months at a time upto attainment of the maximum age as prescribed in Appendix A of the Scheme dated 22.9.2003. Also according to Clause 2, the renewal in service was subject only to two riders i.e. good performance and existence of workload, which justified retention of services of the appointed persons. The respondents/Writ Petitioners had all put in more than five years of contractual service, but their services were decided not to be renewed further. Instead the authorities (present appellants) got issued Advertisement(s) inviting applications for appointment on contractual basis to the posts being held by them.

4. The Writ Petitions were opposed on behalf of the appellants by firstly justifying their decision to not extend/renew the services of petitioners beyond a period of five years on account of the instructions conveyed to them by the Central Organization ECHS, at the Army Headquarters through its letter No.B-49760/AG/ECHS (WC) dated

11.10.2013, which is reproduced below -

*“Central Organisation ECHS
Army Headquarters
Adjutant General's Branch
Maude Lines
Delhi Cantt – 110010
11 Oct, 2013*

*B/49760/AG/ECHS (WC)
Headquarters Western Command
Adjutant General's Branch (ECHS)
Pin – 908 543
c/o 56 APO*

TENURE OF CONTRACTUAL STAFF AT ECHS POLYCLINICS

1. *Ref your letter No. 46153/3/ECHS dt 15 July 2013.*
2. *In this regard, the following clarification to be ensured:-*
 - (a) *Employee who has completed five years of contractual employment should not be considered for the same polyclinic again.*
 - (b) *The ESM should be considered in the reserve category quota of 60%, however, the board of Offrs should be convinced of the efficiency of the ESM in case his selection is made.*

*(DS Khangarot)
Lt. Col.
Offg. Jt. Dir (Pers)
for MD ECHS*

Copy to:

*HQ PH & HP (I) Sub Area
Pin – 900 241
c/o 56 APO”*

5. But the Ld. Single Judge rightly observed that the internal instructions conveyed to the employer could have no bearing on the contractual employees in whose case there was an explicit agreement for renewal of contracts annually subject of course to certain specified contingencies till they would attain the maximum permissible age limit. So the internal communication from the Central Organization ECHS could by no means affect the rights of the contractual employees flowing out of the specific agreement to which they were parties. Undisputedly, the agreement had not been altered or amended at any time before taking the decision to

not renew their services at the end of each span of 12 months. At any rate, it transpires that the aforesaid letter dated 11.10.2013 had itself been subsequently withdrawn by the Central Organization ECHS, by its subsequent letter dated 18.9.2014, which incidentally was issued during the pendency of some of the Writ Petitions. To that extent, therefore, the decision for not re-engaging the contractual employees/Writ Petitions, who had already put in five years of service or more, held no force whatsoever, even assuming that it might have carried any sanctity at any earlier stage.

6. The Ld. Single Judge was also right in distinguishing the ratio of cases cited on behalf of the appellants, which have also been cited before us. These happen to be “**State of Uttar Pradesh and others Vs. Rakesh Kumar Keshari and another** (2011) 5 SCC 341 and a Full Bench decision of this Court in “**S.K.Verma and others Vs. State of Punjab and others**” 1979 (2) SLR 164. In addition, another decision of this Court in “**Anil Kumar & ors. Vs. State of Haryana & Ors.**” 2000 (4) SLR 704, apart from two decisions of the Rajasthan High Court in “**Hasran Khan & Ors. Vs. State of Rajasthan & Ors.**” 2010 (4) WLN 416 and **Virendra Lodha Vs. Regional Director**“ **DB Special Appeal (W) No.1558/2014 decided on 17.4.2010** as well as the decision of M.P. High Court in **Lt. Col. (Retd) Satyendra Kumar Shoraliya Vs. UOI**”, **W.P. No.674/2010 decided on 12.11.2010** were also placed before us. However, in neither of these citations, there was any clause for renewal of the services of the contractual employees, which is the distinguishing feature in the present case. As such, the contentions raised on behalf of the appellants that the respondents/Writ Petitioners could not seek renewal of their contractual services as a matter of right, is unsustainable in view of the Specific Clause 12 for renewal

enshrined in the original agreement itself, which has already been referred/reproduced earlier in this judgment, and which, at the risk of repetition, ensured that the concerned contractual employees are entitled to automatic renewal of their contracts till their attainment of the maximum permissible age limit, except in the event of certain specified eventualities covered in Clause 11 occurring during the term of their employment, none of which undoubtedly had occurred in the present case.

7. For the aforesaid reasons, we find no justification to interfere with the decision of the Ld. Single Judge. These appeals are, therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

December 19, 2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***