

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1352 of 2017**

Jeevmangal Singh Tandan S/o Karnal Tandan, Aged About 41 Years R/o Village Tulsi, Post Misda, Tehsil & Police Station Nawagarh, District Janjgir Champa Chhattisgarh.

---- **Petitioner**

Versus

1. Union of India Through Secretary, Ministry of Human Resources Development Department of Higher Education, Shastri Bhawan, New Delhi.
2. Director, National Institute of Technology G.E. Road, P.S. Civil Lines, Raipur District Raipur (Chhattisgarh).
3. Ajai Sharma, Then Registrar (Admin), National Institute of Technology, G.E. Road, P.S. Civil Line, Raipur, District Raipur (Chhattisgarh).
4. Fahmida Khan, HOD, Chemistry, Department, National Institute of Technology, G.E. Road, P.S. Civil Lines, Raipur, District Raipur (Chhattisgarh).

---- **Respondents**

For Petitioner	:	Ms. Rajni Soren, Advocate.
For Respondents No.1&2	:	Shri RK Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

21/03/2017

1. The present petition has been preferred seeking for quashment of order dated 27.06.2016 whereby the respondents have refused to extend the contractual employment of the petitioner. The petition have also sought for a direction to the respondents to take him back in employment on contractual basis by renewing the contract on the post of Assistant Grade-III.
2. The brief facts relevant for adjudication of the present petition is that the petitioner was first appointed as Assistant Grade-III vide order dated 30.01.2008. The initial engagement of the petitioner was for a stipulated

period of six months with a clause of renewal. The services of the petitioner got renewed periodically. The last engagement of the petitioner as contractual employee was on 08.01.2016 for a period of five months i.e. from 04.01.2016 to 31.05.2016. Thereafter the services of the petitioner have not been renewed. Now after a gap of about 9 months time the petitioner has filed the instant petition seeking for a direction to the respondents to renew the contractual employment of the petitioner and have also questioned the action on the part of the respondents in not granting renewal of his contract employment.

3. Learned counsel appearing for the petitioner assails the action on the part of the respondents on the ground that non renewing the contractual employment of the petitioner was a vindictive act of the respondents inasmuch as they have literally punished the petitioner for some alleged misconduct for which they have not conducted any sort of inquiry. That they have levelled false allegations against the petitioner for non renewing his contractual employment. It was also contended by the petitioner that two other similarly placed persons who were engaged along with the petitioner have got their contracts renewed and are still performing their duties with the respondents, but it is only in the case of petitioner that they have refused to renew the contract.
4. Counsel for the petitioner further submits that it is a case where the respondents No.3&4 and some other officers in the establishment where the petitioner was working as contractual employee had conspired for discontinuing the services of the petitioner. There is no strong evidence or any valid reason for non renewal of the contract of the petitioner who

has been working with the respondents since 2008 onwards. He lastly submits that it is a case where the petitioner has worked with the institution from his prime age period hoping of being absorbed or regularized in due course of time but having been discontinued, the petitioner would find it difficult to get an employment elsewhere and this all the more is a ground for continuation of his contractual engagement.

5. Learned counsel for the respondents however opposes the petition and submits that since the petitioner has already been out of employment beyond 31.05.2016, he does not have any right conferred seeking for a relief which has been sought for in the present petition. It is also submitted that the substantive appointment of the petitioner was as a contractual employee and since the contract has come to an end, no indefeasible right stands created in his favour for the relief which has been sought for. He further submits that it is not a case where the services of the petitioner has been abruptly discontinued in between the contract period. Rather, it is a case where the petitioner was permitted to work for the entire contractual period and thereafter his services stood discontinued. Thus, prayed for dismissal of the writ petition.
6. Having heard the rival contentions put forth on either side and on perusal of record what is foremost to be considered is whether there is any right created upon the petitioner seeking for a relief that has been made in the present petition. Admittedly, the engagement of the petitioner with the respondents was as a contractual employee. The very term contractual employment itself means that it is a contract for specific period and that the moment the period of contract expires, the relationship between the

two persons who entered into an agreement comes to an end. In the instant case, the last contract was of 08.01.2016 and the period of contract was up till 31.05.2016. The petitioner was permitted to work the entire period of contract and it is only beyond 31.05.2016 that the petitioner's service stood discontinued.

7. So far as the legal position is concerned, the law is by now well settled that the contractual employee does not have any indefeasible right created seeking for continuation of the contract even after the conclusion of contract period. The conditions attached to the contract entered into between the parties would be binding upon the petitioner. Moreover, the contract which has been entered into between the parties for contractual employment clearly stipulates the condition that the said contract is up till a particular date which in the instant case is up to 31.05.2016. The said contract had also a condition that they shall not have any benefits of government job. It was also the condition in the contract that in case of non satisfactory performance, the contract can be terminated at any point of time without any notice or with one months notice. Such conditions clearly reflects the nature of the employment being for a fixed period of time. The moment contract period gets concluded, the contractual employment stands discontinued from the service.
8. Renewal or extension of contract is always the prerogative of the employer. If the employer feels that the services of the petitioner was not suitable, the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India would not have a power and jurisdiction to issue suitable instructions for extension of contract. Further, from the records

attached to the petition it clearly reflects that for the last couple of years there have been complaints and allegations being made against the petitioner by the officers of the respondent's establishment which also leads us to infer that the services of the petitioner cannot be said to be to the satisfaction of the higher authorities.

9. It would be relevant to refer to certain judicial pronouncements which have been made in the recent past in respect of the contractual employment. One of the most recent decisions in this field is the judgment of the Supreme Court in the case of **State of Maharashtra and others vs. Anita and another** reported in **(2016) 8 SCC 293**. In paragraph-14 of the said judgment it has been emphatically held that:

“14. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to the Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the Government.”

10. The Supreme Court in the land mark judgment in the case of Umadevi (supra) while dealing with the question of equality in public employment and also comparing the rights of a contractual employee or for that matter the rights of a daily wage employee or temporary employee has held as under:

“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."

Further In Paragraph-52 it has been held as under:

Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State

has a legal duty to make them permanent.”

11. In the case of **Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College** reported in **1962 AIR 1210** the Constitutional Bench of the Supreme Court has held that “In order that mandamus may be issued to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance.”
12. It would be relevant at this juncture to refer to the decision of the Supreme Court in the case of **State of Karnataka and Others Vs. G. V. Chandrashekar** reported in **(2009) 4 SCC 342** wherein again reiterating the principles of law laid down by the constitutional Bench of the Supreme Court in the case of Umadevi (supra) referring to paragraph-43 has held that if it is a contractual appointment, the appointment comes to an end at the end of the contract.
13. In view of the aforesaid discussions made in the preceding paragraphs and also the principles laid down by the Supreme Court, this Court is of the opinion that since the nature of employment itself being contractual, no right stood created in favour of the petitioner and the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
Judge