

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 11098/2015**

% **27th January, 2017**

SH. HARI KISHORE SHARMA Petitioner

Through: Ms. Rashmi Chopra, Advocate.

versus

CHIEF SECRETARY, GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mrs. Avnish Ahlawat, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks continuation of his contractual appointment, and which has otherwise come to an end on 16.02.2015. Petitioner impugns the advertisement dated 14-20.11.2015 issued by the respondent no. 2/Delhi Technological University/employer inviting candidates for the post in question of Assistant Engineer (Civil), and in which post the petitioner had worked, by means of transfer on deputation basis from Centre/State Government/NCT of Delhi/University/Autonomous Body/Government

Undertaking/Recognized Research Institute employees. This impugned advertisement reads as under:-

**“DELHI TECHNOLOGICAL UNIVERSITY
Established by Govt. of Delhi vide Act 6 of 2009
(FORMERLY DELHI COLLEGE OF ENGINEERING)
BAWANA ROAD, DELHI -110042**

No. F.DTU/HOO/Recruitment Engg./96/2010

Dated:

Recruitment of various posts in Engineering Cell on deputation basis

The Delhi Technological University invites application to fill up the following posts by transfer on deputation basis from the Centre/State Govt./NCT of Delhi/University/Autonomous Body/Govt. Undertaking/Recognized Research Institute employees

S.No	Name of Post	No. of post	Pay Scale
1.	Assistant Engineer (Civil)	01	Rs. 9,300 – 34,800 Grade Pay Rs.4600/-
2.	Jr. Engineer (Civil)	01	Rs. 9,300 – 34,800 Grade Pay Rs.4200/-
3.	Jr. Engineer (Elect.)	01	Rs. 9,300 – 34,800 Grade Pay Rs.4200/-

Performa in respect of the posts are available on the university website www.dtu.ac.in from 23.10.2015 and the last date of submission of application form is 03.12.2015”

2. Learned counsel for the petitioner argued before this court two aspects. The first aspect is by placing reliance upon the judgment of the Supreme Court in the case of *State of Haryana and Others Vs. Piara Singh and Others, (1992) 4 SCC 118* that one contractual employee cannot be replaced by another contractual employee. As a supplement to the first aspect, it is argued that by the impugned advertisement effectively since

there will be transfer on deputation basis only for a contractual period with the respondent no. 2/employer, hence, persons who would be appointed in terms of the impugned advertisement will also be contractual employees and will be similarly placed as the petitioner. The second aspect which is argued is that the respondent no. 1/GNCTD is not entitled to terminate the services of a contractual employee in view of the circular of respondent no. 1/GNCTD dated 19.10.2015 and which reads as under:-

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
(SERVICES DEPARTMENT-BRANCH- IV)
7TH LEVEL, B-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI-110002**

No.F.19/(11)/2015/S.IV/1890-96

Dated:19/10/15

ORDER

The Government of National Capital Territory of Delhi has considered the issue of regularization of the Contractual employees working in various departments of Govt. of N.C.T of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No. 2223 dated 06.10.2015:-

In line with the Uma Devi Judgment, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts:-

- 1. Every department should formulate a scheme to fill up all vacant posts.*
- 2. Contractual employees working against these posts should be allowed to apply with following conditions:-*
 - (a) They should be given age relaxation.*
 - (b) They should be given appropriate and adequate weightage of experience for that post in evaluation.*
 - (c) Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.*

3. *Policy in para-2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.*

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest.

sd/-

(ANUPMA CHAKRAVORTY)
DY. SECRETARY (SERVICES)

No.F.19/(11)/2015/S.IV/1890-96

Dated:19/10/15

Copy forwarded for information and necessary action to:-

1. Secretary to Lt. Governor, Govt. of N.C.T. of Delhi.
2. Pr. Secretary to Chief Minister, Govt. of N.C.T. of Delhi.
3. Secretary to Dy. Chief Minister, Govt. of N.C.T. of Delhi.
4. Secretaries to all Ministers, Govt. of N.C.T. of Delhi.
5. OSD to Chief Secretary, Govt. of N.C.T. of Delhi.
6. Pr. Secretaries/Secretaries/Head of Department, Govt. of N.C.T. of Delhi, Delhi/New Delhi.
7. Guard file/Delhi Govt. website.

sd/-

(ANUPMA CHAKRAVORTY)
DY. SECRETARY (SERVICES)”

3. Learned counsel for the respondent no. 2/employer in response argues by placing reliance upon the counter affidavit of respondent no. 2/employer that the present is not a case where one contractual employee being the petitioner is substituted by another identically placed contractual employee, inasmuch as, the feeder cadre with respect to the appointment to the post in question is now changed from the general public to employees of/from Centre or State Government employees or to Public Sector Undertakings and so on as stated in the advertisement, and the object of

which was to fix accountability with respect to persons who are appointed because as regards a normal contractual employee from the general public after termination of contractual employment, the employer is not in a position where the employees accountability can be called into question, whereas after expiry of deputation period even if a deputationist goes back to the employer organization which is a Government or a Government organization or a similarly placed organization, then the respondent no. 2/employer can still seek accountability from such repatriated employee on account of continued employment of the deputationist in the principal/lending organization and which would effectively be a State under Article 12 of the Constitution of India.

4. In my opinion, both the arguments urged on behalf of the petitioner do not have substance and are liable to be rejected. The reasons for the same are given hereinafter.

5. Firstly, it is seen that no doubt the law is that one contractual employee cannot be substituted by another contractual employee, however, the ratio in the case of *Piara Singh (supra)* only is applicable if one contractual employee is substituted by an identical contractual employee. In this case, it is found that the petitioner is being substituted not by an identical contractual employee because respondent no. 2/employer has

desired employment for contractual periods only from employees of Government or Government organizations for ensuring continuation of accountability even after expiry of the deputation period of the employee. This is specifically pleaded by respondent no. 2/employer in para 5 of its counter affidavit which reads as under:-

“5. That since the post held by petitioner is a supervisory post, a policy decision was taken by respondent that the post would be filled up only on transfer by deputation basis so that some kind of accountability can be fixed on the incumbent of the post otherwise in case of contract employee, except terminating the contract, no further accountability can be fastened on the holder of the post. In the case of the petitioner, he is in any case was 58 yrs of age when decision was taken not to give further extension on contractual basis to a contractual employee.”

6. I have already reproduced the impugned advertisement above and it is seen that the employment which would be done of persons to the post in question in which the petitioner was appointed is now to be from a totally different feeder cadre and which is that the candidates must be those who will be employed by means of transfer on deputation basis from Centre/State Government/NCT of Delhi/University/Autonomous Body/Government Undertaking/Recognized Research Institute employees. This has been done by respondent no. 2/employer for valid reasons and I cannot hold the reason of respondent no. 2/employer of requiring continued accountability being in any manner arbitrary or perverse. Obviously,

persons who are employed on contract basis from general public, after expiry of the contractual period, cannot be held accountable unlike a deputationist who can be held accountable as the deputationist will continue as an employee of the lending organization, which is a State as per Article 12 of the Constitution of India.

7. Learned counsel for the petitioner sought to argue that the persons who are appointed in terms of the impugned advertisement will also be on contractual basis, and therefore the petitioner is also similarly placed, however, I cannot agree in view of the fact that the feeder cadre for appointment to the post in question is different than the general public cadre from where the petitioner was appointed, with the fact that respondent no. 2/employer has a relevant reason of seeking appointment of an employee who will only come from deputation from a Government or Government organization or an organization which is a State as per Article 12 of the Constitution of India.

8. The first argument urged on behalf of the petitioner therefore is rejected that the petitioner is being substituted by an identically placed contractual employee and therefore the ratio in the case of *Piara Singh (supra)* relied upon by the petitioner will not help the petitioner in the present case.

9. The second argument urged on behalf of the petitioner by placing reliance on the circular of Government of National Capital Territory of Delhi dated 19.10.2015 is again misplaced because the contractual employees whose regularization is being talked of in terms of the circular of Government of National Capital Territory of Delhi dated 19.10.2015 should be identically placed than the persons who are substituted with the contractual employees. Obviously, if for the post in question, which is a contractual appointment, there are different parameters for appointment whereby, the new appointees are not identically placed than the contractual employees whose terms have expired, the circular of the Government of National Capital Territory of Delhi dated 19.10.2015 cannot apply for continuing the contractual employment and which circular will only apply if the contractual employees are terminated and substituted by identically placed contractual employees, and which is not so in this case as already discussed above while deciding the first aspect urged on behalf of the petitioner. Also, it is seen that effectively the circular of Government of National Capital Territory of Delhi dated 19.10.2015 seeks following of the ratio of the Constitution Bench judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC 1* and which holds one time regularization only of irregularly

appointed employees as existing in 2006 with the fact that appointment of the employee has taken place on a sanctioned post, that there was a vacancy in the sanctioned post, and qualified persons were appointed against vacancies in sanctioned posts but without calling for appointment by advertisements, i.e. advertisements for permanent appointments, but in the present case admittedly the appointment is only a contractual appointment and therefore the issue cannot be argued as that which would be the subject matter of regularization in terms of *Umadevi's* case (*supra*). Issue is of non-continuation of contractual employment which is the subject matter of *Piara Singh's* case (*supra*) which is relied upon by the petitioner and ratio of which judgment does not help the petitioner as discussed above.

10. In view of the above, there is no merit in the present petition and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 27, 2017/

VALMIKI J. MEHTA, J