

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5637 of 2018

Humendra Kumar Pawade S/o Shri Bhimadhar Pawade, aged about 33 years, R/o village & Gram-Panchayat, Bhejipadar, Block Manipur, District Gariyaband (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Panchayat And Rural Department, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
2. Collector And District Co - Ordinator, Gariyaband, District Gariyaband Chhattisgarh.
3. Chief Executive Officer, Zila Panchayat, Gariyaband, District Gariyaband Chhattisgarh.
4. Chief Executive Officer, Janapad Panchayat Mainpur, District Gariyaband Chhattisgarh.
5. Programme Officer, Mahatma Gandhi National Rural Employment Guarantee Project, Janapad Panchayat Mainpur, District Gariyaband Chhattisgarh.

---Respondents

For petitioner	:	Smt. Meena Shastri, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/08/2018

1. The challenge in the present Writ Petition is to the order Annexure P/1 dated 18/05/2018 whereby the respondents have decided not to extend the contractual employment of the petitioner.
2. The counsel for the petitioner first of all assails the impugned order on the ground that, the petitioner has been abruptly discontinued from his employment.

3. According to the counsel for the petitioner, he had been initially appointed on 15/05/2007 and he continued to work till the year 2018 as a contractual employee to the satisfaction of the authorities. However, now the respondents have discontinued the employment of the petitioner on the ground that, the petitioner did not have the ACR grading of “excellent” or “very good” and that it was only good which was entered in the ACR which disqualifies him for expansion of contractual employment. According to her, maintaining of the ACR's itself has not provided under the Rules for a contractual employee. It was further contended that non-communication of the grading good in the previous years already is also in violation to the judgment of the Hon'ble Supreme Court in the case of **Dev Dutt v. Union of India and Others, (2008) 8 SCC 725**.

4. The counsel for the petitioner further submits that, the respondents now again initiated steps for a fresh recruitment of contractual employee in place of the petitioner which again is arbitrary and bad in law. The respondents should not be permitted to replace one contractual employee by another set of contractual employee when the petitioner has been discharging his duties on the said post from the last about 10 years.

5. All said and done what cannot be disputed is the very nature of the employment of the petitioner which was contractual in nature.

6. The very term contractual itself means that, there is a contract of employment between the petitioner and the respondents and that contract

exists for a specific period. Beyond the terms of contract, there is no right whatsoever which accrued in favour of the contractual employee.

7. It is also by now well settled that even the ground of legitimate expectation is not flowing in favour of contractual employee howsoever be the length of service that there must have been as a contractual employee.

8. True it is that, it was unnecessary for the respondents to have taken note of the ACR's of the petitioner for determining whether the contract has to be extended or not. The respondents still have all the powers within their domain not to extend the contract in case if the respondents finds the work of the petitioner or contractual employee to be unsatisfactory or unsuitable.

9. The respondents need not have a comparative study prepared in this regard.

10. In **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, 2006**

AIR SCW 3601 the Supreme Court also observed as under :-

“While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate

forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

11. The counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Amarendra Kumar Mohapatra & Ors. v. State of Orissa & Ors. [2014 4 SCC 583]** and also to the judgment passed in the case of Dev Dutt (Supra).

12. So far as the judgment of Dev Dutt (Supra) is concerned, the same may not be applicable in the instant case for the simple reason that, the nature of employment of the petitioner itself was contractual whereas in the said judgment the employee was a regular government employee.

13. So far as the judgment of Amarendra Kumar Mohapatra (Supra) is concerned, the said judgment only has reiterated what the Supreme Court had laid down in its earlier decision in the case of Umadevi (3) which also was dealing with irregular and illegal employment.

14. So far as the contractual employment is concerned, the Supreme Court in one of its recent decision in the case of **State of Maharashtra & Ors. v. Anita & Anr. [2016 8 SCC 293]** in paragraph 14 has held as under:-

“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.”

15. In view of the aforesaid factual matrix of the case, this Court is of the opinion that, no strong case has been made out by the counsel for the petitioner calling for an interference with the impugned order.

16. Needless to mention that, since it was only non-renewal of the contractual employment of the petitioner, it would not preclude the petitioner from participating in any future recruitment process initiated by the respondents. The discontinuance of the petitioner now shall never come in the way of the respondents from considering the petitioner and it would not be considered as a disqualification of the petitioner.

17. In addition, the petitioner would also be at liberty to make a suitable representation before the authorities to reconsider their decision for reengaging the petitioner as a contractual employee.

Sd/-

(P. Sam Koshy)
JUDGE