

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (ST) NO. 17347 OF 2018**

|                         |                |
|-------------------------|----------------|
| Shri. Binod Agarwal     | ...Petitioner  |
| Versus                  |                |
| Union of India and ors. | ...Respondents |

**WITH  
WRIT PETITION (ST) NO. 16966 OF 2018**

|                         |                |
|-------------------------|----------------|
| Union of India and ors. | ...Petitioners |
| Versus                  |                |
| Shri. Binod Agarwal     | ...Respondent  |

Appearances:

Mr. Binod Agarwal, Petitioner in person in WPST No. 17347 of 2018 and Respondent in person in WPST No. 16966 of 2018.

Mr. A.C. Singh, A.S.G. a/w. Mr. R.R. Shetty for the Petitioners in WPST No. 16966 of 2018 and for the Respondent in WPST No. 17347 of 2018.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &  
M. S. SONAK, J.**

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| DATE OF RESERVING THE JUDGMENT   | : 26 <sup>th</sup> JUNE 2018. |
| DATE OF PRONOUNCING THE JUDGMENT | : 03 <sup>rd</sup> JULY 2018. |

**JUDGEMENT:**

1] Both these petitions are required to be considered together because the challenge in both these petitions is mainly to the judgment and order dated 2.05.2018 made by the Central Administrative Tribunal disposing of O.A. No. 725 of 2017 instituted by Binod Agarwal, the petitioner in Writ Petition (St) No. 17347 of 2018. In Writ Petition (St) No.

16966 of 2018 instituted by the Union of India, there is an additional challenge to the order dated 5.6.2018, by which, the Central Administrative Tribunal rejected the Review Application No. 15 of 2018 in O.A. No. 725 of 2017. In such circumstances, it will be appropriate if both the petitions are taken up for consideration together.

2] Accordingly, Rule in both these petitions. Rule is taken up for final disposal forthwith.

3] Mr. Binod Agarwal, who appears in person, relies upon the rulings in ***Secretary, State of Karnataka and ors vs. Umadevi and ors. - 2006 (4) SCC 1*** and ***State of Haryana vs. Piara Singh and ors. - 1992 (4) SCC 118*** to urge that one contractual employee cannot be replaced by another. He submits that in breach of such principle, the respondent – UOI, has sought to replace him with another contractual employee. He submits that the Central Administrative Tribunal has granted him only limited relief and has erred in not granting him the relief of reinstatement with all consequential benefits. On this ground, he submits that the impugned judgment and order dated 2.05.2018

made by the Central Administrative Tribunal warrants interference to the extent it denies him reinstatement with all consequential benefits.

4] On the other hand, Mr. A.C. Singh, learned Additional Solicitor General (ASG) for Union of India, submits that the Central Administrative Tribunal had no jurisdiction to entertain the Original Application instituted by Mr. Binod Agarwal was neither holding any civil post nor was the matter raised by Mr. Binod Agarwal a service matter in connection with the affairs of the Union. He submits that the issue of jurisdiction was expressly raised in the affidavit in opposition to the Original Application and thereafter in the review petition instituted by the Union of India

5] Mr. Singh contends that Mr. Binod Agarwal was only appointed on contractual basis and consequent upon expiry of contractual period, Mr. Binod Agarwal had no right to continue. In this regard, Mr. Singh, relies upon the appointment letter dated 20.01.2017, clause (1) of which provides that the contract shall be valid for a period of 12 months commencing from 10.10.2016 to 10.09.2017.

6] Mr. Singh also made reference to a Chart indicating pattern and strength of employment/employees as per the approved Recruitment Rules at SEEPZ – Authority to point out that the post of I.T. Consultant is not one of the sanctioned post. He submits that in such a situation, the principle that one Ad-hoc or contractual employee cannot be replaced by another, cannot apply.

7] Finally, Mr. Singh submits that the Union of India and others, i.e., the petitioners in Writ Petition (St) No. 16966 of 2018, without prejudice, will pay to Mr. Binod Agarwal the amounts which the Central Administrative Tribunal has directed, but Mr. Singh submits that the imposition of costs of Rs.25,000/- was not warranted, in the facts and circumstances of the present case and therefore, such imposition of costs may be interfered with.

8] The rival contentions now fall for our consideration.

9] We have perused the impugned judgments and orders as well as the other materials placed on record by all the parties. The Central Administrative Tribunal has considered

the issues now raised by either of the parties in some details and we do not regard this as a fit case to interfere in the exercise of our extraordinary jurisdiction under Article 226/227 of the Constitution of India.

10] On the issue of jurisdiction, the Central Administrative Tribunal has relied upon the Full Bench decision of the Calcutta High Court and on such basis ruled that it has jurisdiction to entertain the Original Application instituted by Mr. Binod Agarwal. The Central Administrative Tribunal has also referred to the decision of the Ernakulam Bench in O.A. No. 621 of 2012 concerning ex-serviceman appointed on daily wages through Zilla Sainik Board by Cochin SEZ, in which, again, the issue of jurisdiction was decided in favour of the applicant. The relief applied for by Mr. Binod Agarwal, if construed in its proper prospective was for continuance as a I.T. Consultant. Since, it was his case as pleaded by him that he was assured that his contract would continue and for comparison, Mr. Agarwa had also referred to contracts with other Consultants which had similarly continued. The question is not really whether Mr. Agarwal was able to finally make out a case that such an assurance had been

given to him or that he was entitled to enforce any such assurance. However, taking into consideration the averments in the Original Application, which are to be read and construed along with the relief applied for by Mr. Agarwal in his O.A., we cannot fault the Central Administrative Tribunal for overruling the objection based upon the jurisdiction.

11] In ***State of Assam vs. Kanak Chandra Dutta - AIR 1967 SC 884***, the Constitution Bench of the Hon'ble Supreme Court held that a Mauzadar appointed for the purpose of collection of revenue under a system prevailing in the Assam Valley would be a holder of a civil post. The Hon'ble Supreme Court noted that there is no formal definition of '*post*' and '*civil post*'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence. It is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. A post is a service or employment. A person holding a post under a State is a

person serving or employed under the State. The heading and sub-heading of Part XIV and Chapter I emphasis the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

12] In ***Union of India vs. Deep Chand Pandey - (1992) 4 SCC 432***, the Hon'ble Supreme Court has held that even an examination of Section 14 and Section 3(q) of the Administrative Tribunals Act, 1985 clearly indicates that the Act covers a very wide field and there is nothing to suggest that the provisions dealing with jurisdiction of the Tribunal should receive a narrow interpretation. In that case,

the Hon'ble Supreme Court was concerned with casual employees, who were seeking temporary status. They had claimed their right to continue in employment. In view of the nature of the claim, it was held by the Hon'ble Supreme Court that their application under Section 14 of the Act was maintainable.

13] In view of the aforesaid rulings of the Hon'ble Supreme Court and taking into consideration the averments and reliefs in the Original Application instituted by Mr. Agarwal, we do not regard this as appropriate case to interfere with the view taken by the Central Administrative Tribunal on the aspect of the jurisdiction.

14] The Central Administrative Tribunal, in the present case, has examined the matter in great details, *inter alia*, by visiting the files and the notings maintained by the UOI/SEEPZ authority. On such basis, the Central Administrative Tribunal has recorded a finding that Mr. Binod Agarwal was not fairly treated. The Central Administrative Tribunal has observed that this was not a case of simply non-continuance consequent upon expiry of contractual

period, but that employment of Mr. Agarwal was continued even beyond the contractual period and thereafter, Mr. Agarwal's employment was sought to be terminated verbally and even without furnish of any relieving order or experience certificate.

15] The Central Administrative Tribunal , as noted earlier, has examined the matter in great details, but, quite rightly, has granted Mr. Agarwal only limited relief, i.e., payment of wages/salary along with interest until Union of India/SEEPZ formally terminated his employment vide termination dated 14.11.2017. The Central Administrative Tribunal has also awarded Mr. Binod Agarwal some interest on this limited amount and taking into consideration the reasons set out by the Central Administrative Tribunal, we are not inclined to interfere.

16] The Central Administrative Tribunal has also clarified that since this is not some termination on account of any unsatisfactory rendering of services by Mr. Agarwal, Union of India/ SEEPZ must issue Mr. Agarwal a proper letter certifying his experience with full facts to the extent

necessary in relation to his conduct within time bound period.

17] In the review petition, the Union of India/SEEP came up with the case that they were dissatisfied with the services of Mr. Agarwal. The Central Administrative Tribunal has rightly held that this stance was in the nature of an afterthought. In any case, if this was the position, then, the authorities, ought not to have been acted in such a unilateral manner and without compliance with minimum principles of natural justice and fair play. Taking into consideration the limited relief of payment of wages for hardly 5 to 6 months with interest thereon and costs of Rs.25,000/-, we do not consider that this is a fit case to interfere with the impugned judgment and order.

18] We also record with satisfaction the statement made by Mr. Singh, learned ASG, that the Union of India/SEEPZ is not averse to the payment of amounts as directed by the Central Administrative Tribunal except the amount of costs of Rs.25,000/-. In the facts and circumstances of the present case, we are not persuaded to interfere with the award of

costs in favour of Mr. Binod Agarwal. From the material on record, we cannot say the findings recorded by the Central Administrative Tribunal to the effect that Mr. Binod Agarwal was not treated very fairly is a finding, which is not borne out from the material on record.

19] Mr. Binod Agarwal's contention based upon *Umadevi (supra)* and *Piara Singh (supra)*, however, deserves no acceptance. The principle that one ad-hoc or contractual appointment ought not to be normally replaced by another, applies mostly to a situation where there is a regular post and the employer, without taking steps to make a regular appointment is indulging in *ad hocism*. Since, the position in the present case is not comparable, we see no good ground to interfere with the view taken by the Central Administrative Tribunal in the matter of denying Mr. Binod Agarwal the relief of reinstatement and other consequential benefits. The petition filed by Mr. Binod Agarwal, therefore, deserves to be dismissed.

20] For all the aforesaid reasons, both the petitions are liable to be dismissed and are hereby dismissed. Rule in

each petition is discharged. In the facts and circumstances of the present case, there shall be no order as to costs.

**(M.S. SONAK, J.)**

**(ACTING CHIEF JUSTICE)**