

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.9092 OF 2018

ORDER

This writ petition is filed challenging the proceedings in Rc.No.TSTDC/Admn/P2/16/2017-04 dated 16.03.2018 issued by the 2nd respondent – Managing Director, wherein the petitioner's services were disengaged as his contract period has expired on 31.12.2017.

Learned Senior Counsel Sri S.Sathyam Reddy, appearing for the petitioner, referring to the averments made in the affidavit filed in support of the writ petition, would submit that the petitioner was appointed as Deputy Manager on contract basis vide proceedings in Rc.No.03/DYM-1/Admn/2002 dated 25.11.2002, and the contract period was extended from time to time. Petitioner was also given promotion as Joint Manager on contract basis on 28.06.2004. Learned Senior Counsel submits that the petitioner, earlier to the present appointment under the 2nd respondent, was working in Nizam Sugars Limited and he has taken voluntary retirement from the said organization with the fond hope that he would be continued in employment of the 2nd respondent, till he attains the age of superannuation. As he was given appointed in the 2nd respondent, he repaid the benefits received under the voluntary retirement scheme from Nizam Sugars Limited. He contended that the petitioner, who was serving for the last sixteen years, in an unceremonious manner, without issuing any notice and conducting enquiry, was disengaged. He submitted that as per the circular No. APTDC/Legal/L1/54/2009 dated 11.01.2011, issued by the 2nd respondent, before disengaging the services of any contract employee, proper enquiry

should be conducted by a competent authority. He stated that in violation of the said circular, 2nd respondent disengaged the services of the petitioner. Relying on a judgment of the Division Bench of this court in **ANDHRA PRADESH TOURISM DEVELOPMENT CORPN. vs. Y.SATYANARAYANA**¹ the learned Senior Counsel submitted that this court considering similar facts and circumstances, where the private respondents therein were being continued from the year 2005 on contract basis and that when they were sought to be disengaged, they filed writ petition, and this court eventually in the writ appeal, while setting aside of the order of the learned single Judge and remanding the matter, observed that *“In our opinion, when private respondents were stated to have been continued from the year 2005, equity lies in their favour for their continuance till W.P.No.19297 of 2017 is disposed of afresh. Accordingly, pending the writ petition, the appellant is directed to re-engage the private respondents forthwith on the same basis as they were engaged prior to their discontinuance on the same terms and conditions subject to which they were engaged earlier.”* He stated that similar relief may be given to the petitioner. Relying on the judgment of the Apex Court in **GRIDCO LIMITED vs. SRI SADANANDA DOLOI**², learned Senior Counsel contended that writ court can examine the validity of a termination order passed by public authority, even in case of contractual employment. In this case, as the petitioner was disengaged after serving for a period of sixteen years, the same is arbitrary. With these contentions, the learned counsel

¹ W.A.NO.1479 OF 2017 dated 23.10.2016

² Civil Appeal No.11303 of 2011 dated 16.12.2011

sought to set aside the impugned order and to direct the 2nd respondent to continue the petitioner in service till he attains the age of superannuation.

On the other hand, Sri G.Vidya Sagar, learned Senior Counsel, appearing for the 2nd respondent submitted that the petitioner was given appointment on contractual basis and further appointment was given on contract basis. As the contract period expired, he was disengaged and he has no legal right to seek for a direction to re-engage or continue him on contract basis. He stated that the circular dated 11.01.2011, relied on by the learned Senior Counsel for the petitioner, is applicable to the contract employees, who were sought to disengaged during the subsistence of contract period, but the said circular cannot be made applicable to the contract employees, who are sought to be disengaged, owing to expiry of their contract period. He contended that even the judgment of the Division Bench of this court relied on by the learned Senior Counsel for the petitioner, is not applicable to the facts of the present case, since the unofficial respondents therein, were appointed pursuant to notification and after undergoing selection process, but in the present case, petitioner was engaged on contract basis, without following any procedure, therefore, he cannot seek parity of treatment with the unofficial respondents therein. Relying on a judgment of the Apex Court in ***YOGESH MAHAJAN v. PROFESSOR R.C. DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES***³ learned Senior Counsel submitted that contractual employees has no right to have his / her contract renewed in absence of any statutory or other right in his favour and at best, petitioner can only claim that due consideration for extending his contract

³ (2018)3 SCC 218

may be granted. The learned Senior Counsel further, referring to paragraph No.26 of the judgment of the Apex Court (2 supra), relied on by the learned Senior Counsel for the petitioner, submitted that termination of a contractual employment in accordance with the terms of the contract is permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. He stated that in the present case, as the contract period expired, petitioner was disengaged and hence the petitioner is not entitled to any relief. With these contentions, the learned counsel sought to dismiss the writ petition.

In this case, there is no dispute that initially on 25.11.2002, the petitioner was engaged on contract basis as Deputy Manager and thereafter the contract period was extended from time to time, and subsequently, vide proceedings dated 28.06.2004, he was appointed as Joint Manager on contract basis. As the contract period expired on 31.12.2017, by the impugned proceedings dated 16.03.2018, his services were disengaged.

Further there is no assertion in the writ petition that the respondents have appointed the petitioner after subjecting him to any selection procedure in accordance with law. The facts in the decision of the Division Bench (1 supra) disclose that the private respondents therein were engaged in the year 2005 after giving employment notification for recruitment and subjecting them to selection process. In those circumstances, the Division Bench while setting aside the order of the learned single Judge and remanding the matter for disposal fresh, opined that equity lies in their favour for their continuing till disposal of writ petition afresh. In the present case, as noted above, no procedure was followed. Therefore, petitioner herein cannot claim any

equities and the judgment of the Division Bench of this court (1 supra) relied on by the learned Senior Counsel for the petitioner, cannot be made applicable to the facts of the present case, on all fours.

The Apex Court in ***YOGESH MAHAJAN vs. PROFESSOR R.C. DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES*** (2 supra) held as under:

6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30.06.2010. At best, the petitioner could claim that the authorities concerned should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the authorities concerned and therefore reject this contention of the petitioner.
7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in *Umadevi* {(2006)3 SCC 1 }. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularization of his services. The decision in *Umadevi* (1) does not advance the case of the petitioner.

In the judgment of *Yogesh Mahajan* case (3 supra), relied on by the learned Senior Counsel for the petitioner, it was held as under:

“26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages / compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no

matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court do well to respect the decision under challenge.

At the cost of repetition it is noted that as the contract period expired on 31.12.2017, the services of the petitioner were disengaged, but not on any allegations. Petitioner was purely engaged on contract basis and term of contract expired and it cannot be said disengagement of petitioner is arbitrary. Whether to continue petitioner on contract basis is to be considered by competent authority basing on the need. In Yogesh Mahajan case, referred to above, Apex Court held that no contract employee has a right to have his or her contract renewed from time to time. In view of the facts and circumstances of the case and the law laid down by the Apex Court referred to supra, I do not find any reason to interfere with the impugned proceedings dated 16.03.2018.

However, it is open for the petitioner to make appropriate representation to the 2nd respondent, and within a period of four weeks from the date of making such representation, the said authority shall consider the claim of the petitioner and take appropriate decision in accordance with law.

With the above observation, the writ petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:03—04—2018

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