

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.26441 and 26770 OF 2018

DATED : 12.10.2018

WP 26441 of 2018

Between :

Dr. Srihari Reddy Mukku S/o.M.Sriramulu Reddy,
Aged 31 yrs, Occu : Dental Officer,
O/o.Officer In-charge, ECHS, 5th Ward,
Kongalavedu Road, Giddalur, Prakasam District,
Andhra Pradesh.

.. Petitioner

And

Union of India,
Rep., by The Secretary,
Ministry of Defence,
Ex-Servicemen Contributory Health Scheme through
Adjutant General Branch, Army Head Quarters,
New Delhi & others.

.. Respondents

WP 26770 of 2018

P. Narayana S/o.P.P.Guruvaiah,
Aged 44 yrs, Occu : Peon,
O/o.Officer In-charge, ECHS Polyclinic, 5th Ward,
Kongalavedu Road, Giddalur, Prakasam District,
Andhra Pradesh 523 357.

.. Petitioner

And

Union of India,
Rep., by The Secretary,
Ministry of Defence,
Ex-Servicemen Contributory Health Scheme through
Adjutant General Branch, Army Head Quarters,
New Delhi & others.

Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION Nos.26441 and 26770 OF 2018****COMMON ORDER :**

Heard learned counsel for the petitioners Sri K.V.R.K Prasad, learned Assistant Solicitor General for respondents 1 to 3 and Sri Venkateswara Rao Gudapati, for respondent No.4.

2. Petitioner in W P No. 26441 of 2018 is a Post-Graduate Dental Surgeon. In response to the notification issued by the Station Headquarters of Ex-Servicemen Contributory Health Scheme, Secunderabad, in December, 2016, petitioner applied to the post of Dental Officer on contract basis in ECHS Polyclinic at Giddalur. Petitioner was selected and appointed for a term of one year on contract basis commenced from 01.05.2017.

3. Petitioner in WP No. 26770 of 2018 is an Ex-serviceman. He responded to the notification to fill up the post of Peon in ECHS, Polyclinic, Giddalur. He was appointed on contract basis on 1.3.2008 for a period of one year renewed from time to time. On 24.02.2018 the petitioner and 2nd respondent entered into an agreement for renewal of contract for a further period of 12 months.

4. When they were appointed, petitioners were governed by old policy on such contractual appointments. The contractual employment terms were renewed and new policy was notified on 22.12.2017. The new policy envisages appointment for 11 months and all earlier appointments came to an end on 31.03.2018. The policy envisages the appointments for a period of two years. Fresh

recruitment notification was issued for the posts held by the petitioners. Petitioners applied and participated in the selections. In the meantime, for petitioner in W P No. 26441 of 2018 a fresh agreement was entered on 03.05.2018 extending the tenure for 11 months commencing from 03.05.2018 and ending on 01.04.2019 and for petitioner in W P No. 26770 of 2018 on 24.2.2018 for 12 months. By the order impugned petitioners were informed that their services were no more required and therefore, contractual appointments are terminated by giving one month notice and that they would be relieved with effect from 09.08.2018 and 14.8.2018 respectively.

5. Learned counsel for petitioners would submit that consequent to renewal of their contract for further period of 11/12 months on 03.05.2018 and 28.2.2018 respectively, petitioners are entitled to continue until they complete the contractual period and their termination by giving one month notice is not valid. He would submit that when petitioners participated in the selections, they were assured that they would be given fresh contractual appointment, whereas, contrary to the assurance given to them, their services are now dispensed with.

6. He would submit that petitioner in WP No. 26441 of 2018 has better merit compared to the newly selected candidate, he has longer experience and he is a Post-Graduate, whereas, the 4th respondent has only three years of experience. Therefore, the assessment of relative merit was also not properly done and for no justifiable ground his services are terminated.

7. He would further submit that on account of renewal of contract, petitioners were under legitimate expectation that their employment would be continued till they complete the tenure. They were forced to participate in the selections by giving assurance that their appointment would be renewed for two years and illegally, even though term was already renewed, selections were conducted only to throw the petitioners out of employment.

7.1. In support of his contentions, learned counsel for the petitioner places reliance on the following decisions :

Dr.Neha mahajan Vs. Union of India¹; Lokendra Singh Vs. Union of India²; Satish Kumar Vs Union of India³; Boggadi Rama Chandra Reddy Vs State of A.P.⁴; G.C. Ghosh and others Vs Union of India⁵.

8. Per contra, learned Assistant Solicitor General would submit that employment in Ex-Servicemen Contributory Health Scheme is on contractual basis. 60% of the vacancies are reserved to be filled up by Ex-servicemen. Petitioner in W P No. 26441 of 2018 is not an Ex-serviceman. In terms of the policy a civilian is entitled to continue only for 11 months and renewal is not automatic. Clause (11) of the contract employment also provides right to terminate by giving one month notice. Thus, even if contractual employment is renewed, it does not mean that the employee is entitled to continue until he completes the term and for valid reasons, contract can be terminated.

¹ CWP No. 7404 of 2014 High Court of Himachal Pradesh

² S.B.Civil W.P. 11898 of 2017 High Court of Rajasthan

³ CWP 8798 of 2014 High Court of P & H

⁴ 2016 (5) ALT 45

⁵ 1991 Supp (2) SCC 497

9. Learned Assistant Solicitor General would further submit that it is no more open for the petitioners to contend that as their contract was renewed on 03.05.2018 / 28.2.2018 for a period of 11/12 months respectively, it is not permissible to terminate their service and appoint freshers, when petitioners responded to the recruitment notification, participated in the selections and were unsuccessful in selections.

10. According to learned Assistant Solicitor General in the list of candidates selected by the Committee of Experts, petitioner in W P No. 26441 of 2018 does not even find place. He would submit that the Board of Officers who conducted the recruitment include Medical Officers and all are experienced officers and on due assessment of relative merit of the candidates who participated in the selections, they have short listed 10 candidates and petitioner was not recommended by the Committee. Similarly, other petitioner was also not recommended.

11. He would submit that in matters of contractual employment, the issue of termination is not amenable to writ jurisdiction and the aggrieved person has to avail the common law remedy.

12. In support of his contention, learned Assistant Solicitor General placed reliance on the decision of the High Court of Patna in CWJC.No.16375 of 2015 and batch dated 1.4.2016.

12.1. Learned counsel representing 4th respondent in both cases, while concurring with the submissions of learned Assistant Solicitor General, would submit that in the selections conducted by competent authority, 4th respondent in both cases were selected

and they are entitled to appointment. Petitioners have no manner of right to stall their appointment.

13. I have carefully considered the respective submissions and decisions placed on record.

14. From the respective submissions and the material on record, it is apparent that petitioners were appointed on contract basis. After the term of contract it was renewed. While they were on contract employment, the earlier policy was reviewed and new policy was put in place vide proceedings dated 22.12.2017. The salient features of this policy are :

(i) Contractual employment would be for two years; however, renewal is not automatic but based on satisfactory performance in the first year.

(ii) The enhanced duration earlier granted would not be applicable with effect from 01.04.2018 and contractual employees who have completed two years as on 31.03.2018 including extension granted earlier would have to apply afresh and to participate in the selection process.

(iii) Civil candidates will not be appointed against ESM vacancies. The civilians selected in lieu of ESM vacancy would be eligible to serve only for 11 months from the date of appointment and thereafter, the vacancy would fall for being made available to ESM.

15. After the notification of new policy, recruitment notification was issued. The recruitment notification also notifies the positions occupied by the petitioners. Petitioners applied and participated in the selections and apparently were unsuccessful. No material is placed on record to show that assurance was given for automatic renewal of contract and that process of selection was only a formality. In the absence of any material it cannot be assumed.

16. Even according to the new policy, renewal of contract after one year is not automatic. But it is based on satisfactory performance in the previous year. That being the policy, it cannot be said that somebody gave an assurance to the petitioners that

they would be granted two more years tenure if they participate in the selections.

17. Once the selection process is set in motion and candidates responding to the selection notification participated in the selections, their employment would depend on the performance in the selections. The contention of the petitioners that they were under an impression that renewal was automatic is contrary to the material on record. If petitioners were under the impression that since the contract was already renewed for a period of one year, there was no need to make fresh recruitment and to participate in the selections, they ought to have protested or availed appropriate remedy as available in law, against initiation of selection process.

18. As rightly pointed out by learned Assistant Solicitor General, having participated in the selection process and unsuccessful, they cannot turn around and challenge the termination. According to learned Assistant Solicitor General, in the merit list prepared after the selections, petitioners were not included. Therefore, it is not open to the petitioners to contend that they ought to have been continued in service.

19. Learned counsel for the petitioners sought to contend that the unofficial respondent in W P No. 26441 of 2018 is less meritorious than the petitioner. This Court cannot go into issue of relative assessment. However, suffice to note that according to the respondents, the Committee of Experts assessed relative merit of the candidates who responded to the recruitment notification and selected the candidates based on their performance.

20. In ***Pawan Kumar Vs Union of India***⁶, the Hon'ble Supreme Court elaborately considered the scope of contractual employment, right to seek renewal of contract, the relationship of master and servant governed by the terms of contract and legitimate expectation. The Hon'ble Supreme Court held that if the appointments are purely contractual, by efflux of time, as envisaged in the contract, the same come to an end; the person holding such post can have no right to continue or seek renewal of contract as a matter of right. In exercise of power of judicial review Court cannot act as an appellate authority sitting over the decision of competent authority terminating the contract.

21. Learned counsel for the petitioners sought to contend that petitioner has right to continue in employment until the term of employment prescribed in the contract is completed. In support of the said contention learned counsel relied on the observations made by the Hon'ble Supreme in Paragraph No.20 in the above decision.

22. A careful reading of paragraph Nos.20 and 30, it is clear that the Hon'ble Supreme Court was observing, with reference to the contentions urged, that a contract employee can seek to continue in employment in terms of the contract for the period fixed therein and not beyond. It is also pertinent to note the observations of Hon'ble Supreme Court in paragraph No.20 that such continuation is subject to other conditions contained in the scheme/contract. In paragraph No.30, the Hon'ble Supreme Court clearly held that the question of legitimate expectation to continue in service would not arise to a contract employee. In paragraph No.30, the Hon'ble

⁶ 2016 SCC Online HP 2696

Supreme Court observed that petitioners having accepted the offer of appointment with eyes wide open cannot turn around claiming higher right ignoring the conditions subject to which the appointments have been accepted; and that there was no uncertainty or ambiguity in the appointments made in so far as the tenure to which they were appointed. The Hon'ble Supreme Court laid down the parameters of contractual employment.

23. Thus, in ordinary course, a contract employee is entitled to continue until he completes his tenure as prescribed in the appointment order/agreement. But if there is a clause incorporated in the agreement which enables either parties to the agreement to terminate the contract of employment and a party to the contract invokes said clause such termination can not per se be held as illegal. However, it is always open to the aggrieved party to work out civil law remedies against violation of any of the terms of contract or wrong invocation of any clause in the contract by one party to the agreement. Thus, this decision does not come to the aid of the petitioners.

24. Before the Patna High Court, several writ petitions were instituted by the employees appointed in similar manner under the very same scheme. The common grievance agitated before the Patna High Court was against their termination of employment. Petitioners therein were employed in similar manner and during the subsistence of their contract similar recruitment process was undertaken. Petitioners therein responded to the advertisement and participated in the selections, but they were not selected. Taking note of the fact that petitioners therein are given notice of

disengagement and engagement letters to others were issued after due process of selections, the procedure followed was held to be valid.

25. It is seen from paragraph No.8 of the decision of Patna High Court that there also petitioners rushed to the Court against disengagement after finalization of the selection process and identification of successors to the petitioners and in the selection process they were not successful.

26. According to sub-clause (i) of clause (11) of agreement for any other reason termination can be resorted to by giving one month notice. In exercise of this clause, the impugned notices were issued. Admittedly, in the selections conducted by the competent authority, petitioners were unsuccessful and others were selected. They can not be appointed unless petitioners' services are dispensed with. Thus, this clause was invoked. If there is improper exercise of power by one contracting party against another and if there is a subsisting grievance against another party to the contract on violation of terms of contract or any other terms of employment flowing out of the contract, petitioners have to avail the common law remedy and such issues cannot be gone into in exercise of power of judicial review under Article 226 of the Constitution of India.

27. Thus, looking from any angle the claim of petitioners that their termination amounts to arbitrary exercise of power and that they ought to have been continued until completion of their tenure of employment in terms of the agreement entered on 03.05.2018 and 28.2.2018 respectively merits no consideration. However, if

petitioners have any grievance flowing out of terms of contract, it is open to them to avail common law remedy.

28. Writ Petitions are accordingly, dismissed. Pending miscellaneous petitions shall stand closed.

P. NAVEEN RAO, J

Dated : 12.10.2018
Rds/tvk



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