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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14843-2016
Date of Decision : Sept. 10, 2018

Paramjit Kaur and others.

.... Petitioners.

Versus

Union of India and others.

.... Respondents.

2. COCP-1007-2017

Gurpreet Sharma and another.

.... Petitioners.

Versus

Prof. Lalit Kumar Awasthi and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Vijay Lath, Advocate
for the petitioners.

Mr. Vivek Singla, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent No.2 not to replace the petitioners, temporary hands, with other temporary hands, i.e., respondents no. 3 to 8.

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2. Facts relevant for the purpose of decision of this writ petition; that respondent No. 2, Dr. B.R. Ambedkar National Institute of Technology is an autonomous body and is affiliated to Ministry of Human Resource Development, Department of Higher Education, Government of India, respondent No.1 herein. Respondent No.2 had advertised various posts including the posts of Staff Nurses and the petitioners being fully qualified as per the requisite qualifications prescribed in the advertisement, appeared in the Walk-in-Interview and they were appointed as Staff Nurses on contract basis as temporary employees. They continued to serve the respondent-Management for different periods with notional breaks as well. As per the petitioners, their services with respondent No.2 were on contract/temporary basis though there was regular work available with respondent No.2 but they had adopted a noble device to appoint the employees on temporary basis for three months, six months, nine months or a year.

3. Thereafter, respondent No.2 issued advertisement No. 7/2016 (Annexure P/37) for appointment of Staff Nurses alongwith other posts and a corrigendum to the advertisement, Annexure P/37 was issued and the age limit for appointment of Staff Nurses was laid down to be below 27 years. The petitioners appeared before respondent No.2 for walk-in-interview on 11.07.2016, but respondent No.2 did not allow the petitioners to be interviewed on the ground that their age was not below 27 years. The petitioners were in service till 30.07.2016 and respondent Nos. 3 to 8 were shown to have been selected.

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4. The grounds taken in the writ petition are that the action of respondent No.2 is arbitrary, unconstitutional and against the law because temporary hands cannot be replaced by other temporary hands. The action of respondent No.2 is contrary to the law laid down by Hon`ble Apex Court in **State of Haryana Vs. Piara Singh, 1992 (3) SCT 201**. The petitioners were under the *bona fide* impression that they were to be re-employed as their services were being extended from time to time, but on the basis of corrigendum to the advertisement No. 7/2016, the petitioners were not entertained for the purpose of interview simply by saying that their age is not below 27 years. The petitioners prayed that respondent no.2 be directed not to replace the temporary hands with other temporary hands.

5. Notice of the writ petition was issued to the respondents on 27.07.2016. Thereafter, on an application filed by petitioners No.1 and 3 the present writ petition was dismissed as withdrawn qua them.

6. Respondents have filed written statement taking preliminary objections that the present writ petition has otherwise become infructuous as the petitioners have already been relieved from their duty in the month of March, 2017. As per respondent no.2, staff was being employed from time to time as per the need of the hour. Advertisement No. 7/2016 (Annexure P/37) was issued by respondent No.2, which was initially stayed by this Court and the petitioners were allowed to continue their work upto January, 2017 and thereafter they were relieved. As such, the present writ petition has become infructuous. While replying on merits, the respondents submitted that earlier in the month of September, 2014 and

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April, 2015, it was decided by the Institute to out-source its non-teaching employees for smooth functioning of the Institute. Some of the employees filed different writ petitions bearing No. CWP-20031-2014 titled, Gurmukh Singh Vs. State of Punjab and others; CWP-22001-2014 titled, Siman and others Vs. Dr. B.R. Ambedkar NIT Jalandhar and others and CWP-7480-2016, titled Jagjeevan & others Vs. Dr. B.R. Ambedkar NIT Jalandhar and another, where the similar matter was decided and the writ petitions were dismissed by this Court vide order dated 27.05.2016. At the time of disposal of above mentioned writ petitions, this Court observed that it is “neither illegal to outsource work if the Management thinks it more suitable to its felt needs. The petitioners cannot dictate terms to the respondents.” Accordingly, the respondent-NIT implemented the scheme of out-sourcing of its non-teaching employees from March, 2017. It was prayed that the writ petition is without any merit and the same be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the main contention of the petitioners is that they were appointed on contract basis but continued to work till March, 2017 when they were relieved and they cannot be replaced by temporary employees especially when the work was available. On this point, reliance was placed on the decision of Hon`ble Apex Court in **Piara Singh's case (supra)**. On the same point, reliance was also placed upon decisions of Co-ordinate Benches of this Court in Dr. Barinder Kaur Vs. Guru Nanak Dev University, Amritsar and others, 2015 (3)SCT 608 and Shiv Kumar and

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another Vs. State of Haryana and another, 2017 (1) SCT 197.

8. While arguing on this point, learned counsel representing the respondents contended that there is no dispute on the fact that the appointment of the petitioners was on contract basis and the nature of their employment was temporary though, they have served for certain period keeping in view the availability of work. The petitioners were not considered for employment as they were not below the age of 27 years which is a condition for appointment in the advertisement No.7/2016 (Annexure P/37), which was applicable to one and all. In fact, the Management decided to outsource the job, which is well within its rights and this view has already been upheld by this Court in **Gurmukh Singh's case (supra)**. While dealing with CWP No. 22001 of 2014, titled, Siman and others Vs. Dr. B.R. Ambedkar NIT Jalandhar and others, and this Court observed as under:-

“CWP No.22001 of 2014

This case involves employment with Dr. B.R.Ambedkar National Institute of Technology, Jalandhar. The petitioners shall suffer the same order as above, but *mutatis mutandis* inasmuch as no explanation letter was called from them for any deviation from expected conduct as an employee. In this case the defence in the written statement is that the petitioners were not appointed against the sanctioned posts and, therefore, they cannot make a claim for absorption as regular employees. Availability of sanctioned posts is sine qua non for consideration. It is neither illegal to outsource work if the Management thinks it more suitable to its felt needs. The petitioners cannot dictate terms to the respondents. No order

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can be passed as prayed for in Prayer-(ii) that only be reason of length of service, the petitioners be absorbed and regularized into service of the Institute. No merit. Dismissed.”

9. As regard to the rights of contractual employees appointed on contract basis and the employment being temporary in nature, the matter was before Hon`ble Apex Court in **State of Karnataka and Ors. Vs. Umadevi and Ors, AIR 2006 SC 1806** and it was observed as under:-

“38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

10. As regard to the fact that services of the present petitioners have already been dispensed with, the writ petition has otherwise become infructuous.
11. In view of the above, the present writ petition is without any

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merit and the same stands dismissed.

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12 In view of the fact that the main writ petition bearing CWP-14843-2016 has been dismissed, nothing survives in this petition and the present Contempt Petition also stands dismissed.

13. Rule discharged.

14. Resultantly, both CWP No. 14843-2016 and COCP No.1007 of 2017 stand dismissed in the above terms.

(SHEKHER DHAWAN)
JUDGE

September 10, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes