

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10453-2018

Date of Decision: 27.04.2018

Anil Kumar and another

... Petitioners

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. C.R. Dahiya, Advocate
for the petitioners.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioners have challenged oral termination.

2. Petitioners were appointed on contract/temporary basis. They have no right to continue on the post. Moreover no order of appointment has been issued. Therefore, petitioners have no right to continue to hold the post. Supreme Court time and again held that contract appointee has no legal right and so also for regularization or continuation in the post as and when tenure is completed. In fact, Supreme Court in case of ***AIR India Ltd. Vs. Dharmendra Kumar (2001) 10 SCC 547*** it is held that if there is no legal right to continue in service, the High Court cannot restrain the employer from terminating the service of the expiry of the term. Court cannot be party to renewal of contract appointment. Further Supreme Court (Constitution Bench) in the case of ***Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1*** held in para 43 and 47 as under:-

“43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its

instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

47. 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.”

3. In view of the above principle laid down by the Supreme Court, petition stands dismissed.

27.04.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**