

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 21280 of 2018 (O&M)
Date of Decision: 24.08.2018**

Gurwinder Singh Kohli

..... Petitioner

Versus

Punjab State Electricity Regulatory Commission
and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ashok Kumar Virdi, Advocate
for the petitioner.

JASWANT SINGH, J.

1. Instant writ petition under Article 226 of the Constitution of India is filed seeking quashing of advertisement/vacancy circular No. 28/2018/07 (28th July, 2018) (**Annexure P-1**) to the extent the respondents have advertised one post/vacancy of Director-Technical on deputation/contract basis in Punjab State Electricity Regulatory Commission (for short 'PSERC').

2. The petitioner retired as 'Engineer-in-Chief' from the Punjab State Power Corporation Ltd. on 30.06.2015. The 'PSERC' issued a vacancy Circular dated 06.08.2016 (**Annexure P-3**) inviting applications from interested eligible persons against the vacant post of Director-Technical to be filled up on deputation/contract basis. The petitioner along with other candidates was interviewed and ultimately selected as Director-Technical and an appointment letter dated 22.08.2016 (**Annexure P-2**) on one year contract period was issued. The petitioner joined as Director-Technical on

23.08.2016 and on 21.08.2017 his tenure was extended for further period of one year on earlier terms and conditions.

3. The 'PSERC' opted not to further extend tenure of petitioner and issued vacancy circular No. 28/2018/07 (P-1) inviting applications for the post of Director/Technical. By instant petition, the petitioner has challenged said circular on the ground that a contractual employee cannot be substituted by another contractual employee.

4. Learned counsel for the petitioner contended that impugned circular is bad in the eyes of law because respondent cannot appoint another Director in place of the petitioner who has already worked for two years and there is no deficiency in his work and it is well settled law that a contractual employee cannot be substituted by another contractual employee. In support of his contention, counsel cited order of Hon'ble Supreme Court in the case of *Hargurpratap Singh Versus State of Punjab and Others 2017 (13) SCC 292* and judgments of this Court in the case(s) of *Swarna Singh and Others Versus Pepsu Road Transport Corporation, Patiala and Another 2017(2) CLR 1043*; *Ajit Kumar Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh and Another 2017(1) LLJ 353*; and *Shiv Kumar and Another Versus State of Haryana and Another 2017(1) S.C.T. 197*.

5. After having heard arguments of counsel and scrutinized record of the case, this Court finds that present petition is bereft of merits and deserves to be dismissed. The conceded position as emerges from arguments and record of the case is that the petitioner could be and was appointed on contract basis. Appointment to a post in the Commission/PSERC can be

made by way of (i) direct appointment (ii) promotion (iii) deputation. The direct appointments can be made only on contract basis or services can be out sourced. The respondent by way of Notification dated 24.12.2015 (**Annexure P-6**) has framed regulations known as Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2015 (for short 'Regulations'). As per Regulations 6 (c), the services of an employee appointed on contract basis shall be terminable with prior notice of three months or salary in lieu thereof on either side. Regulation 4 and 6 read as under:

“ 4. Mode of appointment to service

Appointment to the post (s) in the Commission shall be made by any one of the following methods:

- (a) Direct appointment.*
- (b) Promotion.*
- (c) Deputation.*

Provided that direct appointments shall be only on contract or service can be outsourced.

6. Terms & Conditions of appointment

- (a) XXX*
- (b) The Commission may consider suitable persons having requisite qualifications and experience for appointment on contract basis. Applications will be invited through advertisement in the press and through Commission's website. Such appointment shall be made initially for one year which can be extended from time to time by appointing authority.*
- (c) The Services of employee appointed on Contract basis shall be terminable with a notice of three months or salary in lieu thereof on either side.*
- (d) The maximum duration of service will be up to 65 years of age for the employee taken on contract basis.*

6. The petitioner was appointed on contract basis and for the said purpose offer letter dated 22.08.2016 was issued wherein terms of appointment on contract basis were specifically mentioned which included that initial appointment shall be for one year which may be extended, and services are liable to be terminated at any time by serving a notice of three (03) months or salary in lieu thereof. The petitioner was appointed in terms of an agreement which was executed in terms of Regulations, 2015. In other words, the petitioner was appointed on contract basis and said contract was based upon Regulations having statutory force. It is not a case of simple contract in terms of Contract Act whereas it is a contract which is based upon statutory Regulations framed by State Government. The terms and conditions of contract categorically state that tenure may be extended and services of an employee may be terminated with notice of three months or salary in lieu thereof.

7. Time and again Hon'ble Supreme Court has deprecated practice of appointment of employees on contractual basis because it amounts to back door entry, nevertheless contractual appointments cannot be prohibited in view of urgent need of employees. In case of appointment against public post, authorities are bound to comply with mandate of Article 14 & 16 of the Constitution. It is well known fact that in case of contractual appointments or appointments for limited tenure which may or may not be extended, very few people apply and many competent people do not apply. In spite of said ground reality, the State Authorities as well as private employers opt for contractual appointments because services of contractual employees can be terminated at the choice of the employer subject to prior

notice or salary in lieu of notice. Every employer wants competent, honest and men of integrity. By way of appointment on contract basis, employer gets opportunity to revisit its selection process and search better employees. If an employer is satisfied with its existing employees, there is no need to go for fresh appointments. In case an employer feels that he needs and may get better employees, he has every right to go for search of fresh employees instead of continuing services of existing employees. The Hon'ble Supreme Court in a recent judgment reported as ***Yogesh Mahajan Versus Prof. R.C. Deka 2018(3) SCC 218*** has reiterated the settled law that no contract employee has a right to have his/her contract renewed from time to time.

8. The petitioner in the present case has not challenged Regulations, 2015, which provide that appointments would be on contract basis or through deputation meaning thereby there would be no regular cadre. The employer shall have right to terminate services of any employee with three (03) months' prior notice or salary in lieu thereof. The appointment would be for one year which may or may not be renewed. If claim of petitioner is accepted that respondent has no right to issue fresh vacancy circular, it would amount to illegally restraining the rights of the Employer/PSERC, which is not the mandate of the Regulations and contract.

9. The petitioner has heavily relied upon judgment of Hon'ble Supreme Court in the case of ***Hargurpratap Singh (supra)*** as well as few judgments of this Court. Judgment of this Court in the case of ***Shiv Kumar (supra)*** is based upon order of Hon'ble Supreme Court in the case of ***Hargurpratap Singh (supra)***. In the case of ***Hargurpratap Singh (supra)***,

employees were appointed on *ad hoc* basis and there were number of employees who were appointed in several colleges of State of Punjab. The Hon'ble Supreme Court ordered to continue their services because interest of students was involved and teachers were working on contract basis for a quite long time and it was not in the interest of college as well as students to appoint fresh contract teachers. In case of appointment of teachers and doctors, interest of students and patients is always involved and it may be considered desirable to continue services of teachers/doctors, who are working for quite long time though on contract basis instead of new contract appointees unless their work and performance is not satisfactory. This Court is unable to subscribe view of learned Single Judge of this Court in the case of ***Shiv Kumar (supra)***, because the said judgment is based upon order of Hon'ble Supreme Court in the case of ***Hargurpratap Singh (supra)*** and employees appointed in the said case were not appointed on the basis of Regulations framed by State Government mandating appointment on contract basis and termination at any time. The judgment of this Court in the case of ***Swarna Singh (supra)*** relates to minimum pay of *ad hoc* employees and this Court has not dealt with question of appointment of employees on contract which is based upon Regulations framed by State Government. The facts of judgment in the case of ***Ajit Kumar (supra)*** and judgment delivered by Division Bench of Calcutta High Court are distinguishable, because in those cases, appointments were not made on the basis of contract which is backed by statutory regulations. Even otherwise Calcutta High Court has dealt with appointment of teachers which cannot be at par with a technical post. In case of appointments against technical post, there is always scope of

improvement and better quality because of change of technology and development of science. The teachers cannot be treated at par with technical posts.

In view of the aforesaid findings, the present petition deserves to be dismissed and accordingly '**dismissed**'. The contract of the petitioner was not extended and it is not a case of termination of services in mid-term, so the petitioner is not entitled to three (03) months' prior notice or salary in lieu thereof.

August 24, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>