

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.25136 of 2018 (O&M)

Date of Decision:1.10.2018

Prikshit Dahiya

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Dahiya, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

1. I have heard learned counsel for the petitioner at some length and have perused the paper-book and the law cited.

2. Briefly put, the Programme Officer, State After Care Home, Sonapat invited applications by 12th May, 2015 to fill up one post of Counsellor, with which we are not concerned and one post of Pharmacist (Full Time) @ Rs.5,000/- per month (with which we are in this case) advertised with the qualifications and experience from eligible persons possessing 10+2 with Science (Physics & Chemistry) and Pharmacist Course from recognized institute. The petitioner applied for the post of Pharmacist. The interviews were held on 15th May, 2015. He was offered appointment vide letter of appointment dated 30th July, 2015 (Annex. P-2). The petitioner was thus appointed as a contractual employee and not as a regular government servant.

3. The State After Care Home is run under the aegis of the Integrated Child Protection Scheme (ICPS) which is a programme designed and implemented by the Government of India to help secure

the safety of children, with a special emphasis on children in need of care and protection, juveniles in conflict or contact with the law and other vulnerable children for their welfare. The appointment was on contractual basis for a period of six months or till regular appointment is made by the Department. The working hours were 12.00 Noon to 8.00 PM. The petitioner joined on the same date and served on contract basis in his first spell till 29th January, 2016. In his second spell, after being relieved from the first six months' stint, he was re-employed on contract basis to serve from 3rd March, 2016 to 2nd September, 2016. Having been relieved again, he was offered with a fresh letter of appointment on contract basis to serve from 25th October, 2016 to 24th April, 2017. The 4th spell of contract was from 9th May, 2017 to 8th November, 2017. The petitioner was relieved again to serve under fresh letter of appointment from 13th November, 2017 to 12th May, 2018. There have been breaks in all these five spells with cumulative service of six months each totalling 2 1/2 years till the last offer of appointment vide letter dated 25th October, 2016, co-terminus on 24th April, 2017. It has been stipulated in the letters that the appointment is purely on contract basis for a period of six months or till regular appointment is made. He was issued an experience certificate on 6th December, 2017. His work and conduct was found satisfactory by the issuing authority i.e. District Programme Officer, Women and Child Development, Sonapat.

4. In the appointment letter dated 9th May, 2017 (Annex. P-5), Condition No.7 stipulates that the petitioner's service will remain continued for six months or till the recruitment against this post is made by the department. However, the appointment letter dated 30th

May, 2017 (Annex. P-5) stated that the contractual appointment shall be for six months, but “or till regular appointment is made” has been deleted and does not find mention in the opening clauses of the contract letter. However, Clause 4 of the appointment letter (Annex. P-5) states that the petitioner will execute an agreement on a non-judicial stamp paper of Rs.10 with two witnesses and submit the same to the employer at the time of reporting for duty, agreeing that he will not claim continuity of his post on completion of six months. On the expiry of the period, he was issued an experience certificate. A similar letter of appointment was issued on 13th November, 2017 (Annex. P-7) containing Clauses 4 and 7 mentioned above. On expiry of period of six months from 13th November, 2017, the petitioner was relieved from duty vide order dated 11th May, 2018 (Annex. P-9). Since his contractual service came to an end, he obtained an experience certificate dated 14th August, 2018 (Annex. P-10) stating that his work and conduct was very satisfactory.

5. District Programme Officer, Women and Child Development, Sonapat placed advertisement in Dainik Jagran on 24th August, 2018 (Annex. P-11) inviting applications for filling up seven different posts including the post of Paramedical Staff on contract basis. The post of Paramedical Staff is mentioned at Sr.No.4 to be paid Rs.9,000/- per month. The qualifications prescribed are different from one under which the petitioner was engaged as Pharmacist for the first time. The prescribed qualifications for Paramedical Staff mentioned in advertisement are 10+2 with Science (Physics and Chemistry), Pharmacist Course Diploma from the Medical College, Rohtak or any other recognized institute recognized by Haryana

Government with training in injection/Dressing and ward work in a recognized with Hospital, and registered as Pharmacist with Haryana Pharmacy Council u/s 31 (1) or 31 (c) of 32 (a) of Pharmacy Act, 1948 as applicable in Haryana State, Hindi and Sanskrit upto Matric with age 21 to 42 years. The petitioner had qualified the Diploma in Pharmacy from the Rajasthan University of Health Sciences, Jaipur pursuing a course of study in Diploma in Pharmacy at Apex Institute of Management Sciences, Mansaroor, Jaipur for two years and passed the same at the main Examination held by the University in October, 2013.

6. The petitioner has approached this Court assailing the advertisement with a prayer for a direction to allow him to work on the post of Pharmacist and not to be replaced by a similar arrangement, in view of the order passed by the Supreme Court in *Hargurpratap Singh vs. State of Punjab & Other*, (2007) 13 SCC 290 a copy of the judgment which is annexed as Annex. P-24 together with a judgment of single bench of this Court in *Anurag Chahal and others vs. State of Haryana & Anr.*, (CWP No.16954 of 2015 decided on 5.5.2016) copy of which is annexed as Annex. P-25. It has been argued that the advertisement (Annex. P-16) is an attempt to displace the petitioner even when he has a right to continue till regular recruits are available to fill up the post of Pharmacist in terms of his contractual appointment. Asserts that not only should he be taken back in contractual service, but the petitioner has also has a right to the minimum pay scale of the post of Pharmacist as admissible to regular employees. Reliance in this regard is to the judgment of the Supreme Court in *State of Punjab and others vs. Jagjit Singh and*

others, 2016 (4) SCT 641. The petitioner also seeks compound interest at the rate of 18% per annum from the date of actual payment on the salary, on the assumption that he is taken back in service.

7. The principle in *Hargurpratap Singh case*, supra would apply in case nature of post/employment is the same including period of contractual tenure and qualifications prescribed for the post having regard to his advertisement and the fresh one under challenge. In the present case, the petitioner was appointed as Pharmacist whereas vide Advertisement (Annex. P-11) applications have been invited for the post of Paramedical Staff. When the petitioner was inducted in service, he was required to possess qualification of 10+2 in Science (Physics and Chemistry) and Pharmacist Course from recognized Institute whereas vide the advertisements in question for the post of Paramedical Staff, the essential qualifications are 10+2 with Science (Physics and Chemistry), Pharmacist Course Diploma from the Medical College, Rohtak or any other recognized institute recognized by Haryana Government with training in injection/Dressing and ward work in a recognized Hospital and is registered as Pharmacist with Haryana Pharmacy Council u/s 31 (1) or 31 (c) of 32 (a) of Pharmacy Act, 1948 as applicable in Haryana, Hindi and Sanskrit upto Matric with age of 21 to 42 years which are different qualifications from those when the petitioner was inducted. At that point of time, the period of contract was for six months whereas vide the present advertisement/s, the period of contract is one year. There are two advertisements inviting applications. The first advertisement was published in Dainik Jagran dated 24th August, 2018 (Annex. P-11) with last date for submission of forms 4th September, 2018 and in this

advertisement the station for submission of the applications was not mentioned and thereafter vide second advertisement published in Dainik Bhaskar dated 9th September, 2018 (Annex. P-16), the station for submission of applications has been mentioned as State After Care Home Near Rohtak Road, Railway Flyover, Sonipat. And the last date for receipt of application has been mentioned as 20th September, 2018. Furthermore, vide the present recruitment process on contract basis, the age limit has been mentioned from 21 to 42 years whereas the same was not mentioned at the time when the petitioner was inducted vide advertisement (Annex. P-1) wherein the age limit was 62 years. In this view of the matter, there are qualitative changes in essential qualifications and description of post as now advertised for the post of Paramedical Staff but the post held by the petitioner was Pharmacist. It is not pleaded in the petition that Diploma in Pharmacy possessed by the petitioner is from an institute recognized by the State of Haryana. The advertisements in question do not spell out that the selected candidates would continue till regular recruitments are made. The petitioner has willingly received experience certificates three times over after the expiry of the contract periods which itself means that he was not forced to leave the job and thus is presumed that the petitioner would use the experience certificates for some other subsequent employment.

8. This petition was filed on 27th September, 2018 while the last date for submission of the application forms vide advertisement (Annex. P-16) was 20th September, 2018 and vide the earlier advertisement (Annex. P-11), the last date for submission of forms was 4th September, 2018. Since the parameters of the

advertisements have been changed from the earlier advertisement, the petitioner could well have applied for the post of Paramedical Staff and competed with others on merit.

9. The judgments relied upon by the petitioner are of no help to him. In *Hargurpratap Singh, supra*, the Supreme Court dealt with employment of teachers on ad hoc basis in several colleges in the State of Punjab. The appellants therein had approached the High Court under threat of termination of their services claiming the relief of regularization, minimum pay scale and to continue them in their jobs until regular appointment is made. All the reliefs were rejected by the High Court and so far as the relief relating to continue them in their posts until regular incumbents join, the High Court directed that the Government will have to follow its policy decision dated 23rd July, 2001. The Supreme Court rejected the prayers of the appellant for regularising the appointment and granting minimum pay scale and nor that they should not be continued till regular incumbents are appointed. However, the Supreme Court held that the course adopted by the High Court would result in displacing one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, the Supreme Court set aside the orders made by the High Court to that extent only and directed that the appellants shall be continued in service till regular appointments are made on minimum of the pay scale. Ad hoc service by teachers in educational institutions is different in character than contractual service of a Pharmacist. The fact situation in

Hargurpratap Singh involved teaching in colleges on which careers of the students depended which could be avoided by repeated replacement by fresh ad hoc appointments in the same arrangement. This was willy nilly due to the experience gained for years by the first lot of ad hocs when State was unable to make regular recruitments in time. It was the experience factor and non-arbitrary action that had ruled the day. Pharmacists do not fall in the same place. Their experience is overshadowed by teaching experience as commented upon by the Supreme Court in *Hargurpratap Singh* in the following words: “*more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis.*” and that is the reasonable classification that differentiates the two avocations. The order passed in *Hargurpratap Singh* is reproduced below:-

“1. Leave granted.

2. The appellants in these cases were employed on ad hoc basis in several colleges in the State of Punjab. There being a threat of termination of their services, they filed writ petitions before the High Court seeking for the relief of regularisation, minimum pay scale and to continue in their present posts until regular appointments are made. All the reliefs were rejected by the High Court and so far as the relief relating to continue them in their present posts until regular incumbents are appointed, the High Court stated that the Government will have to follow its policy decision dated 23-7-2001.

3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled

to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.” [emphasis added]

10. The facts in *Anurag Chahal, supra* reveal that this Court dealt with the post of Computer Instructors in Colleges (Also teachers) wherein the essential qualification prescribed for the post was MCA/M.SC. (Computer Science/IT)/M.C.Tech with least 50% marks or post graduate with 50% marks with A level Diploma in DOEACCC. The petitioners therein had been selected by duly constituted Selection Committee and were working on the post of Computer Instructor since 2010. In these circumstances, this Court held that the respondents cannot deny the minimum pay scale to the petitioner as it is the State that has to take steps to sanction the posts on which they were working for the last about 6 years. The facts of the present case are different and the case in *Anurag Chahal* is clearly distinguishable. There is no gainsaying that each case has to be decided on its own facts.

11. In the present case, the petitioner gave an undertaking that he would not claim continuity of service on completion of six months service tenure on contract, as per Clause 4 of the letter of appointment (Annex. P-5). If the petitioner has been relieved on the expiry of the contract by the impugned order dated 12th May, 2018, he cannot make a legitimate grievance that he should be re-engaged or recalled by setting aside the advertisement in respect of the post of Paramedical Staff. The petitioner does not possess any such right as vested and indefeasible. The Court will not put fetters on the prerogative of the respondent to make its choices so long as they are not arbitrary or unreasonable and without guarding public interest. It cannot be assumed that the department will make arbitrary selection or indulge in malpractice, nepotism or corruption nor can it be presumed that a person picked up as a Pharmacist will not fit the bill or be far inferior or less suitable or less experienced than the petitioner or would be unable to discharge the duties of office. In the effort, if it is sincere and bona fide, and if fresh blood is found which may enthuse paramedical services to a higher level in the State After Care Home, Sonapat, I find nothing per se wrong with this. India is a country where jobs are hard to find. The utilitarian principle is a sound one to apply to bring more happiness to more people by spreading employment opportunity to the have-nots who are waiting to perform more assiduously and prove their worth in open competition. With the greatest respect *Hargurpratap Singh* case is not to be read as Euclid's theorem or an Act of Parliament. It has served its purpose in its day and age and in many ways continues to instruct but much depends of the nature of the job. Proliferating the

order to every nook and crevice of service or post, short of regular service, may cause more harm than than intended without looking carefully into the problem and the distinguishable features on a case to case basis instead of a mechanical application that one should not replace the other in every situation. The plethora of judgments and orders that have spawned from those directions require a serious re-think. The Court should not buckle down every genuine effort of the Government in the numerous departments and schemes without fully understanding the scope or the peculiar and specialized work required of a job to benefit the community in different ways and means. Experience certificates in the kindest words are commonly doled out for the asking is not unknown to the community. They are conveniently and routinely handed over while parting ways by a handshake wishing those exiting all success in their future life. To my mind, receiving the certificates of experience expectantly is a circumstance against the petitioner. I would not place my finger on these to grant relief.

12 Consequently, a writ of mandamus will not issue for the asking to the State After Care Home, Sonapat compelling it to extend the contract beyond its life and prevent recruitment to the post on contract basis for one year with different qualifications prescribed from the advertisement of 2015 through which the petitioner came in contractual service for the first time.

13. Moreover, the petitioner was free to apply for the post and to compete on merits with those aspirants who also have right of consideration for employment as Paramedical Staff if one is to fulfill the guarantees and aspirations of Article 16 (1) of the Constitution of

India, that is, of equal opportunity to those who are qualified and have become eligible meanwhile waiting for openings to make their careers. If the petitioner has hope, so do they. The petitioner is not a government servant protected by Article 311 of the Constitution, nor was his service governed by statutory rules. He worked in a scheme on contract basis. He was not an ad hoc employee and could be lawfully relieved by efflux of time stipulated in the contract of employment. The principle in Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 as an exception to retrenchment can be usefully applied, that is, “termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;”

14. For the foregoing reasons, I find no merit in this petition which is accordingly dismissed.

1.10.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes