

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29323-2017 (O&M)

Date of Decision:-02.02.2018.

Khalil Kumar

.....Petitioner

Versus

Indian Bank, Corporate Office and others

.....Respondents

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

Present: Mr. Sushil Kumar Verma, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has prayed for the following relief:-

- i) the Respondents no.3, to not to replace the services of petitioner with the another contract employee i.e. respondent no.4 in violation of law lay down by Hon'ble Supreme Court, especially in the matter of Hargunpartap Singh Vs. State of Punjab and others.*
- ii) To allow the petitioner to continue on his post as peon till the regular appointment by the respondent bank against the said post.*
- iii) Issue a writ in the nature of certiorari for quashing the impugned order vide which the Respondent No.3 has terminated the services of the petitioner without any show cause notice or enquiry and without giving opportunity of being heard and appointing respondent no.4 in place of the petitioner, on adhoc / temporary basis, as a casual labour for the similar category of work of the petitioner;”*

Petitioner was appointed on contract basis which tenure appointment as is evident from the documents. His grievance is that respondents have resorted to engage some other person on contract basis. Such action is impermissible in view of the decision cited vide Annexure P-5 read with CWP-13555-2013, CWP-2346-2013 and CWP-1034-2012. It was submitted that in view of the principle laid down in the aforesaid decision that contract employee cannot be replaced by another contract appointee. Further he is entitled to seek a direction to the respondents restraining respondents to not to terminate his services. Supreme Court in the case of ***State of Maharashtra and others versus Anita and another*** (2016)8 SCC 293 in para Nos. 15 to 17 held as under:-

“15. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the Government. The appointments of the respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. The conditions of the respondents’ engagement are governed by the terms of agreement. After having accepted the contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, the respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

16. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the Government.

Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the Government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.

17. In the result, the impugned judgment of the High Court is set aside and these appeals are allowed. Consequently, all other appeals are also allowed. No costs.”

Undisputed fact is that petitioner is a contract appointee and which is a tenure appointment and he has no right to continue. In the case of ***Shilpa Jindal versus Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others*** reported in 2016 SCC OnLine P&H 12112, a Division bench of this court in para Nos. 29, 31, 32, 35 and 36 held as under:-

“29. The doubts raised in UP State Electricity Board Vs. Pooran Chandra Pandey (2007) 11 SCC 92, on the applicability of Constitution Bench in Umadevi's case (Supra) in a case where regularisation is sought for in pursuance of Article 14 of the Constitution or the conflict with the judgment of the seven judges bench in Maneka Gandhi Vs. Union of India (1978) 1 SCC 248, has also been set at rest in the case of Official Liquidator vs. Dayanand (2008) 10 SCC 1.

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31. The said judgment holds the field and is binding.

32. What could be deduced from the cited decision is as under:-

(i) Any public employment has to be in terms of the Constitutional scheme.

(ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.

(iii) Regular appointment must be the rule.

(iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.

(v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment would not confer any right on the appointee.

(vi) If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption. (vii) If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as

envisaged by the relevant rules.

(x) Regularisation is not a mode of appointment.

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules governing the posts.

(xii) The High Court acting under Article 226 of the Constitution of India should not issue directions for regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(xiii) There should be no further by-passing of the constitutional requirement and regularisation or making permanent those not duly appointed as per the constitutional scheme.

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(35) In Umadevi's case (Supra) there is an exception. General principles against regularisation like the employees who have worked for 10 years or more against a sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. Thus the employee should have been continued in service voluntarily and without break of more than 10 years and appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments would be considered to be illegal. However, the employee while possessing the prescribed qualification and was working against sanctioned post but had been selected without undergoing the process of open competitive selection,

such appointments are considered to be irregular. Umadevi's case (Supra) casts a duty upon the concerned Government or instrumentality to take necessary steps to regularise the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any interim orders of Courts or Tribunals as a one-time measure. The said direction was to be set in motion within 6 months from the date of its decision i.e. w.e.f. 10.4.2006. The true effect of the direction is that all employees who have worked for more than 10 years as on 10.4.2006, the date of decision in Umadevi's case (Supra) are entitled to be considered for regularisation, if otherwise they are eligible. Unfortunately, petitioner's case does not fall within the principle laid down by the Supreme Court in the case of Umadevi's case (Supra). The conditions stipulated for regularisation would be prior to the date of disposal of Umadevi's case (Supra) i.e. 10.4.2006. Consequently, it has no prospective application.

36. The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered

for appointment on permanent posts in accordance with the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility criteria from being considered as Lecturer/Assistant Professor.

Having regard to the Constitution Bench decision in the case of ***Secretary, State of Karnataka and others versus Uma Devi and others*** reported in (2006) 4 SCC 1, it is crystal clear that contract appointee has no legal right to continue in the post. Paras 43 and 45 of ***Uma Devi's*** case read as under:-

43. *Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of [Article 14](#) or in ordering the overlooking of the need to comply with the requirements of [Article 14](#) read with [Article 16](#) of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right*

on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under [Article 226](#) of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him,

whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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45. *While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given*

the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in [Article 14](#) of the Constitution.”

Supreme Court in the case of **GRIDCO Ltd. and another**

Versus Sadananda Doloi and others reported in (2011) 15 SCC 16 in paras

41 and 42 held as under:-

“41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.”

Supreme Court in the case of ***AIR India Ltd. Versus 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 after expiry of the term. Further in the case of ***Central Electricity Supply Utility of Odisha Versus Dhobei Sahoo and others*** (2014) 1 SCC 161, it is held that contract appointee cannot claim extension as a matter of right. Extract of Para 49 reads as under:-

“.....Having regard to the nature of language used, it is to be construed that it is a contract appointment to choose a highly qualified and skilled person. The extension is also dependant upon

performance. No limit is provided for number of extensions. It would depend upon the capability, efficiency and suitability as adjudged by the employer. Needless to say, for grant of extension the person would not have a right. Similarly his continuance for the term of three years will depend upon the nature of appointment letter issued to him. Thus viewed, we are inclined to think that the principle stated in Hari Bansh Lal's case would get attracted. That apart, there is no maximum age limit for Chairman. He holds a higher post and his experience and capability have been appreciated by the Commission."

Learned counsel for the petitioner relied on judgment of Supreme Court in the case titled as ***Hargurpratap Singh Versus State of Punjab and others*** reported in 2007 (13) SCC 292, to the extent that contract appointee cannot be replaced by another contract appointee. The Supreme Court while deciding ***Hargurpratap Singh's*** case (supra) has not taken note of the Constitution Bench decision of ***Uma Devi's*** case (supra). Therefore, Hargurpratap Singh's case (supra) is distinguishable.

In view of the Constitution Bench decision in Uma Devi's case (cited supra) where Uma Devi and AIR India Ltd.'s case (supra) decisions have not been taken into consideration. Hence, the decisions cited by the petitioner are distinguishable.

Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

February 02, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.