

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

CWP No.30074 of 2017

Date of Decision:08.01.2018

Amarjit Singh Chitchot (Retd.)

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Mr. A.S. Sandhu, Advocate for the petitioner.

Ms. Anita Balyan, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged the advertisement dated 30.11.2017 (Annexure P-4).

Respondents have advertised for the post of Officer Incharge for two vacancies on 30.11.2017. Petitioner is stated to have been working as Officer Incharge on contract basis for two years from 2016-2017-2018.

Perusal of the agreement, it is evident that contract period of the petitioner has been completed on 02.01.2018. In view of this, petitioner should have filed an application or participated in the process of selection pursuant to the advertisement dated 30.11.2017. On the other hand, he slept over the matter and presented this petition on 26.12.2017 and it was listed on 02.01.2018 for the purpose of admission. As on 02.01.2018, process of selection was complete and order of appointment was issued on 05.01.2018 which was not disputed.

In view of these facts and circumstances and the fact that petitioner was appointed on contract basis for a particular tenure, he has no right to claim over the post. Moreover, there is no infirmity in the

advertisement dated 30.11.2017. He has also failed to participate in the process of selection.

Learned counsel for the petitioner contended that matter is covered by the decision (Annexure P-5).

Petitioner is a contract appointee. He has no right over the post that too he has been appointed for a particular tenure and the contract period of the petitioner has been completed on 02.01.2018 as is evident from the agreement. The respondents have resorted to fill-up the post of Officer Incharge on contract basis pursuant to the advertisement. Supreme Court time and again held that contract appointee has no legal right. 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.”

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.

44. xxx xxx xxx

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 ***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. In view of the aforesaid decisions of the Supreme Court cited by the petitioner's counsel vide Annexure P-5 are distinguished.

Accordingly, petition stands dismissed.

08.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No