

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.22995 of 2015 (O&M)
Date of decision: 30.04.2019

Mahesh Kumar.

..... Petitioner

Versus

State of Haryana and others.

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Jamshed Ahmed, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Civil Writ Petition has been filed praying for the issuance of a writ of Mandamus for directing the respondents not to terminate the services of the petitioner as also not to replace him by a contractual employee during the pendency of the writ petition besides to regularize his services in terms of policy (Annexure P-17) dated 18.06.2014.

[2] At the time of hearing, learned counsel for the petitioner stated that he does not press the writ petition qua the claim for regularization at this stage and restricts relief claimed only to a direction being issued to the respondents not to replace the petitioner by a contractual employee till such time that a regularly selected candidate joins.

[3] Brief facts of the case leading to the filing of the instant writ petition are that the petitioner who possesses qualification of ITI Course in Plumber trade after having passed Senior Secondary Examination in December, 2000 from the Board of School Education, Haryana, as also Diploma in Plumbing from the Department of Industrial Training and

Vocational Education, Haryana apart from having served as an apprentice in

the Municipal Corporation, Faridabad for a period of two years i.e. from 15.04.2002 to 14.04.2004, applied in June 2010 for appointment to the post of Plumber in B.K. Hospital, Faridabad on contractual basis for a period of six months. In response thereto, the petitioner was offered appointment on contract basis as Plumber in the B.K. Hospital, Faridabad on fixed salary as per DC rates for a period of six months or till regular appointment/outsourcing was made by the Haryana Government whichever was earlier. A Service Agreement (Annexure P-7) dated 12.07.2010 was also executed between the Governor of the State of Haryana acting through the Office of the Principal Medical Officer and the petitioner whereby the services of the petitioner were engaged by the Department for a period not exceeding six months, besides, containing other conditions including that the petitioner would not have any legal right to claim regularization of service etc.

[4] Contractual appointment of the petitioner was continued over the years by the issuance of orders from time to time. One such extension order is Annexure P-9 dated 08.04.2011 while vide order Annexure P-12 dated 09.04.2012 the petitioner was appointed again on contract basis as Plumber at B.K. Hospital, Faridabad on DC rates for a period of six months or till regular appointment/outsourcing was made. Similarly, vide Annexure P-14 dated 07.11.2012 the petitioner was again appointed on contract basis as Plumber w.e.f. 07.11.2012 for six months or till regular appointment/outsourcing. Certificate Annexure P-15 dated 20.09.2012 was also issued by the Principal Medical Officer, B.K. Hospital, Faridabad, Health Department, Govt. of Haryana certifying that the petitioner had worked from 13.07.2010 to 11.01.2011, 18.04.2011 to 10.09.2011 and

11.04.2012 till date of issuance of certificate i.e. 20.09.2012 and that his work and conduct was satisfactory.

[5] On 17.03.2016 while adjourning the case for arguments to 11.04.2016 it was ordered that in the meanwhile, the petitioner would be allowed to continue on the post against which he had been working for the past five years on the same status.

[6] Learned counsel for the petitioner states that the petitioner is continuing in service on contractual basis ever since, his appointment in the year 2010 with notional breaks. Learned counsel further contends that it is well settled that a contractual employee cannot be replaced by another contractual employee and a contractual employee is entitled to continue in service till regular appointment is made. Learned counsel relies on the decision of a Co-ordinate Bench of this Court in CWP No.13555 of 2013 dated 02.07.2013 in case titled as Shivkesh and others vs State of Haryana and others to contend that in said case by relying on the decision of a co-ordinate bench of this court in CWP No.2346 of 2013 decided on 04.02.2013, it was held that the decision rendered in said writ petition was consistent with the views expressed by the High Court as well as Supreme Court that a contractual employees could not be replaced by another similar arrangement and services of a contractual employee were to be continued till regular recruitment was made unless the work and conduct of the contractual employee indicated to the contrary and that the submissions of learned state counsel to the contrary were not consistent with the decision of this Court in Rajni Bala Vs. State of Haryana, 1995 (4) R.S.J. 329 as also decision of Hon'ble the Supreme Court in Hargurpratap Singh Vs. State of Punjab & others, (2007) 13 S.C.C. 292.)

[7] Learned Sr. DAG does not dispute the proposition enunciated in the aforementioned decision that a contractual employee cannot be replaced by a contractual employee and services of a contractual employee are to be continued till regular appointment is made unless work and conduct of the contractual employee indicates to the contrary. He however contends that regular post of Plumber in the Hospital stands abolished and now a Plumber is to be recruited through outsourcing as per policy applicable.

[8] I have considered the submissions of learned counsel for the parties. Appointment of the petitioner was initially made on contractual basis for a period of six months vide order Annexure P-6 dated 12.07.2010 and thereafter, the same was continued from time to time with notional breaks and now has been continued uninterruptedly with effect from the date of filing of the writ petition.

[9] In the circumstances, the writ petition is liable to be allowed to the extent that the petitioner is held entitled to continue in service till such time that work exists and he will not be replaced by another contractual employee subject to his work and conduct being up to the mark. However, the aforementioned directions are not to be construed as a bar to a decision if taken by the respondents in terms of Chief Secretary Policy, Part A.

30.04.2019
amit

(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.