

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

CWP No.23702 of 2019

Date of decision: 28.11.2019

Parveen Kumar and Ors.

...Petitioners

Versus

State of Haryana and Ors.

... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Sanjeev Majra, Advocate for the petitioners.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Learned counsel contends that the petitioners were appointed as Instructors on contractual basis for a period of six months vide order Annexure P-1 dated 08.03.2019 (in the case of petitioner No.1) and likewise, petitioner Nos.2 to 4 were also appointed on similar basis in the year 2019 for a period of six months or till regularly selected candidates joined.

[2] Apprehension of the petitioners is that they would be replaced by other similar contractual employees whereas in view of the decision of Hon'ble the Supreme Court in **Hargurpratap Singh v. State of Punjab and Ors, 2007 (13) SCC 292**, the petitioners are entitled to continue in service till joining of regularly selected candidates. Relevant extract of the same is reproduced as under:-

“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 same was followed by a Division Bench of this Court in Ashok Kumar and others v. State of Haryana and others, CWP No.5289 of 2007 decided on 24.01.2008. Relevant extract of the same is reproduced as under:-

“In this writ petition, the petitioners have prayed that till such time regularly selected candidates are not appointed, they be not replaced by appointing Instructors on contract basis. Their further prayer is to grant them enhanced pay on the principle of equal pay for equal work.”

“At the time of hearing, on getting instructions from Sh. Rajpal Singh, Joint Director, Industrial Training and Vocational Education Department, learned Advocate General, Haryana gave a very fair concession that till such time candidates are not selected and appointed on regular basis the petitioners shall not be replaced with other contractual employees. Statement made by the Advocate General, Haryana satisfies counsel for the petitioners and they very gracefully state that they

are not pressing their claim to get higher wages as claimed by them in these writ petitions.

In view of the consensus arrived at between the parties, we dispose of these writ petitions with a direction to the respondents to allow the petitioners to continue in service, subject to all terms and conditions which they had accepted by executing agreement dated 8.11.2006 (Annexure P-7). It is further made clear that in case work and conduct of any employee is not up to the mark, authority(s) concerned will be at liberty to take action as per rules. It is further directed as follows:-

- (i) That the petitioners shall not be entitled to continue in service, when regularly selected candidates, on completion of ongoing selection process are appointed against the posts, the petitioners are holding at present.*
- (ii) In case the department decides to close down any trade in any institute, incumbent of those posts will have no right to continue. However in case that very trade is opened in any other institute and if former teachers are available, they be offered the posts in the first preference.*
- (iii) In case the department of Vocational Education is merged with the department of Secondary Education, the petitioners will continue to work on the same terms and conditions under which they are working now and will leave the post when regularly selected candidates are appointed against them or in case on account of availability of regular staff their services become surplus.”*

[3] Learned counsel for the petitioners states that on the last date of hearing while issuing notice of motion for today, a co-ordinate Bench of this Court had granted ad interim stay qua dispensing the services of the

petitioners, in case, respondents intended to replace the petitioners by other similar set of contractual employees but clarified that interim stay would not come into force if the respondents undertook exercise to fill-up the posts through regular process.

[4] Learned Sr. DAG states that the writ petition can be disposed of by making interim order absolute inasmuch as the petitioners who were appointed on contractual basis would be allowed to continue in service in terms of the directions given in Ashok Kumar's case (Supra) and would not be replaced by similar set of contractual employees, however, it be clarified that the protection would not be available to the petitioners in case the respondents sought to fill up the posts held by the petitioners on regular basis.

[5] The same satisfies learned counsel for the petitioners.

[6] In the light of the position as noted above, the writ petition is disposed of with a direction that the petitioners shall be allowed to continue in service and shall not be replaced by other similar set of contractual employees. However, entitlement to continue in service shall stand vacated in case the respondents fill up the posts held by the petitioners on regular basis. Further, directions issued in Ashok Kumar's case (Supra) would also be applicable in the instant case.

28.11.2019
amit

(B.S. Walia)
Judge

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