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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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***Reserved on: 07.08.2020***

***Pronounced on: 28.08.2020***

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W.P. (C) 2935/2020 and CM Nos. 10191/2020, 14332/2020

MS. SONALIKA BHARGAVA

..... Petitioner

Through: Mr. Ashok K Mahajan & Mr.  
Vinay Rathi, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Avnish Ahlawat, Standing  
Counsel with Mr. Nitesh Kumar  
Singh, Advocate for R-1.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

1. Present Petition has been filed by the Petitioner seeking directions to the Respondents to continue the services of the Petitioner in the post of Legal Consultant (Law) till regular appointment against the post as well as for directions to Respondent No. 3 not to initiate the fresh process for appointment of Legal Consultant on contractual basis by replacing the Petitioner with another contractual employee.

2. The factual narrative required for deciding the petition is in a narrow compass. Petitioner was a practicing Advocate and was empanelled with Delhi Legal Services Authority (DLSA) in the year 2015 as a panel Advocate (Civil). In August 2018, Respondent No. 3 issued an

Advertisement for appointment of one Legal Consultant (Law) in consultation with DLSA (Central). Pursuant to the Advertisement, in September, 2018 the name of the Petitioner was forwarded by DLSA to Respondent No. 3, along with a few other advocates.

3. Interview was conducted on 04.09.2018 by the Selection Committee comprising of District Magistrate (Central), Additional District Magistrate (Central) and Sub-Divisional Magistrate (HQ). Being successful in the interview, Petitioner was selected and offer letter was issued on 12.09.2018 appointing her as Legal Consultant (Law) on contract basis, subject to her acceptance.

4. Vide letter dated 13.09.2018 Petitioner accepted the appointment on the terms and conditions offered, pursuant to which an Agreement was entered into between her and Respondent No. 3 and the Petitioner joined on 17.09.2018. The appointment was for an initial period of six months commencing from the date of joining i.e. 17.09.2018, extendable, subject to satisfactory performance or till regular appointment was made, whichever was earlier.

5. The case as set out by the Petitioner is that the work and performance of the Petitioner being satisfactory, the contract of the Petitioner was extended for a period of one year from 01.03.2019 to 29.02.2020 vide letter dated 05.03.2019. It is averred that there are 12 Legal Consultants in total, working in 11 Districts in Delhi and one, at Revenue Headquarters/Respondent No. 2, all on contract basis, with same terms and conditions as applicable to the Petitioner. Contractual engagement of all the other Legal Consultants was also extended by Respondent No. 2, vide letter dated 05.04.2019.

6. Petitioner avers that the contract of the Petitioner expired on 29.02.2020 but no letter was issued extending her contract for further period of one year and she was not allowed to continue, whereas all the other Legal Consultants continued working.

7. The petition was filed under an apprehension that Respondent No. 3 was initiating fresh process of appointment of a Legal Consultant in Central District, on contractual basis, replacing the Petitioner. When the petition was listed on 20.03.2020 counsel appearing for GNCTD had given a Statement before the Court that the Respondents shall maintain status quo regarding the subject matter of the petition, till the next date of hearing and petition was adjourned to 12.05.2020. On account of the Nationwide lockdown due to Pandemic COVID-19, petition was not listed on 12.05.2020, the scheduled date.

8. On 10.06.2020 Respondent No. 2 issued a Circular extending the period of engagement of Legal Consultants appointed on contract basis, in all the 10 Districts and Revenue HQ, except for the Central District in which the Petitioner was working and the reason given in the Circular for non-extension in the said District was that the matter was 'subjudice' before this Court.

9. Issuance of this Circular triggered the filing of an application before this Court, being CM No. 14332/2020, by the Petitioner seeking directions to the Respondents to extend her services in terms of the said Circular. Notice was issued on the said application on 07.07.2020 granting time to the Respondents to file a reply. Petition was fixed for final hearing and status quo order passed on 20.03.2020, was continued.

10. The contention of learned counsel for the Petitioner is that by resorting to fresh process of selection, Respondents are replacing one contractual employee with another contractual employee, which is contrary to the judgement of the Constitution Bench of the Supreme Court in ***State of Haryana vs. Piara Singh, 1992 (4) SCC 118*** as well as the recent judgement of this Court in ***Anil Lamba & Ors. vs. Govt. of NCT Delhi & Ors. 2017 (238) DLT 760***. Relevant paras of judgement in ***Piara Singh (supra)*** so relied are as under:-

*“44. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularization of ad hoc/temporary employees in government service.*

*45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.*

*46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.”*

11. It is argued that action of Respondent No. 3 is arbitrary and violates the right of livelihood of the Petitioner, enshrined under Article 21 of the Constitution of India. Petitioner was appointed after going through a rigid process of interview, conducted by Respondent No. 3 and only after clearing the selection criteria, she was offered the job and was assured of a term, till a regular appointment took place.

12. Learned counsel for the Petitioner strenuously argues that when the Circular for appointment was issued on 29.08.2018, it was clearly stipulated therein that approval of the Secretary was conveyed for engagement of the Legal Consultant on contractual basis for the period 01.09.2018 to 28.02.2019, extendable for further period of one year or till the regular appointment was made on the post, whichever was earlier. To the same effect were the provisions of Circular issued on 05.04.2019 by which the period of engagement of Legal Consultants working in other Districts was extended. It is contended that from a combined reading of the Circulars dated 29.08.2018 and 05.04.2019, it is evident that the intent of the Respondents was to renew the contracts, till a regular appointment was made and there was no other condition for extension. Contrary to the said intent and the assurance and despite the fact that no regular appointment was made, the contract of the Petitioner was not extended beyond 29.02.2020, for another year.

13. The argument of the Petitioner thus hinges on a two-pronged attack. Firstly, that in the absence of a regular appointment, Respondents were liable to extend the contract from 01.03.2020 to 28.02.2021. Second argument is founded on discrimination vis-à-vis the Legal Consultants in all the other Districts. It is contended that once the contract

has been extended upto 28.02.2021, for Legal Consultants in all other Districts, non-extension in the case of the Petitioner is a clear violation of right to equality under Article 14 of the Constitution of India. Mr. Mahajan further argues that perusal of the Circular dated 10.06.2020 reveals that the only reason for not extending the contract of the Petitioner is that the present petition is pending in this Court. Only because the Petitioner approached the Court to ventilate her grievances cannot inure to her disadvantage to decline extension to her.

14. It is argued that the words ‘till regular appointment’ and ‘whichever is earlier’ in the Circular dated 29.08.2018, cannot be ignored and require to be given a meaningful interpretation. Simply read, the only connotation is that the Petitioner’s contract is liable to be extended for further one year from the date of expiry unless regular appointment is made in the meantime. It is an admitted position that no regular appointment has been made and the post is still vacant.

15. It is argued that the phrase ‘whichever is earlier’ came up for consideration before the Supreme Court in ***Vidhya Dhar Sharma vs. G.B. Patnayak 2001 (10) SCC 633*** and the Court interpreted the same to mean that temporary and adhoc services shall continue till the regularly selected candidate is appointed. Para 6 of the judgement relied upon is as under:-

*“6. The selection of the petitioner was made pursuant to an advertisement of the State of U.P. wherein they have proposed to recruit 1400 doctors on ad hoc and temporary basis. It was in that selection that the petitioner was selected but appointment not given. It is true that the petitioner cannot be given permanent appointment because his selection was for one year or pending selection of the*

*regular candidates by the Public Service Commission. In the office memorandum now issued on 19<sup>th</sup> February, 2001, it is stated that the appointment of the petitioner is for a period of one year or until a candidate selected by the Public Service Commission is available whichever is earlier. We see no justification for expression “whichever is earlier” and direct that the petitioner’s appointment will continue as long as persons junior to him are allowed to continue pending selection of a regular candidate by the Public Service Commission. In other words, the temporary and ad hoc services of the petitioner will continue till a regularly selected candidate is appointed and/or till the services of all those juniors to him are terminated. His seniority for the purpose of termination will now, in the changed circumstances, count from the date of his initial selection as a Medical officer. The petitioner will also be entitled to salary with effect from 8th November 2000 and arrears will be paid within four weeks from today.”*

16. It is next argued that Respondent No. 3 is subordinate to the office of Respondent No.2. Power of taking a decision in matters of appointments/extensions vests with Respondent No. 2 and has not been delegated to Respondent No. 3. Delegation, if any, was only for a limited period upto 29.02.2020. Respondent No. 2 was considering extension of existing contracts for the various Districts and Respondent No. 3 ought to have waited for the decision of Respondent No. 2, before taking a decision, adversely affecting the rights of the Petitioner. Thus the action of the Respondent in taking a decision to initiate fresh process of selection for the concerned District, without there being an authorization or delegation from Respondent No. 2, is wholly without jurisdiction and bad in law.

17. Referring to the file noting, produced by the Respondents during the course of hearing, learned counsel submits that it is evident from the notings that Respondent No. 2 had delegated the power for initiating the process of selection to Respondent No. 3, only for a limited period 01.09.2018 to 28.02.2019. In the subsequent Circulars dated 05.04.2019 and 10.06.2020, there is no such delegation. Attention of the Court is drawn to the list of dates of events submitted by the Respondents as well as a part of the noting, which is as under:-

*“In view of this it is proposed that the District Deputy Commissioners may review the performance of existing Legal Consultants and re-engage on the basis of their assessment alternatively the Deputy Commissioners in consultation with DLSA may engage a suitable Legal Consultant for a period 01.09.2018 to 28.02.2019 extendable for further one year or till a regular appointment is made on the post whichever is earlier subjected to continuation of temporary posts of Legal Assistants or these posts converted into permanent posts.”*

18. On the issue of alleged discrimination qua the Legal Consultants in the other Districts whose respective contracts have been extended till 28.02.2020, learned counsel places reliance on the following judgements:-

***(i). 1991 (3) SCC 291 ‘Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla’.***

***(ii). 2009 (6) SCC 611 ‘Mohd. Abdul Kadir & Anr. Vs. Director General of Police, Assam & Ors.’***

***(iii). LPA No. 595/2019 decided on 01.05.2020 (DB) Delhi***

***High Court 'Manisha Priyadarshini Vs. Aurobindo College-Evening & Ors.'***

19. *Per contra* learned counsel for the Respondents Mrs. Ahlawat submits that the present petition is not maintainable, as the appointment of the Petitioner was purely contractual in nature and she has no vested right to continue as such. The fresh process was initiated in order to give fair opportunity to other people for competing for appointment as Legal Consultant, which is in keeping with the letter and spirit of Articles 14 and 16 of the Constitution of India.

20. Mrs. Ahlawat highlights Clause 8 of the Agreement appointing a Legal Consultant which categorically states that 'the contractual engagement of the appointee is purely on temporary basis and the employer reserves the right to terminate the said contract at any time, before the expiry of the term, without assigning any reason, whatsoever. She further points to Clause 2 which reads as under:-

*"2. The engagement of the appointee shall be initially for a period of six months commencing from 19.09.2018 subject to satisfactory performance or till regular appointment is made, whichever is earlier.*

*This engagement on contract basis will not vest any right or claim for regular appointment against the said post."*

21. Mrs. Ahlawat submits that the Petitioner is completely overlooking the relevant portion of the Circular dated 05.04.2019 which is as under:-

*"The District Deputy Commissioner may review the performance of existing legal consultant in their district and re-engage on the basis of their assessment, alternatively the*

*Deputy Commissioner in consultation with DLSA may engage a suitable legal consultant for the period approved.”*

22. The argument is that Respondent No. 3 has the discretion to appoint, in consultation with DLSA, a suitable Legal Consultant for the period approved, as an alternative to extending the existing contracts. There is no mandate to Respondent No.3 to necessarily extend the Petitioner’s contract, even if her performance is satisfactory. Petitioner is misreading and misinterpreting the Circulars in this regard.

23. Drawing the attention of the Court to the chronology of dates and events, Mrs. Ahlawat submits that initially in 2017, Office of DC (HQ) had issued an advertisement for appointment on contractual basis for six months, extendable with the Approval of the Government. Twelve candidates were selected and five were kept in the reserve panel. The selection of the Legal Consultants was against 12 vacant posts of Legal Assistants in the Revenue Department, on contract basis. The twelve selected Legal Consultants were to be posted in the respective Districts, including the Revenue HQ. Out of 12, only 9 candidates submitted their acceptance and offer was thus sent to the 3 candidates from the reserve panel. Out of the 3, only 2 joined. The service of the appointees was extended upto 31.08.2018 with the direction to prepare a fresh panel, as it was decided not to give further extension to the existing Legal Consultants.

24. On 08.08.2018 a proposal was put to the Competent Authority to allow the District DCs to review the performance of the existing Legal Consultants and re-engage them on the basis of their assessment and

alternatively to allow the District DCs, in consultation with DLSA, to engage suitable Legal Consultant for the period 01.09.2018 to 28.02.2019, extendable by one year or till regular appointment, whichever was earlier. The proposal was approved by DC (HQ) on 21.08.2018 and at this stage the appointment of Legal Consultant was de-linked from the Centre and authority was delegated to the concerned DM to re-engage existing or engage fresh Legal Consultants. In keeping with this, on 29.08.2018 letters were issued authorizing the DMs in this behalf. On 30.08.2018 a proposal was submitted by the SDM (Central) to DM (Central) to constitute a Committee for engagement of Legal Consultant in the Central District along with a request to the DLSA to submit a list of empanelled advocates with experience in Revenue and land matters.

25. It is hereinafter that post the approval on 31.08.2018, interviews were conducted and the Petitioner was appointed on contract basis for a period of six months commencing for 19.09.2018, subject to satisfactory performance or regular appointment, whichever was earlier. On 04.02.2019 before expiry of six months, proposal was submitted to the DM (Central) for further extension of six months. DM (Central) however, in view of the sanction received, granted one year extension from 01.03.2019 to 29.02.2020.

26. It is further submitted that before the said term expired, on 18.02.2020, matter was placed before the Competent Authority i.e. DM (Central) for extension of one year i.e. 28.02.2021. On a query from the DM (Central) on 24.02.2020, the ADM (Central), pointed out that as the period of contract was expiring, the DM could review the performance of the existing Legal Consultant in the District, on the basis of assessment or

alternatively make fresh appointments in accordance with the Circular dated 05.04.2019. DM (Central) on 25.02.2020 approved the second option with a view to give opportunity to the others to compete for the appointment. On 26.02.2020 DLSA was requested to provide a list of 8 empanelled Advocates with experience in the relevant field.

27. Mrs. Ahlawat submits that before the process could go any further, present petition was filed and thus status quo was maintained, as per the assurance given to the Court. She submits that on 14.06.2020 financial sanction to engage Legal Consultants was received, but no action was taken with respect to the Central District for twofold reasons viz. there was a status quo order and petition was pending and process had already been initiated for appointing a fresh Legal Consultant. Since the Competent Authority had left it to the discretion of the concerned DMs to choose any one of the two alternatives, and it was decided to hold fresh selection, Petitioner can hardly have any grievance and cannot allege discrimination qua the Consultants in the other Districts.

28. Learned counsel for the Respondents contends that it has been repeatedly held by various Courts that a contractual employee has no right to seek extension of a contractual employment. Once the contract comes to an end by efflux of time, there is no right to continue in the post and the Courts cannot direct the employer to extend the contracts. Mrs. Ahlawat relies on the following judgments in this context as follows:-

1. ***Director, Institute of Management Development, U.P. vs. Pushpa Srivastava (Smt) (1992) 4 SCC 33***
2. ***Dr. L.M. Nath vs. Dr. S.K. Kacker and others (1996) 1 SCC 229***

**3. *Dr. S.K. Kacker vs. All India Institute of Medical Science and ors. (1996) 10 SCC 734***

**4. *Union of India & Anr. vs. Satish Joshi ILR (2013) V Delhi***

29. Mrs. Ahlawat further draws the attention of the Court to paragraphs 4 & 5 of the Counter Affidavit wherein it is averred that the right of the Petitioner to compete in the fresh selection process has not been taken away. She is still on the panel of DLSA and her representation has been included in the list of Applicants for fresh recruitment, treating the same as an application. Selection Committee has been constituted comprising of the ADMs of the West District and North District, including all the SDMs of Central District and Law Officer from MCD. The selection shall be conducted in a fair and transparent manner, giving equal opportunity to all the applicants including the Petitioner and the present petition deserves to be dismissed.

30. Learned counsel for the Petitioner in Rejoinder submits that the Respondent cannot give a go-by to the terms and conditions of the contract between the parties. It was clearly mentioned in the Appointment Letter as well as the agreement signed with the Petitioner that the contract would be extendable for further one year or till a regular appointment is made. Merely because the concerned Deputy Commissioner of a District has been given the discretion to engage a fresh Legal Consultant as an alternative to the extension of the existing contract, does not imply that the said clause would override the terms of the contract. It is also argued that once Respondent No. 2 has extended the contractual engagements of

the Legal Consultants in the other Districts, it implies that the first option has been exercised and therefore the discretion to resort to second option becomes meaningless in the Petitioner's case.

31. I have heard learned counsels for the parties and examined their contentions.

32. The uncontroverted facts are that the Petitioner was selected for the post of Legal Consultant on contractual basis for an initial period of six months, whereafter an Agreement was signed between the Petitioner and Respondent No. 2 on 19.09.2018. The contract was extended for a further period of one year from 01.03.2019 to 29.02.2020 by Respondent No. 3, vide letter dated 05.03.2019 and the relevant part of the letter is as under:-

*“The Competent Authority is pleased to renew the contract of Legal Consultant for the period of one year from dated 01.03.2019 to 29.02.2020 in term of notification issued by Revenue (HQ) vide letter No. F10(7)/GA/DC/HQ/2013/1418 dated 29.08.2018.*

33. The contents of the letter dated 29.08.2018 which was the genesis of the selection and has been referred to in the Appointment Letter dated 05.03.2019, is significant and reads as under:-

*“In this regard, approval of Secretary (Revenue) is hereby conveyed for engagement of Legal Consultant on contractual basis against the vacant temporary posts of Legal Assistants for the period 01.09.2018 to 28.02.2019 extendable for further one year or till a regular appointment is made on the post, whichever is earlier subjected to continuation of temporary posts of Legal Assistants/these posts converted into permanent posts.*

*The District Deputy Commissioners may review the performance of existing Legal Consultants in their district and re-engage on the basis of their assessment, alternatively*

*the Deputy Commissioners in consultation with DLSA may engage a suitable Legal Consultant for the period approved. The terms and conditions of appointment of Legal consultants remain the same.”*

34. In continuation of the letter dated 29.08.2018 another letter was issued by Respondent No. 2 on 05.04.2019 regarding extension of the contract of the Legal Consultants in the other Districts. The relevant part of the letter is as under:-

*“GOVERNMENT OF NCT OF DELHI  
REVENUE DEPARTMENT, DELHI  
(GENERAL ADMINISTRATION BRANCH)  
5 SHAM NATH MARG, DELHI*

*Dated: 05/04/2019*

*No. F.10(7)/GA/DC/HQ/2013/Pt. File/66*

*To*

*The District Magistrate  
All District of Revenue Department  
Govt. of NCT of Delhi  
Delhi/New Delhi*

*Sub: Regarding extension of the period of engagement of Legal Consultants appointed on contractual basis.*

*Sir/Madam,*

*In continuation of this department's letter of even number dated 29.08.2018, approval of Secretary (Revenue) is hereby conveyed for engagement of legal consultants basis against the vacant temporary posts of legal Assistants for the period of 01.03.2019 to 29.02.2020 extendable for further one year or till a regular appointment is made on the post, whichever is earlier subjected to continuation of temporary posts*

*of legal Assistants/these posts converted into permanent posts.*

*The District Deputy commissioner may review the performance of existing Legal Consultants in their district and re-engage on the basis of their assessment, alternatively the Deputy Commissioner in consultation with DLSA may engage a suitable legal consultant for the period approved.*

*The approval of office of the Chief Electoral may also be obtained if fresh appointment made during the period of enforcement of Model Cod of Conduct.*

*The terms and conditions of appointment of Legal Consultant remain the same.*

*Yours faithfully,*

*-sd/-*

*(Arun Kumar Jha)*

*SUB-DIVISIONAL MAGISTRATE-II (HQ)*

35. A perusal of the offer letter indicates that the terms and conditions regarding the extension of the contractual period were not provided therein. An agreement was separately signed on 19.09.2018 which had a clause providing that the engagement of the Petitioner was for six months subject to satisfactory performance or till regular appointment is made, whichever was earlier. When the appointment was subsequently extended vide letter dated 05.03.2019 it referred to the letter dated 29.08.2018. Letter dated 29.08.2018 has been extracted above.

36. The contents of the said letter are relevant in as much as in the earlier part of the letter it was mentioned that the contract was extendable for further one year or till a regular appointment, whichever was earlier, however, the second paragraph clearly provided that the District Deputy Commissioners may review the performance of existing Legal Consultants in their District and re-engage them on the basis of their assessment. Alternatively, in consultation with DLSA, they had the discretion to make fresh appointments. In fact the letter dated 05.04.2019 on which great emphasis has been laid by learned counsel for the Petitioner also contains similar provisions and was in continuation thereof.

37. It is the admitted case of the Petitioner that the contents of the letter dated 05.04.2019 were in her knowledge and as far as letter dated 29.08.2018 is concerned, the same is referred to, as is evident, in the letter of her extension, dated 05.03.2019. Combined reading of the Agreement, the letters dated 05.03.2019, 05.04.2019 and 29.08.2018 leads to two inevitable conclusions. Firstly, that at the end of the first extension i.e. on 29.02.2020, the contract was extendable by one year or till the regular appointment was made and secondly, the discretion vested with the concerned Deputy Commissioners in the respective Districts, to either renew the existing contracts or take a recourse to fresh selection. Petitioner seeks to argue that the words 'extendable for further one year or till regular appointment is made, whichever is earlier' confers vested right on the Petitioner for extension up to 28.02.2021 and the only rider was a regular appointment, in the meantime. In my view, the said words are being wrongly interpreted by the Petitioner. The word used is not

‘extend’ but is ‘**extendable**’. By its very meaning and connotation, word ‘extendable’ means and is used to describe something which is ‘capable of extension’ and thus implicit in it is the discretion to extend or not to extend. Even the terms of the contract of the Petitioner reveal that it was the discretion of the Competent Authority to extend or not to extend the contract and any other interpretation would be contrary to the plain meaning of the word ‘extendable’. At best the word ‘extendable’ would convey that there was a probability for extension beyond 29.02.2020, but certainly cannot be construed to mean that there was a vested right of the Petitioner for extension upto 28.02.2021.

38. This interpretation is fortified by the latter part of the letters dated 29.08.2018 and 05.04.2019, giving a discretion to the Competent Authority to review the renewal of the existing contracts. The scheme of things that thus emerges is that once the contract ended by efflux of time on 28.02.2019, the terms of extension letter, by virtue of the use of the word ‘extendable’, permitted the Competent Authority to extend the contract. It was only once the decision was taken to extend the contract, the words ‘further one year’ or ‘till a regular appointment’ assumed significance, and not the converse. Significance of the words is merely to circumscribe the tenure of the extended contract and no more.

39. Learned counsel for the Petitioner has strenuously argued, in the background of the words ‘till a regular appointment’ that they can only mean and read that Petitioner had a right to extension of contract for one year or till regular appointment. In my opinion, once the contract itself was not extended, the terms describing the tenure become redundant and otiose.

40. It is clear from a reading of the letters that once the contract ended, the concerned Deputy Commissioners had the discretion to either review the performance of the existing Legal Consultants and re-engage them or appoint fresh Legal Consultants. The two sentences in the concerned paragraphs are conjoint with a word 'alternatively' which can only connote 'or'. The Petitioner, in my view, wrongly contends that the Competent Authority was obliged to resort to the first option of considering the performance of the existing Legal Consultants and re-engage them if the work was satisfactory and only if the work was not satisfactory, the alternative of fresh selection could be resorted to. The use of the word 'alternatively' can only be read to give a discretion to follow one path or the other and it is for the Authority, in whom the discretion is vested, to decide which of the two paths it wants to tread on. Therefore, there is no force in the contention of the Petitioner that she had any vested right for extension of the contract beyond 29.02.2020 and that the Competent Authority had no jurisdiction to resort to fresh selection.

41. The argument of the learned counsel for the Petitioner that Respondent No. 3 had no jurisdiction to take a decision to invoke the clause of fresh selection and invite names for the said purpose from the DLSA, also has no merit. Learned counsel for the Respondents has placed on record the file notings containing the entire selection process from the year 2017 onwards. It is clear that on 08.08.2018 a proposal was put to the Competent Authority to allow the District Deputy Commissioners to review the performance of the existing Legal Consultants and re-engage them or to appoint suitable Legal Consultants. The file further indicates that the DMs were authorized in their Districts

to engage the Legal Consultants. Therefore, there is merit in the contention of Mrs. Ahlawat that the engagement of Legal Consultants was decentralized and powers/discretion was given to the DMs to carry out the process. On 30.08.2018 the SDM (Central) submitted the proposal to DM (Central) to constitute a Selection Committee for engagement of Legal Consultant in Central District comprising of the District Magistrate as Chairman, Additional District Magistrate and SDM as Members. As per the proposal a request was to be sent to the DLSA to submit the names of the empanelled Advocates. It is post this procedure, that the Petitioner was initially appointed for a period of six months, commencing from 19.09.2018. Before the one year contract period of Petitioner ended on 29.02.2020, the matter was again put up before the DM (Central) on 18.02.2020 for extension by one year. On 24.02.2020, the DM (Central) enquired about the procedure to be followed. In keeping with the earlier procedure and the letter dated 29.08.2018, the ADM (Central) apprised the DM (Central) that it could resort to either renewal of existing contract or engage a suitable Legal Consultant. On 25.02.2020, DM (Central) approved the second option. On 26.02.2020 the DLSA (Central) was requested to provide a list of maximum eight empanelled Advocates having experience in Revenue, Civil and Land matters for appointment on contract basis. On 20.03.2020, DM (Central) directed to include ADM (North) and ADM (West) in the Committee along with the Law Officer from any MCD for better assessment on the legal front. On account of the status quo order by this Court in the present writ petition the matter did not progress thereafter.

42. Having gone through the file, it is clear that the process of engagement of Legal Consultants was decentralized in 2018, even before the Petitioner was given her first appointment in 2018. Once the concerned DMs were given the authority to make selection and the concerned DMs chose the alternative of engaging a suitable Legal Consultant by inviting names from the DLSA, no infirmity can be found with the said action.

43. The law on the right of a contractual appointee to seek extension of contractual appointment is more than well-settled. Once contract of employment comes to end by efflux of time, it cannot be claimed as a vested right for its extension. In the case of ***Vidyavardhaka Sangha and Another v. Y.D. Deshpande And Others***, (2006) 12 SCC 482, the Supreme Court held as under :-

*“4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that*

*appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation, etc.”*

44. It is true that an Authority / State cannot be permitted to act whimsically, capriciously or arbitrarily, but this cannot be applied as a principle in every case, to hold that in each case the Contract of employment must be extended as a matter of right. On the expiry of the Contract no obligation can be fastened on the employer to necessarily extend the said contract. The Court exercising jurisdiction under Article 226 of the Constitution of India cannot impose any such liability on the employer. This shall apply with greater force in the present case, where the terms of the employment gave a discretion to the Competent Authority, to extend the contract or make fresh selection.

45. Much was argued by the Petitioner on the Circular dated 10.06.2020 issued by Respondent No.2. In a nutshell, the argument was that Respondent No.2 has extended the contract of the existing Legal Consultants up to 28.02.2021 or till regular appointments are made, whichever is earlier, in all Districts, with an exception of the Central District. The argument was also that as per the Circular the contract of the Petitioner was not extended only because her matter was subjudice before this Court. The argument hinges on violation of Article 14 of the Constitution of India vis-à-vis the Consultants in the other 10 Districts and one Revenue (HQ) District. This argument of the Petitioner, in my view, though does appeal in the first blush, but on a careful analysis, overlooks the latter part of this Circular. It is significant to note that in the

first part of the Circular, there is a reference to a letter dated 05.04.2019 and it is stated that in continuation of the said letter the approval of the Principal Secretary Revenue/ Divisional Commissioner is conveyed for extension of period of engagement of Legal Consultants on contract basis. Thus, all that the Circular does is to convey the sanction of the Competent Authority for further extension of the contracts. This is however qualified by paragraph 2, wherein following the mandate and intent of letter dated 05.04.2019, the District Magistrates had been given the discretion to review the performance of the existing Legal Consultants and alternatively to engage a suitable Legal Consultant. Therefore, the Petitioner is wrongly interpreting the Circular, as if a blanket extension has been given to existing Legal Consultants. In fact, this Circular supports the case of the Respondents that discretion with the concerned District Magistrates always existed and still exists in their respective Districts, to choose any of the two options.

46. Even assuming for the sake of arguments, that extension has been granted to all Legal Consultants in the other Districts, the same has been in exercise of the discretion of the Competent Authorities, in their respective domain. In the Central District, the file clearly shows that the discretion was exercised in favour of fresh selection to give opportunity to others also and enlarge the base for healthy competition, which only furthers the goals under Articles 14 and 16, enshrined in our Constitution.

47. The argument of the Petitioner as a proposition of law, that a contract employee cannot be replaced by another contract employee cannot be negated. Petitioner is right in the contention that the Supreme Court in *Piara Singh (supra)* followed by this Court in *Anil Lamba*

(*supra*) has clearly held so. But in my view, the proposition applies in a different context in service jurisprudence. The proposition cannot have any relevance in the present case, looking at the nature of the appointment in question. Legal Consultants are appointed intermittently to fill in the gaps, on purely contract basis. In fact, the post of Legal Consultant is not even a substantive or a permanent or a sanctioned post. The sanctioned post is that of Legal Assistant. Till such time that the posts of Legal Assistant are lying vacant, the Legal Consultants are hired. This confers no right to continue in perpetuity or for any specified term as the nature of appointment is not with an intent or purpose to bestow any employment. The appointment is at best comparable to panel lawyers of the various State and Central Government and cannot be treated as akin to an employment with a Government and cannot have any analogy to a contract of service under the Government, which is on a different threshold.

48. Respondents in their affidavit have clearly stated that the representation of the Petitioner has been treated as an application and that she will be considered during the process of fresh selection. The Petitioner is, therefore, free to compete with the others who are under consideration and if she is successful she shall be appointed again. With the nature of post in question, it would be unfair to hold that the Petitioner has a right to continue in perpetuity as there are others who would be waiting for equal opportunity to compete being qualified and eligible. Article 16(1) of the Constitution of India guarantees equal opportunity to all to aspire to make their careers.

49. In view of the above, the relief sought by the Petitioner for extension of her contract from 01.03.2020 to 28.02.2021 cannot be granted. It is, however, directed that Respondents shall intimate the date of the interviews to the Petitioner and invite her for the same, as and when the interviews are scheduled, to enable her to participate in the selection process. Needless to state that the process shall be fair and due consideration shall be given to the work and performance of the Petitioner, during her last contractual period.

50. The writ petition is accordingly dismissed along with the pending applications.

51. The assurance given by the Respondents to maintain status quo will not operate any further and Respondents are free to carry out the Selection Process.

**AUGUST 28<sup>th</sup>, 2020/yo**

**JYOTI SINGH, J**