

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

**WPA No. 6365 of 2020
I.A. No. CAN 1 of 2020 (Old No. CAN 4925 of 2020)
CAN 2 of 2021**

Sudip Mitra

Vs.

Gayeshpur Municipality & Ors.

With

**WPA No. 6366 OF 2020
I.A. No. CAN 1 of 2020 (Old No. CAN 4928 of 2020)
CAN 2 of 2021**

Ashim Kumar Nath

Vs.

Gayeshpur Municipality & Ors.

For the writ petitioners	:-	Mr. Amal Baran Chatterjee, Adv. Ms. Biswanath Samanta, Adv.
For the State	:-	Mr. Arjun Roy Mukherjee, Adv. [in WPA 6365 of 2020]
For Gayeshpur Municipality	:-	Mr. Ramkrishna Bhattacharya, Adv. Mr. K. Choudhury, Adv.
For the respondent no.5	:-	Mr. A. K. Dasgupta, Adv.
Hearing concluded on	:-	16.03.2021
Judgment on	:-	19.03.2021

Amrita Sinha, J.:-

As facts of both the writ petitions are identical, they are taken up for hearing analogously and disposed of by this common order.

CAN 2 of 2021 have been filed by the petitioners for getting the matter heard on urgent basis. Affidavits in both the matters are over. Both the matters are appearing in the list under the heading 'Application', and by consent of the parties the matter is taken up for final disposal.

The petitioners are aggrieved by the action on the part of the Gayeshpur Municipality in not extending their service contract which expired on 31st March, 2020.

The petitioners were appointed as Sub-Assistant Engineer (Civil) on 9th February, 2008 in the Gayeshpur Municipality on contractual basis. The engagement letter of the petitioners specifically mentions that they have been engaged on contract basis for the project duration period for execution of schemes under JNNURM in the Municipality on a consolidated remuneration of Rs.8,000/- per month. A formal agreement was entered into between the petitioners and the Gayeshpur Municipality. There were certain terms and conditions mentioned in the contractual agreement. The petitioners agreed that they will not claim regular appointment and/or absorption to the said engagement merely by the reason of the agreement. The engagement was on contract basis for the project duration period. The engagement was liable to be cancelled by terminating the contract without assigning any reasons and without payment of any compensation whatsoever. The petitioners were not eligible for any permanent appointment or absorption in any post by virtue of their engagement.

The project under which the petitioners were working came to an end on 31st March, 2017. After the closure of the project the Gayeshpur Municipality engaged the petitioners to look after the works of the Municipal Engineering Department or as assigned by the Municipal Authority time to time with effect from 2nd May, 2017, on purely temporary basis, for a period of six months, at a monthly honourarium of Rs.8,000/- only. The engagement was purely temporary and valid up to 31st October, 2017 or until further order, whichever is earlier. The engagement letter issued in favour of the petitioners clearly mentioned that no claim will be entertained in future for any sanctioned post against their engagement. The service of the petitioners was however extended and the same remained valid till 31st March, 2020. After the expiry of the aforesaid contractual period the Municipality did not extend their service contract. The petitioners are aggrieved by the same.

The petitioners rely upon a departmental order issued by the Ministry of Labour and Employment, New Delhi dated 20th March, 2020 wherein the Chief Secretaries of all the State Governments have been advised that in the backdrop of the challenging situation faced due to outbreak of Covid-19, all the employers of public/private establishments may be advised to extend their coordination by not terminating their employees, particularly casual and contractual workers from job or reduce their wages. In the said advisory it was mentioned that the termination of employee from the job in such a scenario would deepen the crisis and will not only weaken the financial condition of the employee but also destroy their moral to combat with the pandemic.

The petitioners submit that the Municipality ought to have acted in accordance with the advice given by the Central Government and ought to have permitted the petitioners to continue with their service.

It has been submitted that no reason whatsoever has been put forth by the Municipality for not extending the service contract of the petitioners. There is no grievance and/or allegation against the petitioners with regard to their performance. According to the petitioners as there is a need in the Municipality the petitioners ought not to have been terminated and they ought to have been permitted to continue with their service.

It has been contended that terminating the service of the petitioners in the midst of a crisis caused by the pandemic is against public policy.

It is also the case of the petitioners that the action of the Municipality in terminating their service is contrary to provision of Section 23 of the Indian Contract Act, 1872.

The petitioners submit that the Municipality has engaged other persons in the same post in which the petitioners were serving. The Municipality ought not to have replaced the petitioners by engaging another set of contractual employees. According to the petitioners the same is impermissible in view of the judgment delivered by the Hon'ble Supreme Court in the matter of **Hargurpratap Singh -vs- State of Punjab & Ors.** reported in **(2007) 3 SCC 292** where the court directed the ad hoc employees to continue in service till regular appointments are made on minimum of the pay scale.

The petitioners also rely upon the decision delivered by a Learned Single Judge of this Court in the matter of ***Manas Mondal –vs- State of West Bengal & Ors.*** reported in ***(2009) 4 CLT 631 (HC)*** wherein the Court was deciding the issue as to whether the discharge of the petitioners by the respondent authority without assigning any reason was proper or not. The Court directed the authority to consider the case of the petitioner by giving him a hearing and to pass a reasoned order which should necessarily include adequate reason to explain why he was discharged and how his case for re-absorption has been considered.

The petitioners argue that as they were in continuous service for a considerable period of time they ought not to have been terminated during the Covid period without any just and sufficient cause.

The petitioners rely upon the celebrated judgment delivered by the Hon'ble Supreme Court in the matter of ***Central Inland Water Transport Corporation Limited & Anr. –vs- Brojonath Ganguly & Anr.*** reported in ***AIR 1986 SC 1571*** paragraphs 93-101.

The petitioners pray for a direction upon the Municipality to set aside and/or quash the order dated 15th June, 2020 terminating their service and further commanding the respondents to continue their engagement with all benefits and to absorb and regularise them in the post as permanent employees.

Per contra, the learned advocate representing the Municipality submits that the engagement of the petitioners was purely temporary and contractual. The engagement was project based. The project in which the petitioners were engaged came to a close on 31st March, 2017.

The petitioners were thereafter engaged in a separate project of the State Government for a temporary period of six months only which was thereafter extended and the same was valid till 31st March, 2020.

As the per the decision taken by the Municipality on 27th April, 2019 the engagement of the petitioners was extended for a period of eleven months from May, 2019 to 31st March, 2020. The engagement was made under the Scheme “House For All” and the monthly honourarium of the petitioners was paid from the fund of the “House For All” scheme.

The Joint Secretary, Urban Development and Municipal Affairs Department and Additional Mission Director (Housing), State Urban Development Agency by a communication dated 28th November, 2019 intimated the Municipality that as member of the City Level Technical Cell of PMAY-HFA (U), one civil engineer has been selected and engaged by M/s. Mars Engineering Services Pvt. Ltd., the outsourcing agency responsible for the deployment of City Level Technical Cell members. The said person has been placed at the Urban Local Bodies to supervise and monitor all PMAY-HFA (U) along with ODF activities at the Urban Local Bodies. Remuneration of the City Level Technical Cell members will be paid by the outsourcing agency on receipt of a record of attendance checked in accordance with the attendance register available at the Urban Local Bodies. The aforesaid outsourcing agency that is M/s. Mars Engineering Services Pvt. Ltd. by a letter of engagement dated 30th November, 2019 engaged one Mr. Rahul Dev Bose as the Municipal Civil Engineer in the Gayeshpur Municipality.

The Municipality thereafter in their Board meeting held on 29th February, 2020 took a decision to engage regular employee in the post of Sub-Assistant Engineer. However as a temporary measure two Sub-Assistant Engineers have been engaged on contract basis for a period of six months only at a monthly honourarium of Rs.12,000/- only. The respondents submit that the aforesaid two persons have been paid from the general fund of the Municipality.

The respondents categorically submit that they have not terminated the service of the petitioners. The service of the petitioners automatically came to an end on the date of expiry of their contract. As the work which the petitioners were performing was a project based work and the project came to an end, accordingly there is no scope to accommodate the petitioners. It has been contended that the work which the petitioners was performing has been taken over by the outsourcing agency and the Municipality does not have any fund from which the payment can be made in favour of the petitioners. It has been submitted that the petitioners being contractual employees cannot pray for regularisation/absorption in service as the same will be contrary to the terms and conditions of their letter of engagement. The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

All along the contention of the petitioners is that their services have been terminated. The same is not correct. Fact remains that the petitioners were contractual employees of the Gayeshpur Municipality.

They were engaged in respect of a project which came to an end on 31st March, 2017. The petitioners were thereafter engaged in a separate project “House For All” and were paid honourarium from the said project. The work of supervision of the said project has since been outsourced by the State Urban Development Agency and one M/s. Mars Engineering Services Pvt. Ltd. an outsourcing agency has been engaged for engagement of suitable candidates for the purpose of supervision and monitoring of all PMAY-HFA (U) activities. Once the work which was performed by the petitioners has been outsourced to a private agency, and another candidate has been engaged by the said agency to look after the works of the project, the actual need of the petitioners came to an end. As the services of the petitioners were no longer required, the Municipality thought it fit not to extend their service contract.

The service contract of the petitioners automatically came to an end on 31st March, 2020. The service of the petitioners was never terminated. The Municipality is not bound to offer an explanation as to why the services of the petitioners have not been renewed further. The petitioners were all along contractual employees. They were all along aware that their service contract is valid so long as the project remains in operation. The moment the project came to an end the service contract of the petitioners automatically ended.

The Municipality thereafter re-engaged the petitioners in a separate project. The outsourcing agency engaged a separate person to supervise and monitor the PMAY activities in November, 2019 but as the service contract of the petitioners was valid till 31st March, 2020 the Municipality thought it fit not to terminate the contract of the

petitioners, midway. The Municipality permitted the contract to end in its usual course.

The petitioners have tried to convince the Court that after the end of the previous project in 2017 they were engaged by the Municipality to look after the works of the Municipal Engineering Department or as assigned by the Municipal Authority time to time. According to the petitioners the same is not a time bound project and as long as there is a need in the Municipality the service of the petitioners ought not to have been terminated.

Not extending a service contract is quite different from terminating a service contract. An employer is well within his rights to extend the service contract of a contractual employee as long as his services are required by the employer. Only because of the reason that the project in which they were engaged continued for several years, the petitioners cannot claim regularisation/absorption in regular service. The same is not permissible in law. It is contrary to the principles of Articles 14 and 16 of the Constitution of India. Admittedly, the petitioners were contractual employees, engaged in project based schemes, for a particular period of time. Continuity in service for a long period does not change the status of the petitioners. They remain to be tenure based contractual employees.

The decision relied by the petitioners in the case of Brojonath Ganguly (*supra*) will, in my opinion, not be applicable in the facts and circumstances of the instant case. In the case of Brojonath Ganguly the Court was considering the case of the employees whose services were

terminated by the employer. In the instant case the service of the petitioners has not been terminated by the employer. The Court in Brojonath Ganguly categorically held that the action of the State must be in conformity with Article 14 of the Constitution. In the instant case absorbing/regularising the service of the petitioners will tantamount to violation of the principles enunciated under Article 14 of the Constitution.

The Hon'ble Supreme Court in the matter of Hargurpratap Singh (supra) was dealing with a case where the appellant was under the threat of termination of service. The same is not the fact in the instant case. Here the service of the petitioners has not been terminated to accommodate any other person. Accordingly, the ratio of the said case will not be applicable in the instant case.

In the case of Manas Mandal (supra) a casual worker was removed from service without any reason. The court directed the employer to consider his case by giving him a hearing and to pass a reasoned order. The court further recorded that the casual workers don't ordinarily have any right to permanent employment. The aforesaid case is also distinguishable on facts. The petitioners herein have neither been removed nor terminated from service. Their contract came to an end due to lapse of time.

The submission of the petitioners that the agreement entered into by the petitioners and the Municipality is contrary to the provision of Section 23 of the Indian Contract Act, 1872 also cannot be accepted. Section 23 of the Indian Contract Act reads as follows:

“23. What considerations and objects are lawful, and what not:
The consideration or object of an agreement is lawful, unless -----

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

It implies that if the agreement entered into between the parties are forbidden by law or is of such a nature that would defeat the provision of any law or the object or consideration of the agreement is unlawful then the said agreement is void. It also implies that any agreement which is opposed to public policy is unlawful.

In the instant case agreement was entered into by and between the petitioners and the Municipality with regard to their service. The agreement was time bound. The same does not appear to be unlawful or illegal. Contractual service agreements are very well recognized and widely accepted in service jurisprudence. There is nothing illegal or unlawful about it. The petitioners, with eyes wide open, entered into agreement with the Municipality. They were well aware that the agreement will come to an end at some point of time. Fact remains that the project in which the petitioners was serving fortunately continued for a pretty long time. That does not mean that the project will continue for infinity. The petitioners were in service as long as the project was in operation. After the closure of the project the Municipality accommodated the petitioners in a separate project of the State

government. The honourarium of the petitioners was paid from the fund of the said project. The Government took a decision to outsource the work, which the petitioners was performing, to an outsourcing agency, which in turn employed a different person for performing the work and the remuneration/honourarium for the said work is borne by the said outsourcing agency.

It is not the case of the petitioners that the outsourcing agency ought to have engaged them in service instead of engaging a separate candidate of their choice. The petitioners have also not made any allegation against any private individual. The new incumbent has also not been impleaded as party respondent in the instant writ petition.

The primary contention of the petitioners is that their service ought not to have been terminated during the Covid period, more so, in view of the advisory issued by the Central Government in this regard. The tenure of the petitioners ended in usual course, the end date incidentally fell within the pandemic period. The same however does not have any relationship with the pandemic. It was a mere coincidence that the pandemic struck in March, 2020 and the date of expiry of the agreement of the petitioners incidentally happened to be 31st March, 2020. Irrespective of the fact whether there would have been a pandemic or not the tenure of the petitioners would have come to a natural close on 31st March, 2020. The advisory of the Central government does not have any manner of application in the instant case.

A writ of mandamus ought not to be issued upon the employer for extension of the service period of contractual employees. It is for the

employer to assess whether the service of the employee is required or not. The source of funds for remunerating the employee has also to be taken into consideration. Previously the petitioners were paid from the fund of the project. The project being outsourced the Municipality does not have a separate fund for making payment to the petitioners. The fact of engagement of two other employees in the post of Sub-Assistant Engineer, on contractual basis, at a lower honourarium, than that of the petitioners will also not help the case of the petitioners.

A writ of mandamus may be issued only when there is an infringement either in the statutory right or the fundamental right as enshrined in the Constitution of India. In the case at hand neither the statutory right nor the fundamental right of the petitioners has been infringed by the employer by not extending their service contract.

The Supreme Court in the case of ***State of Orissa vs. Chandra Shekhar Mishra*** reported in **(2002)2 SCC 583** held that there was no compulsion on the petitioner to enter into the contract he did. He was free under the law to accept or reject the offer. It was further held that the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution and those who choose to accept those terms and enter into the contract they are bound by them.

In ***Gridco Ltd. & Anr. Vs. Sadananda Dolui & Ors.*** reported in **AIR 2012 SC 729** the Court held that so long as the action taken by the authority is not shown to be vitiated by infirmities and so long as the action is not demonstrably in outrageous defiance of logic, the writ court

would do well to respect the decision under challenge. It held that renewal of contract of employment depended upon perception of management as to usefulness of respondent and need for an incumbent in position held by him. It has to be kept in mind that modern commercial world executive is engaged on account of their expertise in a particular field and those who are so employed are free to 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.

In view of the above no relief can be granted to the petitioners in the instant case. The writ petitions fail and are hereby dismissed.

However, as the petitioners were serving in the Municipality for a considerable period of time and may feel a pinch in their pockets as they have been left jobless at present, the Municipality may consider the possibility of engaging them in any suitable work, if available. This will however not be treated as a mandate upon the Municipality to provide employment to the petitioner, neither will this give any right to the petitioners to seek employment in the Municipality.

WPA No. 6365 of 2020 and WPA No. 6366 of 2020 are dismissed. All connected applications are disposed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)