

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 4215 OF 2020**

- Ashish Kumar Tiwari, S/o. Shri Premnath Tiwari, aged about 28 years, Ward No.10, Muriyapara, P.S. Narayanpur, Narayanpur, District Narayanpur (C.G.) **... Petitioner**

versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur (C.G.)
2. Director, Pradhanmantri Awas Yojna (Gramin), Indrawati Bhawan, Nawa Raipur, Atal Nagar, Raipur (C.G.)
3. Collector, Narayanpur, District Narayanpur (C.G.)
4. Chief Executive Officer, Zila Panchayat, Narayanpur, District Narayanpur (C.G.) **... Respondents**

For Petitioner	:	Mr. N. Naha Roy, Advocate.
For Respondent-State	:	Mr. Amit Buxy, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[28/09/2021]**

1. The present Writ Petition has been filed by Petitioner aggrieved by the Order dated 26.9.2020 (Annexure P-1)
2. Vide impugned Order, the services of Petitioner have been terminated by Respondent No.4.
3. Brief facts relevant for the disposal of the present Writ Petition are that the Petitioner for the first time was appointed on contractual basis as Technical Assistant (Janpad Level) vide Order dated 9.5.2018. He was posted at Janpad Panchayat, Narayanpur. The engagement of Petitioner was under the scheme of Pradhan Mantri Awas Yojna (Gramin). The initial appointment of Petitioner was for a period till 28.2.2019. Services of Petitioner were subsequently further continued and a fresh order of renewal of contract was made on 1.4.2020 (Annexure P-4) and the engagement of Petitioner was renewed for a period between 1.3.2020 to 28.2.2021. Half way through the present extended tenure, the services of Petitioner were abruptly discontinued vide Order dated 26.9.2020 (Annexure P-1), which has led to the filing of the present Writ Petition.

4. Primary contention of learned Counsel for Petitioner in the instant case is that the termination of Petitioner is without conducting any enquiry nor was he given a fair and reasonable opportunity of defence. Further contention is that since in the order of appointment the Respondents had mentioned that the persons engaged in the contractual employment would be governed by the Chhattisgarh Civil Services (Conduct) Rules, 1965, therefore, once when the aforementioned Rules of 1965 were made applicable upon the Petitioner, the Respondents ought to have conducted a departmental enquiry before passing of the order of termination.

5. Learned Counsel for Petitioner further contended that Annexure P-1 is an Order which would reflect that the services of Petitioner have been terminated on account of unsatisfactory performance with an act of negligence, thus, the order would be a stigmatic order and therefore it was required on the part of Respondents to have conducted an enquiry before terminating the services of Petitioner. He also tried to canvass that since the Respondents were predetermined in terminating the services of Petitioner, they in order to project that the Petitioner was given ample opportunity to improve upon, issued various show cause notices to Petitioner at regular interval.

6. Learned Panel Lawyer appearing for the State on the other hand opposing the petition submits that plain reading of the impugned order of termination would reveal that the services of Petitioner were totally unsatisfactory. Numerous show cause notices were issued to him expecting improvement in the discharge of his duties. That, since there was no improvement found and he was repeatedly committing the same act of negligence, the Authorities were left with no other option but to terminate the contract that was executed between the Petitioner.

7. Further contention of learned Panel Lawyer is that since the engagement of Petitioner primarily being that of a contractual employee, he does not have an indefeasible right created in his favour for continuity of a contractual engagement in spite of the services being unsatisfactory. Lastly, it was contended by learned Panel Lawyer that in any case the last contractual period for which the Petitioner was appointed also has got expired on 28.2.2021 and as such there is no further scope of any relief that can be granted to Petitioner.

8. Having heard the contentions put forth by learned Counsels appearing for the parties, some of the admitted factual matrix of the case are that the Petitioner substantially was a contractual employee. The period of Petitioner's initial service was that of the year 2018. Though the contract of Petitioner initially was up till 28.2.2021, he got continued for the subsequent years also and the last contract which was executed in his favour was with effect from 1.3.2020 to 28.2.2021. The last extended contractual period having got expired on 28.2.2021, the question of reinstatement in services does not arise.

9. All that this Court now can look into is, as to whether there is any arbitrariness on the part of Respondents in the issuance of the impugned Order (Annexure P-1) and whether there is any indefeasible right in favour of Petitioner available.

10. So far as the legal position is concerned, the law is by now well settled that the contractual employee does not have any indefeasible right created seeking for continuation of the contract even after the conclusion of contract period. The conditions attached to the contract entered into between the parties would be binding upon the Petitioner. Moreover, the contract which has been entered into between the parties for contractual employment clearly stipulates the condition that the said contract is up till

a particular date. The said contract had also a condition that Petitioner shall not have any benefits of a government job. It was also the condition in the contract that in case of non satisfactory performance, the contract can be terminated at any point of time without any notice or with one month's notice. Such conditions clearly reflects the nature of the employment being for a fixed period of time. The moment the contract period gets concluded, the contractual employee stands discontinued from services.

11. Renewal or extension of contract is always the prerogative of the employer. If the employer feels that the services of Petitioner was not suitable, the High Court in exercise of its Writ jurisdiction under Article 226 of the Constitution of India would not have the power and jurisdiction to issue suitable instructions for extension of contract. Further, from the records attached to the petition it clearly reflects that for the last couple of years there have been complaints and allegations being made against Petitioner by the officers of Respondent establishment, which also leads us to infer that the services of Petitioner cannot be said to be to the satisfaction of the higher Authorities.

12. It would be relevant at this juncture to refer to certain judicial pronouncements which have been made in the recent past in respect of the contractual employment. One of the most recent decisions in this field is the judgment of the Hon'ble Supreme Court in the case of “**State of Maharashtra & Ors. v. Anita & Anr.**” [2016 (8) SCC 293]. In paragraph-14 of the said judgment it has been emphatically held that :-

“**14.** It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to the Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest

and benefits whatsoever of the permanent service in the Government.”

13. The Hon'ble Supreme Court in the land mark judgment rendered in the case of “**Secretary, State of Karnataka & Ors. v. Umadevi & Ors.**” [2006 (4) SCC 1] while dealing with the question of equality in public employment and also comparing the rights of a contractual employee or for that matter the rights of a daily wage employee or temporary employee has held 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. High Courts acting under Article 226 of the Constitution of India, 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....”

14. From the aforesaid legal position as it stands it would establish that the Petitioner does not have any indefeasible right in his favour.

15. As regards the allegations made in the order of termination, it would reveal that the Petitioner was issued with various show cause notices from time to time at frequent intervals. Another fact that also stands revealed is that the show cause notices which were issued from time to time to Petitioner have been by different Authorities, which further forces this Court to infer that it is not a case where a particular officer was not satisfied with the functioning of Petitioner but it were all those superior officers under whom the Petitioner was discharging his duties at the relevant point of time who were not happy with Petitioner's style of functioning and who have been issuing show cause notices to Petitioner at regular interval.

16. Further, if we look into the conditions of appointment that were clearly envisaged along with the order of appointment, it had a very specific clause in Condition No.2 that in the event of Petitioner is found involved in a major misconduct his services can be terminated forthwith. Under the circumstances, if Petitioner has been served with various show cause notices and thereafter if Petitioner's services have been terminated, the same cannot be either held to be arbitrary or can it be said to be in any manner issued with *malafide*.

17. Thus, for all the aforesaid reasons coupled with the fact that the contractual period of Petitioner itself pending the present Writ Petition having been completed, this Court is of the opinion that no relief whatsoever can be granted to Petitioner at this juncture.

18. Writ Petition therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge