

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5722 of 2021**

Nakul Kumar Mahilange S/o Shri Birbal Mahilange, Aged About 33
Years, R/o Danteshwari Ward, Jagdalpur, District - Bastar (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District - Raipur (C.G.)
2. Joint Commissioner And Joint Chief Executive Officer, State Level Nodal Agency (SLNA) Panchayat And Rural Development Department, C-69, Khanij Nagar, V.I.P. Road, Raipur, District - Raipur (C.G.)
3. Chief Executive Officer, Chhattisgarh State Water Management Agency (CGSWMA), Joint Secretary (Agriculture), Agriculture Department, C-69, Khanij Nagar, V.I.P. Road, Raipur, District - Raipur (C.G.)
4. Collector Cum President WDCD, District Bastar, Jagdalpur (C.G.)
5. Chief Executive Officer, Zila Panchayat, Bastar, Jagdalpur (C.G.)
6. Deputy Director, Agriculture Cum Project Director (WDCD), District Bastar, Jagdalpur (C.G.)

---- Respondents

For Petitioner	:	Ms. Meena Shastri, Advocate
For State	:	Mr. Ayaz Naved, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07.10.2021**

1. The grievance of petitioner in the present writ petition seems to be the discontinuance of the contractual appointment of petitioner.

2. The contention of the counsel for petitioner is that the petitioner had been subjected to a recruitment process for appointment to the post of Accountant cum Data Entry Operator. The petitioner was appointed vide order dated 14.06.2013 and the petitioner continued to discharge his duties up till 23.07.2021. Counsel for the petitioner submits that the duties discharged by the petitioner were to the utmost satisfaction of the department. That there was no allegation of the petitioner having committed any misconduct or for that matter having not performed while discharging his duties and that there was also no allegation of an unsatisfactory work of the petitioner. Therefore, the respondent authorities should not have discontinued the services of petitioner or at least should have continued as long as the contract period was left. Further contention of petitioner is that the respondents have meanwhile retained 4 persons identically placed and there is no specific criteria laid down in respect of choosing these 4 persons ignoring the claim of petitioner. It is also the claim of petitioner that if at all if the stand of the respondents is that of non availability of work or the discontinuance being on account of closure of the project, the respondents should consider accommodating the petitioner at any other projects/schemes of respondents of similar nature which are in operation. Lastly it was contended by the petitioner that at least the respondents be directed to consider grant of some relaxation or preferential treatment to the petitioner in any further fresh recruitment process which the respondents would initiate by relaxing the upper age limit for participation, for the petitioner and other similarly placed persons considering the length of service that they have discharged since 2013 on contractual basis under the respondents.
3. From perusal of the pleadings what stands admitted is that the

petitioner's initial engagement from 2013 up till the period of July 2021 was pure contractual engagement. As regards the contractual engagement, the same would be guided always by the terms of contract entered into between the contractual employees with the respondents. The contractual appointment itself means that the engagement of petitioner or for that matter similarly placed persons is for a stipulated period of time mentioned in the contract and thereafter the petitioner or such similarly placed contractual employees would not have any indefeasible right for being continued.

4. In the instant case, the reason for discontinuance of petitioner is that of the decision of the respondents to close down the project. It goes without saying that the moment there is a closure of project, all those employees associated with the project also would get automatically discontinued from their service.
5. Counsel for petitioner drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **Govt. of T. N. and another Vs. G. Mohamed Ammenudeen and others** reported in **1999 (7) SCC 499** whereby the Supreme Court had directed the State Govt. to frame an appropriate scheme to consider for retaining the temporary employees engaged for the census work by way of absorption in any of the Govt. department.
6. It goes without saying that so far as this Court in exercise of its writ jurisdiction is concerned has to weigh the claim of petitioner on the basis of the right which stands accrued in favour of the petitioner in terms of the order of appointment that he has in his favour. Undisputedly, the petitioner herein was a contractual employee. The right of a contractual employee is for a specific period or as long as

the project or work subsists whichever is earlier. The moment the project in which the petitioner was appointed as a contractual employee is getting wound up, the natural consequence would be the contractual engagement of the petitioner and similarly placed persons also would no further be required.

7. Now as regards the length of service put in by the petitioner under the respondents on contractual basis is concerned, it is exclusively within the domain of the respondent no.1 to consider the claim of petitioner for being accommodated and also for being granted any relaxation in future appointment by relaxing the upper age limit. So far as considering the claim of petitioner for being given some preferential treatment in the subsequent recruitment process of similar nature if any initiated by the respondents is concerned, this Court in exercise of its writ jurisdiction cannot issue a writ of mandamus to the respondents commanding for framing of a scheme favourable to the petitioner giving protection to his employment as it would amount to exceeding the scope of interference which is otherwise permissible in exercise of this Courts power of judicial review. Nonetheless what needs to be considered is that the petitioner and there could be many others who are highly qualified and who had undergone a due process of selection and had been found fit for employment and were appointed on contractual basis under the respondents. That they have also discharged their duties to the satisfaction of the respondent authorities where there being no stigma of any misconduct or in respect of any unsatisfactory work.
8. The respondent State and its agencies being a model employer and also being a welfare State must take into consideration the plight of

such persons who discharged their duties for a considerable period of time and who reached a stage where they have crossed the upper age limit in getting employment and as such may get rendered as unemployed and also would be barred from getting further government employment by virtue of their crossing the upper age limit of recruitment. The Govt. should therefore consider taking some policy decision in these nature of situations by framing some scheme or policy for accommodating them in any similar projects which the Govt. undertakes where the similarly qualified persons would be required for discharging their duties or by relaxing the upper age limit considering the services rendered by the petitioner in the past.

9. Leaving it for the respondent no.1 to take an appropriate decision in this regard, the writ petition at this juncture stands disposed of.

10. Learned counsel for the petitioner submits that the petitioner has been denied the salary for the period from March to June, 2021 during which the petitioner had in fact physically discharged his duties under the respondents. It goes without saying that in the event the respondents have extracted work from the petitioner and the petitioner has discharged duties for the period between March to June, 2021, the respondent authorities particularly respondents 2 to 6 shall immediately process the claim of petitioner for releasing the unpaid salary for the period March to June, 2021, after due verification so far as the entitlement of petitioner is concerned, at the earliest, preferably within a period of 60 days from the date of receipt of copy of this order.

**Sd/-
(P. Sam Koshy)
Judge**