

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.7378 of 2020(O&M)

Date of Decision: 24.03.2021

Som Dutt

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhishek Sethi, Advocate
for the petitioner.

Mr. Rohit Verma, Advocate,
for respondent no.1 to 4.

ANIL KSHETARPAL, J.

The writ petitioner, who has remained employed on contract basis upto 06.05.2020 as a driver under the Ex-Servicemen Contributory Health Scheme (hereinafter referred to as 'the ECHS Scheme'), has filed this writ petition claiming the following substantive reliefs:-

- “i). *a writ in the nature of Mandamus directing Respondent No. 1 to consider framing a law to establish, regulate and to provide for quality health care to Ex-Servicemen, Pensioners and their dependants replacing the existing Employees Contributory Health Scheme (ECHS) by using power bestowed upon it under Article 246 of the Constitution of India; as the power to make laws governing the Naval, military, air forces and any other armed forces of the Union falls in the Union List (List-I) as contained in the 7th Schedule; the same been*

necessary and overdue as the existing Employees Contributory Health Scheme (ECHS) is functioning on the basis of a handful of letters issued by the Govt. of India, Ministry of Defense, which are being changed very frequently on the whims and fancies of the concerned officials of the Central Organization, ECHS/Ministry of Defense;

ii). a writ in the nature of Certiorari quashing advertisement (Annexure P-4) which has been issued in violation/ contravention of the judgment of this Hon'ble High Court (Annexure P-9);

iii). a Writ in the nature of Mandamus directing the respondents to continue with the spotless services of the petitioner as Driver at ECHS Polyclinic, Mohali, Punjab by way of re-engaging him forthwith (in compliance with the ratio of the judgment of this Hon'ble High Court; P-9) and not to replace the petitioner with another contractual employee;

iv). a writ in the nature of Mandamus directing the respondents to not advertise the post of Driver at ECHS Polyclinic, Mohali, Punjab during the pendency of the Instant Writ Petition;

v). an interim direction to the respondents to re-engage the petitioner as Driver at ECHS Polyclinic, Mohali, Punjab in compliance with the ratio of the judgment of this Hon'ble High Court; P-9;”

A brief introduction to the scheme under which the petitioners have been appointed is necessary. Previously, the ex-servicemen and their dependents were being provided health care facilities through the existing

network of military hospitals of the Armed Forces. However, keeping in view the large number of ex-servicemen and their dependents and the huge expenditure involved in providing such health care facilities through military hospitals, a decision was taken to float a separate contributory scheme, which will be run by the ex-servicemen themselves under the overall administrative control of the concerned Station Commander, vide a letter dated 30.12.2002. Therefrom, the scheme has been functioning on the basis of various communications/instructions issued by the Ministry of Defence without framing any law or rules regulating the same. The scheme provides for establishment of armed forces clinics at military stations and non-military stations. It also gives details of the estimated expenditure for establishing five types of poly clinics categorized in military and non-military stations i.e. types A, B, C, D & E, respectively, based upon the population of ex-servicemen and their dependents in that area. The scheme also enlists total authorised staff which is subject to revision from time to time. All the posts under ECHS Scheme which is a non-statutory scheme are to be filled up on contractual basis. In the letter dated 30.12.2002, a procedure for the engagement by way of contractual employment of the staff for carrying out the ECHS scheme was laid down. Even a provision for reservation has been made. The maximum age limit for various posts was also prescribed. Subsequently, it was made mandatory that the staff to be engaged will have to enter into a contract with the concerned Station Commander. In the year 2013, the authorities decided that ECHS employees after having put in more than five years of service in a particular poly clinic, will have to re-appear in the interview before they are permitted to continue

in the service. On the basis of the aforesaid instructions, the recruitment notices were issued. Prior to the aforesaid letter, the contracts of ECHS employees were being renewed on yearly basis on the dint of assessment of meritorious work and conduct. The letter issued in the year 2013 resulted in multiple litigations which were based on the claim of the employees that they have a right to continue till the maximum age which is prescribed for their posts in the scheme. On 30.06.2015, while deciding a bunch of writ petitions i.e. CWP No.20113 of 2013 and other connected petitions, the rights of ECHS employees were crystallized and the Court held that they have a right to continue till the maximum age prescribed for their posts in the scheme subject to availability of work and good conduct. On 19.12.2016 in LPA No.1691 of 2015, the judgment passed by the Learned Single Judge was upheld. No special leave petition is stated to have been filed before the Supreme Court.

Thereafter, again certain recruitment notice were challenged in the High Court and another Co-ordinate Bench vide a judgment dated 17.12.2017 in CWP No.439 of 2017, while following the previously referred judgment, the Court, also, restrained the authorities from issuing fresh recruitment notice. The aforesaid judgment was also upheld by the Division Bench in LPA No.1216 of 2017. Keeping in view the various judgments passed, the Government of India on 06.09.2018 changed its policy of recruitment under the scheme. The terms and conditions of a standard agreement, to be entered with the contractual employees of ECHS, were circulated. The relevant Clauses of the said agreement are as under:-

2. The employment of the staff will be entirely

contractual in nature and will be for a period of two years at the maximum based on the selection process by the competent authority, subject to review of their conduct and performance after eleven months.

3. The ECHS reserves the right to terminate the appointee by giving 30 days notice or by paying remuneration for 30 days in lieu of notice any time during the tenure even without assigning any reason; or for misconduct or failure to perform assigned duties to the satisfaction of the Station Commander acting through the Officer-in-Charge Polyclinic/nominated Officers.

7. The Polyclinic can employ a relief if the duration of absence of an employee exceeds 20 days at a stretch. The services of the contractual employees will be terminated by the appointing authority without any notice in case the cumulative absence period exceeds 60 days.

17. The engaged person will also have the right to terminate this agreement before the expiry of tenure of contractual appointment by giving one month's notice or by foregoing one month's contractual amount as consideration for engagement of services.

It may be noted here that under the scheme, there is a provision for reservation and it has been provided that preference will be given to the ex-servicemen, which is extracted as under:-

A. Para 3 – Reservation. Preference will be given to ex-servicemen for all employment in the ECHS. Reservation

criterion is as under:-

Sr. No.	Category	Percentage of vacancies	
(a)	Medical officers/specialists/Dental Officers	60	40
(b)	Officer-in-charge Polyclinics	100	-
(c)	Paramedical staff to include Nurses, Nursing Assistants (General, Radiographer, Physiotherapist), Dental Hygienist/Assistants & Lab Assistants	70	30
(d)	Non Medical Staff to include Receptionist (Records maintenance & Data Entry service) Drivers (Motor Vehicles operation & maintenance services) Peons & Female Attendant (housekeeping services) Safaiwala (conservancy services)	70	30
Note:- The total authorisation of the staff will be as laid down in Appendix 'E' and 'F' MOD letter No.22(1)/US(WE)/D(Res) dated 30 Dec 2002.			

It has also been stated in the written statement of the respondents that the contractual employment for a fixed tenure is being offered so as to give an opportunity to all the ex-servicemen to serve for a fixed tenure to tide over the retirement blues. It is well known that in the armed forces, retirement age is quite early and the officials, who superannuate at such an early age, usually look for an opportunity for re-employment. In this manner, by launching the ECHS of medical care, efforts

were made to not only provide health care facilities to the ex-servicemen and their dependents but also give them an opportunity of re-employment.

It is significant to note that there has been significant change in the manner in which the contracts are entered into with the contractual employees. On 06.09.2018, a new format of the service contracts was introduced. In the aforesaid communication, it has been provided that the employment of the staff will be entirely contractual in nature for a period of two years at the maximum, subject to review of their conduct and performance after a period of 11 months. There is no provision in the contract to grant extension beyond the period of two years.

The petitioner, after having retired as 'Nayak' on 30.04.2015, applied for the post of Driver in ECHS Polyclinic, Mohali and was appointed on the said post on 22.02.2018. He was initially appointed for 89 days. However, on 04.04.2018, the petitioner was appointed on contract basis for a period of 12 months with a provision for grant of extension subject to satisfactory work and conduct for another term of 12 months. Clause-2 of the agreement reads as under:-

“The engagement of the Engaged person for rendering his professional services shall be entirely contractual in nature and will be for a period of 12 months initially and thereafter renewable for 12 months at a time upto and subject to attaining the maximum age prescribed/indicated in Appendix A to Government of India, Ministry of Defence letter No 24(6)/03/US (WE) D (Res) dated 22 Sep 2003 or as amended from time to time. The renewal of contract will be subject to continued good conduct and performance of the Engaged Person during the proceeding 12 months and

existence of the requirement for services of the Engaged person at the ECHS Polyclinic. A fresh contract will be executed for each renewal.”

The petitioner has pleaded that a fresh contract was entered into on 08.04.2019 which was valid till 07.04.2020, however, a copy of the contract was not made available. When the tenure of the petitioner was nearing end, a fresh recruitment notice was issued on 12.02.2020 inviting applications for various posts including the post held by the petitioner. The petitioner after applying for the post pursuant to the recruitment notice, chose not to participate in the selection process. The petitioner claims that after 07.04.2020, he was granted an extension for a period of 89 days due to the situation created by COVID-19 Pandemic and thereafter, on selection of respondent no.5, the petitioner has been discharged on 06.05.2020.

As noticed above, the petitioner now prays for direction to the respondents to re-engage him and not to replace him with another contractual employee.

Pursuant to the notice of motion, the official respondents have filed their reply contesting the petition. It has been pleaded that the petitioner did not participate in the selection process on 16.03.2020 and the petitioner has no right to continue or re-engagement. It is submitted that as per the terms of the contract, the petitioner could only be retained for a maximum period of 2 years and since the period has come to an end, therefore, he has been relieved.

This court has heard learned counsels for the parties at length and with their able assistance perused the paper book.

Learned counsel appearing for the petitioner relies upon a judgment passed by the Court in Civil Writ Petition No.20113 of 2013 and

connected matters (Dr. Sukhpreet Singh vs. Union of India and others), decided on 30.06.2015. It has been submitted that the aforesaid judgment passed has been upheld by the Division Bench in Letters Patent Appeal No.1691 of 2015 (Union of India and others vs. Paramjit Kaur) and other connected cases, decided on 19.12.2016. Further reliance is placed on another Division Bench judgment in Renu Bala vs. Union of India and others, decided on 17.02.2017. Reliance has also been placed on interim order dated 31.07.2017 passed in S.L.P.(Civil) No.18373 of 2017 (Pawan Kumar vs. Union of India). The petitioner has pleaded that the aforesaid Special Leave Petition has been filed against the judgment passed by the Himachal Pradesh High Court.

Per contra, learned counsel representing the respondents has submitted that the judgments relied upon by the petitioner are not applicable in the facts and circumstances of the case because in these judgments referred to above, while interpreting the terms of the employment contracts and keeping in view that these employees have worked for 5 or more years, the court held that the contractual employees were entitled to continue till the age of superannuation subject to availability of work and their good work and conduct.

After having considered the arguments of learned counsel for the parties, this Bench now proceeds to adjudicate the dispute. From careful reading of Clause-2 of the contract which has been extracted hereinbefore, it is apparent that the petitioner was engaged on entirely contractual basis for a period of 12 months which was renewable for another period of 12 months at a time upto and subject to attaining the maximum age prescribed or indicated in Appendix-A to letter dated 22.09.2003 issued by

the Government of India, Ministry of Defence as amended from time to time. It is pertinent to note that the same clause was the subject matter of interpretation by the Court in Dr. Sukhpreet Singh's case (supra). Therefore, the argument of learned counsel representing the respondents that the terms of the contract are different is not correct.

However, it is well settled that the contractual employees have no right to continue on the post against the terms of the contract. The petitioner applied and got appointed to the post after having accepted the offer of appointment and thereafter he voluntarily entered into a contract. Under the ECHS Scheme, no rules or regulations have been framed. This is a contributory scheme which has been promulgated by the Government with twin purposes. One is to provide medical services to the ex-servicemen and their dependents on contributory basis by opening polyclinics of various categories near their place of abode. Second, to give preference to ex-servicemen by providing them tenure appointments so that maximum ex-servicemen can get the opportunity to serve for a limited period in order to tide over the retirement blues. Under the ECHS Scheme, there are no permanent vacancies. The contractual employees are not public servants. They are appointed by the management of the ECHS Scheme and the contract is entered into between the Station Commander and the employee. In the service contract, it is specifically provided that on completion of the term or when the requirement comes to an end, the services can be dispensed with. It is further provided that for each renewal, a fresh contract will have to be executed. It is not in dispute that no fresh contract has been entered into in the present case.

Still further, the petitioner do not dispute that he applied to the

said post pursuant to a recruitment notice dated 12.02.2020, however, did not choose to participate in the selection process.

No doubt, the judgments passed by the court referred to above have interpreted the exactly same clause, however, the attention of the Court was not drawn to the judgment passed by the Hon'ble Supreme Court in *State of Maharashtra and others vs. Anita and another, 2016(8) SCC 293*. In fact, the judgment of learned Single Judge in Dr. Sukhpreet Singh's case (supra) is dated 30.06.2015, hence prior to the decision of the Supreme Court. However, the judgment passed by the LPA Bench is dated 19.12.2016. The judgment of the Hon'ble Supreme Court in State of Maharashtra (supra) was not brought to the notice of the Bench. In State of Maharashtra's case (supra), the court was examining the appeals filed by the contractual employees as well the State of Maharashtra. In that case, 471 posts of Legal Advisors, Law Officers and Law Instructors were created by the Government vide a resolution passed in the year 2006. It was decided to fill these posts on contract basis under the supervision of Director General of Police as well as the Commissioner of Police, Mumbai. The employment contract provided for initial term for a period of 11 months, which could be extended for a maximum of 3 terms, whereafter the employment will come to an end. In that case, fresh recruitment notice was challenged before the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal quashed Clause 'A', 'B' and 'C' of the resolution passed while creating and deciding to fill up the post on contractual basis. The judgment passed by the Tribunal was challenged before the High Court of Nagpur Bench and the Court went on to hold that the posts are permanent. When the matter reached before the Hon'ble Supreme Court, the Supreme Court

while referring to the terms of the contract held as under:-

“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 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. We may usefully refer to the relevant clauses in the format of the agreement which read as under:-

“1. The First Party hereby agrees to appoint Shri/Smt. _____ (Party No. II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs. _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that IIInd party shall not be entitled for separate T.A. and D.A. during the contract period....

2.

3.

4.

5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of Competent Authority, and on its recommendations.

6. The Party No. II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government.”

15. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the

services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

16. *The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”*

Keeping in view the aforesaid well settled position, this Bench is of the considered view that the judgment passed by the Division Bench in LPA No.1691 of 2015, with highest respect, is per incuriam as the attention of the Division Bench was not drawn to the judgment passed in the State of Maharashtra (supra).

This matter can be examined from another perspective. The petitioner was appointed pursuant to a recruitment notice wherein it was clearly stipulated that the appointment is for a fixed tenure of two years only. The petitioner applied pursuant to the aforesaid recruitment notice.

The petitioner accepted the appointment after being fully aware that it is

only for two years. In these circumstances, if the court offers its helping hand and extends the tenure of the petitioner, it will cause serious prejudice to other aspirants, who may not have applied for the post due to the stipulation in the recruitment notice that the appointment is being offered only for two years i.e. a short duration. There may be many candidates, who are more qualified and efficient, but did not choose to apply, in view of the stipulation in the recruitment notice. Now, if the petitioner is directed to be re-engaged, it would be iniquitous to those candidates who did not apply in view of the stipulation in the recruitment notice.

Yet another aspect is the principle of estoppel. The Hon'ble Supreme Court in the case of State of Maharashtra (supra) has examined this aspect and held that the contractual appointees for a fixed tenure cannot be permitted to take a u-turn and challenge the terms of the appointment. The court while deciding such writ petitions is required to keep the equity of everyone in mind. The Court cannot be expected to keep only the interest of the writ petitioner while passing the order without keeping in view the over all impact thereof.

Further, the other interested ex-servicemen who may have recently been superannuated from the Forces, would also stand deprived of the opportunity of getting a tenure employment particularly when the contributory scheme is for the benefit of the entire community of ex-servicemen.

There is yet another perspective. The scheme is in realm of a policy decision taken by the Central Government and unless the policy is found to be arbitrary or illegal, it would not be appropriate to interfere in the manner of its working which will result in changing the entire scheme.

It may be noted here that in an another judgment a similar conclusion has been drawn, i.e. in *Amarjit Singh Chitchot vs. Union of India and others, 2018 SCC Online (P&H), 487.*

Keeping in view the aforesaid facts, this court does not find it appropriate to issue the writ as prayed for.

Hence, dismissed.

24th March, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO