

CWP-7886-2019(O&M) and
CWP-4368-2019(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP-7886-2019(O&M)

Satish Kumar and others

...Petitioners

Versus

State of Haryana and another

...Respondents

(2) CWP-4368-2019(O&M)

Manish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

Reserved on:-6.12.2021

Date of pronouncement:-9.12.2021

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anurag Goyal, Advocate
for the petitioners in CWP-7886-2019.

Mr.Deepak Sharma, Advocate
for the petitioner in CWP-4368-2019.

Mr.Sharad Aggarwal, AAG, Haryana.

Mr.Padamkant Dwivedi, Advocate
for respondent No.2 in both petitions.

H.S. MADAAN, J.

Cases taken up through video conferencing.

1. Vide this order, I shall dispose of two civil writ petitions i.e. CWP-7886-2019 filed on behalf of petitioners Satish Kumar and others and CWP-4368-2019 filed on behalf of petitioner Manish Kumar.

2. Petitioners Satish Kumar and others have brought CWP-7886-2019 under Articles 226/227 of the Constitution of India against respondents i.e. State of Haryana through its Addl. Secretary to Government of Haryana, Department of Agriculture & Farmers Welfare, Haryana and Haryana State Warehousing Corporation, Panchkula through its Managing Director, craving for issuance of a writ in the nature of certiorari quashing the action of the respondents vide which despite issuance of letter of extension dated 6.3.2019, copy Annexure P6, the petitioners are not allowed to join their duties by respondent No.2 and for further directing the respondents to allow the petitioners to join duties as Junior Engineer (Civil/Electrical) in respondent – Corporation with all consequential benefits from 2.6.2018 till date of joining in the form of equal pay for equal work i.e. the minimum of the pay of the regular incumbent working the respondent Corporation along with D.A. in terms of the instructions issued by the Government dated 3.11.2017 vide Annexure P8.

3. Petitioner Manish Kumar has brought CWP-4368-2019 under Articles 226/227 of the Constitution of India against respondents i.e. State of Haryana through its Principal Secretary, Haryana State Warehousing

Corporation, Chandigarh, Managing Director, Haryana State Warehousing Corporation, Panchkula, Secretary, Haryana State Warehousing Corporation, Panchkula and XEN, Haryana State Warehousing Corporation, Kurukshetra, craving for issuance of a writ in the nature of mandamus directing respondent No.2 to extend the engagement period of petitioner as Junior Engineer (Electrical) till the joining of regular employee.

4. For the sake of convenience, the facts are being taken up from CWP-7886-2019.

5. As per the case of the petitioners, in response to advertisement issued by respondent No.2 – Corporation on 21.5.2016 inviting applications for the post of Junior Engineer (Civil and Electrical) on contract basis for one year or till the appointment of regular employees whichever was earlier under the policy of the Government dated 6.4.2015, the petitioners had applied for the posts, appeared for interview and were selected on the basis of their performance before the selection committee; they were appointed on contract basis for a period of one year or till regular incumbent joined whichever was earlier; as per the appointment letter, the gross monthly remuneration was to be given to the petitioners to the extent of 50% of the initial pay i.e. pay in the pay band and grade pay plus D.A. of a fresh entrant regular employee as on 1.1.2006 i.e. Rs.15,559/- per month; after expiry of tenure of one year on contractual basis, the term of services of the petitioners working on contract basis was extended for another one year beyond 2.6.2017 or till regular incumbents joined, whichever was earlier; that after getting extension

from the respondent – Corporation, the petitioners along with some other colleagues submitted representation dated 5.4.2018 to the respondent – Corporation seeking equal pay for equal work; the petitioners were allowed to continue till 2.6.2018, therefore, they were ordered to be discontinued unofficially awaiting approval of respondent – Corporation, though they were allowed to put their attendance biometrically up to 13.8.2018, however, the petitioners have not been paid any salary w.e.f. 2.6.2018. According to the petitioners, in respondent – Corporation total 27 sanctioned posts of SDE/JE were there, out of which only 6 posts are filled up by way of regular appointment leaving 21 posts to be vacant; out of such posts 13 posts are filled up by way of outsourcing under Outsourcing Policy dated 6.4.2015; because of the sanctioned strength and the existing construction activities, the corporation requires their services in future also; the case of the petitioners for further extension was sent to the Chief Secretary, Government of Haryana, Chandigarh; the Executive Engineer in his reference had contended that all the 13 outsourced JEs shall be completing three & two years tenure of service upon Part II outsourcing policy and online dates mentioned against each as such as per terms of State Government letter dated 10.10.2017; the approval for extension of their services beyond two years shall have to be approved by the Chief Secretary Haryana.

6. The petitioners were given extension from 2.6.2018 to 28.2.2019 or till appointments of regular candidates vide letter dated 10.10.2017; that despite extension having been granted to the petitioners vide letter dated 6.3.2019, copy Annexure P6, the petitioners were not

allowed to join in respondent – Corporation by respondent No.2 since respondent-Corporation was interested to put some other persons against these posts. According to the petitioners, after the letter of extension Annexure P6, they are entitled to join and also entitled for salary of period of discontinuation; the gap in service is at the behest of respondent No.2 knowing well that posts occupied by the petitioners are sanctioned regular posts and approval can come at any time from respondent No.1 but despite that Managing Director as well as the Executive Engineer did not allow the petitioners to work awaiting approval from the Government. The petitioners prayd that their petitions be allowed.

7. On notice, the respondents appeared. However, only respondent No.2 filed written statement in CWP-7886-2019 contesting the writ petitions. Inter alia, it had made preliminary submissions to the effect that manpower of respondent No.2 is being restructured, due to which the requisition sent by answering respondent for appointment of regular employees on 152 posts in including the posts of Junior Engineers to the Haryana Staff Selection Commission has been withdrawn vide letter dated 3.10.2019, copy Annexure R-2/1; thus at present there is no requirement of posts to be filled either on regular basis or contractual basis; moreover there is no fresh proposal of construction of new godowns at present, therefore, the strength of Junior Engineers now working is sufficient and the petitions are liable to be dismissed. According to such respondent as per Clause-7 of the part II of the policy for engaging/outsourcing of the services dated 16.2.2009 of the State Government, the services of the persons who are engaged shall hereafter cease on expiry of the term without

providing them any claim for the continuity of contract of service or any other consequential benefit; the persons so engaged shall not have any legal right claiming regularization of their service etc. in the department where they have been engaged; the department shall under no circumstances be deemed or be treated as employer for any purpose whatever nor the department would be liable for any claim whatsoever of any such person. Refuting the other allegations, such respondent prayed for dismissal of the writ petition.

8. The petitioners in CWP-7886-2019 filed rejoinder to the written statement of respondent No.2 controverting the allegations therein, whereas reiterating the assertions in the writ petition.

9. I have heard learned counsel for the parties besides going through the record.

10. Admittedly, the petitioners had been employed for a limited period of one year on contractual basis. They had not appeared in a regular competitive examination for selection but had simply participated in walk-in-interview, the notice for walk-in-interview being Annexure P1. Annexure P2 in CWP-7886-2019 is copy of the appointment letter given to the petitioner Gopal and others separately although on similar lines. A perusal of such letters goes to show that petitioners had been appointed purely on contractual basis for a period of one year or till regular incumbents joined whichever was earlier. A perusal of the terms and conditions mentioned in this letter issued on 3.6.2016 goes to show that respondent No.2 – Corporation had a right to terminate the services of the employee at any time during the period of contractual appointment and on

expiry of the term, the service contract would cease and petitioner could not claim continuity of contract of service. The petitioners could not ask for regularization of services also. Annexure P3 in CWP-7886-2019 is the letter dated 21.7.2017 extending the contract period for another one year beyond 2.6.2017. Annexure P4 in CWP-7886-2019 provides extension of the contract period of another one year from 3.6.2017 to 2.6.2018. The case set up by the petitioners is that since they had asked for equal pay for equal work by submitting representation Annexure P5 dated 5.4.2018 in CWP-7886-2019, the officers of respondent – Corporation got angry and had not extended the contract period. Annexure P6 in CWP-7886-2019 is with regard to grant of extension from 2.6.2018 to 28.12.2019.

11. Now the question arises as to whether on expiry of the contract period, the petitioners have got any vested right to continue in service, the answer cannot be in affirmative. The petitioners cannot go beyond the terms and conditions of the appointment letters. It is clearly mentioned in their appointment letters that they had been appointed for one year or till appointment of regular incumbents, whichever was earlier. Though their period stood extended but after expiry of period of last extension, they cannot insist to continue in service. The petitioners are relying upon judgment by the Apex Court i.e. **Hargurpratap Singh Versus State of Punjab and others, 2007(13) SCC 292** wherein while dealing with the case of ad hoc employees seeking minimum pay scale and continuance till regular incumbents joined, it was observed that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay

scale nor that should not be continued till regular incumbents are appointed. However, when the case of the petitioners is examined in light of this judgment, it comes out that the petitioners cannot insist for continuance in service by extension of their contracts. As already observed, they had been initially appointed for one year and on expiry of that term were granted extensions. On completion of last extension, they are taken to be relieved. As regards their plea that they are not being allowed to join, the stand taken by the respondent No.2 is that the corporation is in process of restructuring and even the requisition sent to Staff Selection Commission for filling up regular posts including those of Junior engineers has been withdrawn. Since there is no work available services of the petitioners are not required. As such the petitioners cannot claim that they be allowed to join and work when no such work is available. Without doing active work they cannot possibly claim wages for that period.

12. In ***Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences 2018 (2) Apex Court Judgments (SC) 56***, it was observed that since appointment of employee on contract basis is not made in accordance with any regular procedure by following necessary rules, no right accrues to such type of employee for regularisation of services and there is no statutory right of a contract employee for renewal of contract from time to time. In a judgment by a Division Bench of this Court – ***Jyoti and others vs. The State of Haryana and others, in LPA No. 40 of 2021 in CWP 121 of 2021, decided on 14.1.2021***, following principles were laid down :-

“ (i) principle of 'last come first go' is applicable to a case of retrenchment but not in the case where initial appointment of an employee is against public policy or the employer finds the work and conduct of an employee to be not satisfactory;

(ii) in case the work and conduct of an employee is not found to be satisfactory, then the services of such an employee, although being a senior, pales into insignificance and the services of such an employee can be terminated in accordance with the terms and conditions of such employee;

(iii) a contractual / temporary employee cannot claim any protection against termination so long as the action taken by the authority is not shown to be vitiated by the infirmities viz. Illegality, perversity, unreasonableness, unfairness or irrationality and so long as the action is not demonstrably defiant of logic;

(iv) renewal of contract cannot be sought by a temporary / contractual employee as a matter of right as its renewal of employment depends upon the perception of management as to the usefulness of the employee and the need for an incumbent in the position held by such employee.”

13. Merely on account of petitioners working on contract basis for some time does not bestow upon them any right for extension of their contract period or their made regular employees. There cannot be any automatic extension of period. Rather, as observed Supra, there are several factors which are to be taken into consideration for that purpose, to say, availability of posts, an employee working on contract basis possessing necessary educational qualifications and expertise for that post, his work and conduct while working on contract basis, etc. Therefore, the petitioners cannot claim extension of contract period and then continuity in service as such, merely for the reason that they are working in the

respondent for some time. The requirement of manpower varies from time to time. The respondent can certainly hire additional work-force having necessary qualification, experience and expertise, by way of outsourcing and petitioners cannot find any fault with such policy of the respondent – Corporation and seek that this circular be not acted upon.

14. It is consistent case of the concerned respondent No.2 that they are not having enough work justifying the continuation in the extension being given to the petitioners. Learned counsel for the petitioners have tried to show that sufficient work is available and only to deny the petitioners their joining the service and continuing there, the respondents have gone to the extent of changing the nomenclature of the jobs and coming up with a plea that sufficient work is not available. However, I find little merit in these arguments. It is for the employer to see as how much work is available; how many more additional hands are required for doing that; whether the work available justifies hiring of more work force, if so, the number and period for which such additional work force should be hired. The petitioners cannot possibly introduce their own opinion and view point in the matter. According to the petitioners since they had demanded equal pay for equal work that irked the officers of respondent No.2, who did not give extension in services of the petitioners and rather got their services dispensed with. I do not see such reason explained to be cogent and convincing. Asking for a hike in wages by an employee is not such a reason by which an employer would feel offended so as to start scheming against such employee to dispense with his services. The petitioners have not been able to show any malafide on the

part of respondents so as to deny them extension in the contract period and to replace them by another set of ad hoc employees. Furthermore, the petitioners have not placed on record any document to show that some other employees on contractual basis are being appointed in their place on the same terms and conditions. I find the reasoning given by respondents to be plausible and convincing. The respondent No.2 need not twist the factual position so as to deny the availability of enough work justifying rehiring of services of petitioners. There was no necessity for respondent No.2 to change the nomenclature of the posts so as to deprive the petitioners continuation in their jobs. Rather such type of assertions amount to reading in between the lines when there is no occasion for doing so. In that way, the petitioners do not have any vested right for continuing in services. The writ petitions filed by them cannot be accepted and are deemed for failure. The necessary ingredients detailed in the judgment ***Hargurpratap Singh's*** (supra) are not found to be fulfilled in the present cases i.e. availability of enough work, justifying grant of further extension in service to the petitioners and there is nothing to show that respondent No.2 wants to replace petitioners by another set of contractual employees, although they have got every right to fill up the posts by regular appointment against sanctioned posts or by any other mode because the only embargo provided is that one set of contractual employees cannot be replaced by another set of contractual employees.

15. Furthermore, learned counsel for the respondents has submitted that the outsourcing policy has since been withdrawn w.e.f.

30.9.2021. As such the petitioners can certainly be not ordered to be

rehired on contract basis.

16. It may be observed here that if the petitioners nurse a grudge that their services have been dispensed with before the expiry of their contract period, the remedy in that regard is to claim damages and not to ask for being allowed to do work. For seeking that relief, the petitioners may approach appropriate Court/Forum, if so advised so as to establish their case.

17. The writ jurisdiction is to be exercised in exceptional cases and not in routine. Here I do not find fit to exercise such power.

18. Finding no merit in the petitions, the same stand dismissed.

9.12.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No