

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

CWP-18418-2021(O&M)

Reserved on:-11.11.2021

Date of Pronouncement:-15.11.2021

Ravi Prakash Yadav

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Argued by: Mr.Gurminder Singh, Sr.Advocate with
Mr.Gurnoor Sandhu, Advocate
for the petitioner.

Ms.Shubhra Singh, Addl.Advocate General, Haryana.

Mr.B.R. Mahajan, Sr.Advocate with
Mr.Jagbir Malik, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

1. This civil writ petition has been filed by petitioner Ravi Prakash Yadav, resident of village Parkhotam Pur, P.O. Jatusana, District Rewari craving for quashing of order dated 30.7.2021 Annexure P12 vide which he has been relieved from his service and duty of Accounts Clerk with Municipal Council, Rewari by official respondents, alleging that the

reasons given in the impugned order are totally contrary to the record because there is permanent requirement of work against vacant sanctioned cadre post of Accounts Clerk, which is admitted in the letter seeking extension of petitioner's contract and further there is no regular incumbent against both the sanctioned posts of Accounts Clerk on which the petitioner has been rendering services for the last five years. He has further prayed that official respondents be directed to allow the petitioner to continue working and discharging his duties on contract till regular appointment is made etc.

2. As per the case of the petitioner, he has been working with Municipal Council, Rewari on contractual basis in the accounts branch on one of the two vacant sanctioned posts of Accounts Clerk, from the year 2015 onwards till July, 2021 i.e. passing of the impugned order of termination of his contractual appointment; that initially in an effort to totally computerise the accounts work of the council through the Tally Software and for the reason that no regular accounts staff was on rolls of the Council, the petitioner was engaged and the nomenclature of petitioner's contractual appointment was that of "Tally Software Expert Operator" in the year 2015; the Municipal Council, Rewari had purchased a Tally Software and petitioner was made to work on the same in the Accounts Branch; the software was subscription based and the MC, Rewari did not renew its subscription beyond a year, consequently the work again started being done in the earlier conventional manner and the petitioner was asked to perform duties as a Accounts Clerk since both the sanctioned posts of the Accounts Clerk were lying vacant and

accordingly, in the course of time, the nomenclature of his post was redesignated as Tally Operator cum Clerk. According to the petitioner, aforesaid two sanctioned posts of Accounts Clerk are even now lying vacant; that in the year 2016, while the petitioner was in service, the respondent - council had decided to engage new contractual employee by replacing the petitioner instead of granting him extension. Therefore, the petitioner had filed a writ petition in this Court. During the course of that writ petition counsel for the respondent Municipal Council had made a statement that the council was not going to make any new contractual appointment on the post on which the petitioner was working and accordingly the writ petition was disposed of on the basis of that statement.

3. Thereafter, the respondent - council renewed petitioner's contract from time to time and he continued working without any break. A table showing such details of the contract period, post and sanction order has been given. The Executive Officer of M.C., Rewari had sought extension of contract of the petitioner vide letter dated 25.7.2019. However on account of Covid-19 pandemic, no final decision qua extension of petitioner in the contractual service could be taken. He was not paid salary up to date, therefore, he had to file a writ petition in this Court seeking releasing salary for the period from January 2020 till date and further seeking direction not to replace the petitioner by any employee on contract basis. However, in that writ petition counsel for the respondent made statement and services of the petitioner as a matter of fact was ante-dated termination. It was despatched on 26.8.2021 i.e. after

one day after the termination order dated 25.8.2021 passed in CWP No.14928 of 2021 filed by the petitioner. The petitioner is challenging that order as illegal, null and void, which is liable to be set aside.

4. The writ petition is being opposed by respondents No.2 and 3 contending that on 1.6.2015 the petitioner was hired on unsanctioned post of Tally Software Expert on DC rate basis for 89 days and after expiry of that period, his term was extended for further 89 days as per approval granted by DC, Rewari; this continued up to 21.2.2017 but before lapse of approval on presumption that he was being replaced by another contractual employee, the petitioner had approached this Court by way of filing CWP No.3816 of 2016; it was disposed of vide order dated 19.1.2017 observing that petitioners had approached the Court on presumption that the respondents were going for fresh contract appointment, which was not so and in view of that petition did not survive for consideration; after passing of that order, engagement of the petitioner was further extended and such extension was up to 31.7.2019, thereafter no extension was granted by the competent authority because there was no sanctioned post of Tally Software Expert with Municipal Council, Rewari and no appointment could be made directly by the Department against unsanctioned posts under Part-II of Outsourcing Policy, which could be only done under Part-I through Outsourcing Agency, in that way petitioner remained working till 30.7.2021 with connivance of respondents No.4 and 5, who were posted in Municipal Council, Rewari on deputation and when it came to the notice of answering respondents, a letter was written to respondent No.1 and on request of answering

respondents, respondent No.5 was repatriated to his parent department and respondent No.4 was also relieved on his promotion; the engagement of petitioner was cancelled and he was relieved; the petitioner does not have any vested right for seeking continuation/extension of his contract as has been held by the Apex Court in **Yogesh Mahajan Versus Prof. R.C. Deka, Director, All India Institute of Medical Sciences, 2018(1) SCT 690** and as per the settled law no contractual employee has a right to have his or her contract renewed from time to time.

5. This position has been reiterated in various judgments passed by this High Court. Refuting the remaining assertions, the respondents No.2 and 3 prayed for dismissal of the writ petition.

6 I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the writ petition and it is doomed for failure.

7. Admittedly, the petitioner was initially appointed for a term of 89 days on contract basis and subsequently his term stood extended from time to time. The petitioner has placed on record various documents, which include letter dated 1.6.2015 by Deputy Commissioner, Rewari addressed to Executive Officer, Municipal Council, Rewari, copy Annexure P3 granting approval for appointment of two Tally Software Experts for smooth working of Accounts Branch of Municipal Council, Rewari as per prescribed procedure on DC rates for 89 days, in that way accepting the request received. Annexure P4 is with regard to similar approval granted by D.C. Rewari to Executive Officer, MC, Rewari dated 24.12.2015 for extension of period of one Tally Software Expert for

further 89 days. Annexure P5 dated 3.3.2016 relates to approval by D.C. Rewari granting extension for 89 days for one Tally Operator-cum-Clerk. Annexure P6 is similar approval letter dated 5.7.2016 extending period of one Tally Operator-cum-Clerk for 89 days from 29.5.2016. Annexure P7 is dated 10.10.2016 conveying approval of D.C. Rewari for extension period of one Tally Operator-cum-Clerk for 89 days on DC rates from 26.8.2016 and Annexure P8 dated 16.12.2016 is for extension period of one Tally Operator-cum-Clerk on DC rates for 89 days from 24.11.2016 i.e. up to 24.2.2017. That means the petitioner was not working on regular basis rather his contract period was being extended as per approval granted by DC Rewari from time to time for 89 days. According to the respondents, on completion of the period of extension, the petitioner was relieved, whereas, the case of the petitioner is that he continued working on the post and the order relieving him was ante-dated; that despite post of Clerk being vacant, services of the petitioner have been dispensed with. However, keeping in view the facts and circumstances of the case and in absence of any allegations of *mala fide* or prejudice against any officer or office bearer of MC, Rewari, it does not seem plausible that such letter would be ante dated or manipulated. Rather it is clear from the wording of the impugned order that all permanent posts of Clerk were filled up and petitioner was not serving on the post of Tally Operator-cum-Clerk and keeping in view the bad financial condition of M.C. Rewari, services of petitioner were being terminated w.e.f. 30.7.2021 and as a matter of fact there was no sanctioned post of Tally Operator-cum-Clerk.

8. It is for an employer to see whether sufficient work exists

justifying the grant of extension to an employee working on contract basis and whether the employer has means to pay his salary. If the financial condition of the M.C. Rewari is not good, then it can certainly manage its affairs with minimum number of employees required, say those working on sanctioned posts and services of other additional employees hired on contractual basis can certainly be dispensed with. The petitioner cannot say that work is still there justifying the extension of his contract. The availability of the work is to be seen from the view point of the employer and not the employee.

9. It is not the case of the petitioner that the respondent Council intends to appoint some other person in his place on contractual basis. Even otherwise, in the impugned order, the council has specifically mentioned that in case they require to appoint any person as Tally Operator-cum-Clerk on contract basis, then the petitioner would be given preference. The rights of the petitioner are safeguarded to that extent in view of the judgment of the Apex Court **Hargurpartap Singh Versus State of Punjab and Ors. (2007) 13 SCC 292**. With respondent No.2 stating that enough work is not available, without levelling any allegation with regard to integrity and antecedents of the petitioner and without their being anything on record to show that M.C. Rewari intends to replace the petitioner with another contractual employee, the petitioner cannot possibly insist that he would continue serving M.C. Rewari as Accounts Clerk and his contract be extended. It needs to be pointed out that petitioner was not originally appointed as Accounts Clerk and his appointment was that of Tally Operator-cum-Clerk though he might have been deputed in

Accounts Branch to look after that work for some time but that does not result in change of his designation as Accounts Clerk. Even otherwise, in terms of the policy for engaging/outsourcing of service/activities of Haryana Government dated 6.4.2015, copy of which has been placed on record as Annexure P15, the same is in two parts. Part-I relates to policy for outsourcing of services/activities which may be outsourced as and when required partly or completely by the departments, where posts have not been sanctioned and the minimum qualifying criteria, the deliverables (accepted service levels) performance monitoring standards and liabilities case is to be approved by Head of the Department and in case of Mini-Secretariats in the Districts where several offices of different government departments are located under one roof, the D.C. concerned.

10. The case of the petitioner is obviously covered by Part I. He was appointed on contract basis and not by way of holding any examination or test inviting applications from the open market adopting the procedure required for selection of candidates for regular posts. The post on which he was appointed, does not come out to be a sanctioned post and it is specific case of respondent council also. Part II of the policy relates to persons on contract basis where regular posts exist. That can be done by by sending requisition to the Employment Exchange and by advertisement in the Newspaper initially for a period not exceeding one year or till the regular selected candidates are appointed. The detailed procedure has been given therein. That part is not applicable to the case of the petitioner.

11. Thus, the petitioner cannot insist that he be allowed to work

till regular incumbent is appointed, because if he had been engaged by adopting proper procedure and fulfilling the requirements as required in Part II of the policy, Annexure P15, he would have at least something to say but not when he was appointed purely on contractual basis for 89 days against a post, which is not sanctioned one.

12. As far as the petitioner working after 31.7.2019 up to 30.7.2021, the respondents No.2 and 3 have specifically taken a stand that it was with connivance of respondents No.4 and 5, who were posted with Municipal Council, Rewari on deputation and when their such illegal acts were detected, action was taken against them inasmuch as respondent No.5 was repatriated to his parent department, whereas respondent No.4 was also relieved. The petitioner remaining in service in such a manner does not provide him any legal sanctity created any vested right in him for being allowed continuation in service. In any case he has already been paid salary for such period.

13. Learned counsel for the respondents in support of their contentions have referred to various judgments first being **Yogesh Mahajan Versus R.C. Deka's** case (supra), wherein it was observed by the Apex Court that when an employee appointed on contract basis by not following regular procedure and necessary rules, then no right accrues to such employee for regularization of services. It was further observed that an employee on contract basis has no statutory right for renewal of contract from time to time.

The next judgment pressed into service is **Jyoti and others Versus The State of Haryana and others** passed by Division Bench of

this Court in LPA No.40 of 2021 decided on 14.1.2021. In paras No.5.3, 5.4 and 5.5 of such judgment, it has been observed as under:

[5.3] In case of appointment against public post, authorities are bound to comply with mandate of Articles 14 & 16 of the Constitution which includes proper advertisement of the post; testing on rational selection process by Public Service Commission or Staff Selection Commission or committee duly appointed under statutory Recruitment Rules & Regulations governing the post and compliance of all mandatory & procedural formalities. It is well known fact that in case of contractual appointments or appointments for limited tenure which may or may not be extended, very few people apply and many competent people do not apply. In spite of said ground reality, the State Authorities as well as private employers opt for contractual appointments because services of contractual employees can be terminated as per terms and conditions of contract e.g. completion of tenure of contract or completion of project or prior notice or salary in lieu of notice. Every employer wants competent and honest men of integrity. By way of appointment on contract basis, employer gets opportunity to revisit its selection process and search better employees. If an employer is satisfied with its existing contractual employees, there is no need to go for fresh appointments. In case an employer feels that he needs and may get better employees, he has every right to go for search of fresh employees instead of continuing services of old employees.

[5.4] It is settled principle of service jurisprudence dealing with contractual and ad hoc service that equity can exist only so long as it does not conflict with statutory provisions under the law. In the present case it is apparent that the writ petitioners were appointed without any advertisement or public notice and thus their entry was per-se illegal. Consequently, the authority concerned was well within its

*right to dispense with the services of appellants. Reference in this regard can be made to judgment passed by Hon'ble Supreme in **UPSC vs. Girish Jayanti Lal Vaghela, 2006(1) S.C.T. 621: (2006) 2 SCC 482 whereby at page 494 in Para 21, the Hon'ble Supreme Court has held as under :***

*" 21. It is neither pleaded nor is there any material to show that the appointment of Respondent 1 had been made after issuing public advertisement or the body authorised under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was de hors the rules. The appointment was not made in a manner which could even remotely be said to be compliant with Article 16 of the Constitution. The appointment being **purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant.**"*

(Emphasis Supplied)

[5.5] Even otherwise, if a fresh contract contemplated is to secure better talent with higher qualifications or seek a fresh batch of contractual employees having more set of skills and enthusiasm, the employer will always have the authority to decide on what is best for improving its functioning with better qualifications which can be need based and based on work requirement. There cannot be a

blanket ban that the fresh recruitment of contractual employees itself must stop or the replacement by higher qualified/better qualified contractual employees cannot be made.

The conclusion drawn in such judgment is in para No.5.8, which was to the following effect:

[5.8] Thus, from a cumulative reading of all the judgments referred hereinabove, inter alia, following principles which are relevant to the facts of the case can be culled out:-

(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.

He has further relied upon judgment **Padma Versus Lala**

Lajpat Rai University of Veterinary and Animal Sciences, Hisar and

others passed by Division Bench of this Court in LPA-647 of 2021 decided on 11.8.2021, wherein after discussing the legal position on the subject in detail, the Division Bench while affirming the judgment by a Single Bench declining regularization of service to the petitioner had observed that it is a settled law that no contractual employee has a right to have his/her contract renewed from time to time.

14. It has to be kept in mind that power of issuing a writ is not to be used in routine but in exceptional circumstances. Here I do not see any reason to exercise such power.

15. The instant writ petition is dismissed accordingly.

15.11.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No