

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

Date of decision: 24.03.2021

CWP No.22788 of 2020 (O&M)

Amritpal Kaur ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.187 of 2021 (O&M)

Anoop Kumar ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.32208 of 2019 (O&M)

Dr. Jeevan Kumar Sharma ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.8574 of 2019 (O&M)

Ritu Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.4003 of 2019 (O&M)

Parveen Tomar ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.8664 of 2020 (O&M)

Mohan Dev ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.17943 of 2020 (O&M)

Kulwinder Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.7333 of 2020 (O&M)

Rajesh Sharma ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.8835 of 2020 (O&M)

Dr. Renu Mangla ... Petitioner

Versus

Union of India and others ... Respondents

COCP No.2257 of 2017 (O&M)

Subedar Omparkash ... Petitioner

Versus

Girish Chandra ... Respondent

CWP No.20453 of 2020 (O&M)

Kasturba Nand ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.19672 of 2020 (O&M)

Gurwinder Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.9836 of 2020 (O&M)

Dr. Shruti Dhawan ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.6589 of 2020 (O&M)

Jarnail Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.11412 of 2020 (O&M)

Gagandeep Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.25183 of 2017 (O&M)

Harjinder Singh and others ... Petitioners

Versus

Union of India and others ... Respondents

CWP No.6609 of 2017 (O&M)

Subedar Om Parkash ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.4957 of 2020 (O&M)

Ex. Sep Sukhwinder Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.5446 of 2020 (O&M)

Dr. Jaspal Singh Bhatia ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.14213 of 2020 (O&M)

Amandeep Kaur ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.4976 of 2020 (O&M)

Rajni Chopra @ Rajni Makkar ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.20806 of 2020 (O&M)

Kawalbir Singh ... Petitioner

Versus

Union of India and others ... Respondents

CWP No.14814 of 2020 (O&M)

Ranjodh Singh ... Petitioner

Versus

Union of India and others ... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Narinder Kumar, Advocate
for the petitioner (CWP-22788, 8664 and 19672, 11412,
20806 of 2020).

Mr. Ramneek Vasudeva, Advocate
for the petitioner(s) (CWP-4957, 4976, 5446, 14213,
14814, 8835 of 2020 and CWP-187-2021).

Mr. Abhishek Sethi, Advocate
for the petitioner(s) (CWP-17943-2020).

Mr. H.P.S. Isher, Advocate
for the petitioner(s) (CWP-6589-2020).

Mr. Sandeep Kumar Goyat, Advocate
for the petitioner(s)
(CWP-6609-2017 & COCP-2257-2017).

Mr. Mohammad Saleem, Advocate for the petitioner(s)
(CWP-25183-2017).

Mr. Parminder Singh, Advocate
for the petitioner(s) (CWP-7333 & 20453 of 2020).

Mr. Rakesh Bakshi, Advocate
for the petitioner(s) (CWP-9836-2020).

Mr. Saqib Ali Khan, Advocate
for the petitioner(s) (CWP-4003-2019).

Mr. Dhruv Gupta, Advocate for the petitioner(s)
(CWP-8574-2019).

Mr. Inderjit Sharma, Advocate for the petitioner(s) (CWP-
32208-2019).

Mr. Arun Gosain, Advocate for UOI.

Mr. KK Jund, Advocate for UOI (CWP-22788, 20806,
19672 of 2020 and 187 of 2021).

Mr. Arihant Goyal, Advocate for UOI
(CWP-14213-2020).

Mr. BS Kanwar, Advocate for UOI
(CWP-6609-2017 and COCP-2257-2017).

Ms. Anita Balyan, Advocate for UOI (CWP-32208-2019,
CWP-6589-2020).

Mr. Parveen Kumar Saini, Advocate for UOI
(CWP No.8574 of 2019, 8664, 9836 of 2020).

Mr. Ankur Sharma, Advocate for UOI (CWP-4003-2019).

Ms. Monica Chawla, Advocate for UOI
(CWP-17943-2020).

Mr. Shivoy Dhir, Advocate for UOI (CWP-7333-2020).

Mr. HS Oberoi, Advocate for UOI (CWP-8835-2020).

Mr. Sudhir Nar, Advocate for UOI (CWP-20453-2020).

Mr. Arvind Seth, Advocate for UOI
(CWP No.11412 of 2020).

Mr. Shobit Phutela, Advocate for UOI
(CWP-25183-2017).

Ms. Sonia Sharma, Advocate for UOI
(CWP No.4957, 5446, 4976 of 2020)

Mr. Gaurav Pathak, Advocate for UOI
CWP No.14814 of 2020.

Mr. Dheeraj Jain, Advocate for UOI.

ANIL KSHETARPAL, J.

By this order various connected writ petitions i.e. CWP
No.22788, 4957, 4976, 5446, 11412, 14213, 14814, 17943, 6589,
8664, 8835, 7333, 9836, 19672, 20453, 20806 of 2020, 6609, 25183
of 2017, 4003, 8574, 32208 of 2019, 187 of 2021 and COCP No.2257

of 2017 shall stand disposed of. Learned counsel for the parties are *ad idem* that the issue which needs adjudication is common and therefore, these writ petitions can be disposed of by a common order. The petitioners in various writ petitions are working on various posts under the Ex-servicemen Contributory Health Scheme (hereinafter referred to as 'ECHS Scheme') notified by the Central Government.

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 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 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 previous judgment, 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	
		Reserved for ex-servicemen	Open 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

Sr. No.	Category	Percentage of vacancies	
		Reserved for ex-servicemen	Open vacancies
(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 of 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.

Now, through these writ petitions, the petitioners assail the correctness of the recruitment notice issued by the respondent to fill various posts. The petitioners claim that they have a right to continue in view of the judgment passed in CWP No.20113 of 2013 (supra). Hence, it becomes important to carefully examine the judgment passed in CWP No.20113 of 2013 (**Dr. Sukhpreet Singh Vs. Union of India**). It is also of utmost significance to carefully examine the relevant clause in the employment contracts of the petitioners in the aforesaid writ petition, which is extracted as under:-

2. The engagement of the Engaged person for rendering his/her 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 up to 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(WR) 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 Engager Person during the proceeding 12 months and existence of the requirement

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

In the aforesaid case, all the petitioners had worked for a period of more than five years. Keeping in view the clause in the employment contract which has been extracted as above, the Court held that once the petitioners in those writ petitions had been given an extension after a period of 12 months and the communication dated 11.10.2013 stands withdrawn therefore, the petitioners have a right to continue. It is important to note that in the case of petitioners herein, learned counsels representing the petitioners have failed to draw the attention of the Court to any similar clause as it existed in the facts of the case of **Dr. Sukhpreet Singh (supra)**. The judgment passed in **Dr. Sukhpreet Singh (supra)** is interpreting the relevant clause in the employment contract which does not exist in these writ petitions. Learned counsels representing the petitioners have also relied upon the judgment passed by the Court in CWP No.8798 of 2014 (**Satish Kumar and another VS. Union of India and others**) decided on 30.06.2015. In the aforesaid case, again while interpreting Clause 2 of the agreement, the Court held that since the drivers have been allowed to continue for more than seven years, hence, they have right to continue subject to good performance and existence of work. The Court further directed that due to reduction of posts from three to two, the principle of ‘last come first go’ shall be required to be followed

while renewing the contract. In the present case, learned counsels for the petitioners have failed to draw the attention of the Court to any agreement parallel to the employment contract entered in case of the petitioners in the aforesaid writ petition. Hence, the aforesaid judgment is also not applicable.

Learned counsels representing the petitioners have also relied upon the judgment in **Mohd. Abdul Qadir and another Vs. Director General of Police, Assam and others, (2009) 6 SCC 611** to contend that once the petitioners have been employed for a particular project or scheme then they have a right to continue till the scheme is in existence or till they attain the age of superannuation.

It may be noted here that in the aforesaid judgment, the Lordships of the Supreme Court were considering the cases of the persons employed under the Prevention of Infiltration of Foreigners Scheme formulated by the Government of India. This scheme was formulated to strengthen the machinery of the Assam government to detect and deport the foreigners in the year 1960. After a passage of 25 years, Inspector General of Police (Border), Assam, issued a circular dated 17.03.1995 directing that all the appointments shall be for a contractual period of one year. In these circumstances, the Supreme Court held that once someone has been appointed under a scheme then there is no reason to dispense with his services particularly when he has undergone the required training and has gained sufficient experience. The aforesaid judgment, with greatest respect, does not as

a ratio decidendi lay down that whenever a contractual employee is given contractual employment for a particular period then irrespective of terms of the contract, he has right to continue till the scheme continues. Hence, the aforesaid judgment does not espouse the cause of the petitioners

It is by now well settled, that the contractual employees are governed by the contract entered into. Even while deciding the cases of **Dr. Sukhpreet Singh (supra)** as also **Satish Kumar (supra)**, the Court referred to the scheme and held that the principle 'a contractual employee cannot be replaced by another contractual employee' is not applicable.

Still further, the contractual employees have no right to seek permanency. Reference in this regard can be made to the judgment passed by the Three Judge Bench in **State of Maharashtra VS. Anita and others, (2016) 8 SCC 293**. The Court held that the employees after having secured the appointment on a contract, are estopped from seeking permanency. Para 15 and 16 of the aforesaid judgment read as under:-

15. 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 IInd 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.”

16. 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.

17. 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.

Further this aspect can be examined from another angle.

The decision taken by the respondent is in the realm of a policy decision and unless the decision is proved to be arbitrary, unfair or illegal, the Court is not expected to interfere with such policy decision. As already noted, the policy as adopted is with a view to provide medical/health care to the ex-servicemen and their dependents by the ex-servicemen, under the auspices of the Defence Ministry. Further, opportunity of employment is also being provided to the ex-servicemen. Once, more than one purposes are sought to be achieved by adopting a policy in a particular manner, this Court does not find any ground to interfere.

This matter can be examined from yet another perspective. The petitioners were appointed pursuant to a recruitment notice wherein it was clearly stipulated that the appointment is being offered for a fixed tenure of two years. The petitioners applied under the aforesaid recruitment notice. They were cautious of the fact that

appointment is only for two years. In these circumstances, if the Court offers its helping hand in order to extend the tenure, it will cause serious prejudice to other aspirants who may not have applied for the post due to stipulation in the recruitment notice that the appointment is being offered for only 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 tenure of the petitioners is directed to be continued, it would be inequitable to those candidates who did not apply in view of the stipulation in the recruitment notice.

Another aspect of approaching this case is by applying the principle of estoppel. The Hon'ble Supreme Court in the judgment quoted above has examined this aspect and held that the contractual appointees for a fixed tenure have no right 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 doctrine of equity cannot be applied by holding a one sided perspective. The Court cannot grant relief to the petitioners without keeping in view the overall impact thereof.

Another Co-ordinate Bench in its judgment dated 28.09.2016 while deciding CWP No.1992 of 2016 (**Dr. Harbhajneek Kaur Vs. Union of India and others**) has also taken the similar view after noticing the judgment in CWP No.20113 of 2013.

Keeping in view the aforesaid discussions, this Bench is

of the considered view that the petitioners have no right to challenge the recruitment notice issued by the respondents. They have no right to continue on the post(s) after their tenure has come to an end or whenever it comes to an end.

With these observations, all the writ petitions are dismissed.

24.03.2021

ashok

Whether speaking/reasoned:

Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No

Yes / No