

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

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**LPA-19-2022 & CMS-43, 44 & 974-LPA-2022
DATE OF DECISION: MAY 18, 2022**

Sukhjinder Pal Singh

.....Appellant

VERSUS

Punjab & Haryana High Court through Registrar and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Damanpreet Singh, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J.

CM-974-LPA-2022

Application is allowed as prayed for subject to all just exceptions.

Affidavit of the applicant-appellant is taken on record.

CM-43-LPA-2022

Prayer in this application is for condonation of delay of 770 days in filing the appeal.

As per the pleadings, the writ petition was dismissed by the learned Single Judge vide order dated 02.02.2018. The applicant-appellant came to now of the fact about the dismissal of the writ petition in the month of June 2020 as it is asserted in the additional affidavit that whenever he

enquired from counsel for the applicant-appellant about the fate of his case, he was intimated that the writ petition is still pending. For the subsequent period, the delay has been attributed to Covid pandemic. The present appeal has been filed on 05.01.2022 and, therefore, prayer has been made for condoning the delay in filing the present appeal.

We have considered the submissions made by counsel for the applicant-appellant but do not find ourselves in agreement with what has been asserted by the applicant-appellant and the reasons assigned by him. No explanation whatsoever of the inordinate unexplained delay has been given. As per the admitted position, the writ petition was dismissed by the learned Single Judge on 02.02.2018 and, therefore, the appeal could have been filed within a period of 30 days, meaning thereby on or before 04.03.2018. The ground for the applicant-appellant having enquired from the office of the counsel and the intimation with regard to the writ petition being pending appears to be unacceptable, especially when the counsel had argued the case in Court on behalf of the applicant-appellant (petitioner in the writ petition) and the judgment was dictated in open Court in the presence of the counsel.

That apart, the explanation, which has been put forth by the applicant-appellant for the delay is also not acceptable as all through during the period of Covid, except for the period for lock down, filing was open. We, thus, do not find any ground for condoning the inordinate, unexplained and unreasonable delay in filing the present appeal and, therefore, dismiss the application for condonation of delay.

appellant but do not find any ground for interfering with the judgment passed by learned Single Judge.

As per the admitted facts, the appellant was appointed on contractual basis on a tenure appointment on the post of Reader in the Fast Track Court, which had been created under the Central Government Scheme. The appointment letter was issued to him and he joined the service as Reader with the Fast Track Court, Roopnagar on 01.05.2004 and continued working as such upto 22.10.2007, when his services were dispensed with on abolition of said Fast Track Court. The Fast Track Court was again created in District Roopnagar and instead of continuing the appellant on the said post, a fresh advertisement was issued and a retired employee was appointed on the post of Reader, which has been assailed by the appellant.

It has been asserted that a person who has been appointed on contract basis cannot be replaced by another contractual appointee. It is on this principle that the appellant had approached the writ Court and that too after a delay of almost 11 years in the year 2018. The plea taken for the delay was that the Punjab Adhoc, Contractual, Daily Wages, Temporary, Work charged and Out sourced Employees Welfare Act, 2016 (hereinafter referred to as “the 2016 Act”) has come into existence, which provides that any of these categories of employees who had worked for a continuous period of not less than 3 years, are entitled for regularization of their services. It is on the basis of the 2016 Act that the appellant had served a legal notice dated 27.10.2017 (Annexure P-9) on the respondents to absorb him in service on regular basis. The said legal notice was rejected by the District & Sessions Judge, Roopnagar vide order dated 28.11.2017

(Annexure P-10), which has been assailed by the appellant in the writ petition on the basis of the observations of the Hon'ble Supreme Court in Hargurpratap Singh Vs. State of Punjab and others, 2007 (13) SCC 292 that a contractual appointee cannot be replaced with another contractual appointee. Reliance was also placed upon the judgments of this Court in Civil Writ Petition No.2346 of 2013 (Balwan Singh and others Vs. State of Haryana and others), decided on 04.02.2013 and Civil Writ Petition No.1034 of 2012 (Sunita Devi Vs. State of Haryana and others), decided on 22.04.2014.

Learned Single Judge proceeded to reject the said contention on the basis of the observations of the Hon'ble Supreme Court in State of Maharashtra and others Vs. Anita and another, (2016) 8 SCC 293, wherein it has been held that the appointment of a contractual employee is governed by the terms and conditions of the agreement and, therefore, termination of the services of such an employee in accordance with the terms and conditions cannot be said to be illegal. Reliance was also placed upon the judgment of Hon'ble Supreme Court in Secretary, State of Karnataka and others Vs. Uma Devi and others, (2006) 4 SCC 1, wherein it has been held that in a contractual appointment, the appointment of an employee comes to an end at the end of the contract. It has been further held that where the term of appointment of an employee comes to an end, dispensing with the services of such an employee would not be illegal and the employee concerned does not acquire any right of continuance on the said post. Further reliance has also been placed upon the judgment of Hon'ble Supreme Court in GRIDCO Ltd. and another Vs. Sadananda Doloi and others, (2011) 15 SCC 16, where it has been held that the renewal of

contract of an employee is depended upon the perception of the management. An employer, on completion of tenure, can terminate the services of an employee appointed on a term appointment. In AIR India Ltd. Vs. Dharmendra Kumar, (2001) 10 SCC 547, it has been held that there is no legal right to continue in service by an employee after expiry of the term. In Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others, (2014) 1 SCC 161, it has been held that a contractual appointee cannot claim extension as a matter of right.

All these judgments, when taken into consideration, settling the principles with regard to the terms and conditions of a contractual employee, leave no scope for accepting the principle that a contractual appointee cannot replace another contractual appointee. The said principle, thus, cannot be accepted as a rule as it would be dependent upon various factors including the terms and conditions of appointment which govern the contract entered into between the employee and the employer. An employee cannot claim continuance in service as a matter of right, unless protected under the contract or the rules governing the service/terms and conditions of appointment.

In the present case, as is apparent, appellant was appointed on contractual basis and that too for a term period on temporary basis as a Reader at a fixed remuneration of ₹7,000/- per month (without any allowances) for a period of one year, which has been extended and he continued as such upto 22.10.2007, when his services were dispensed with in terms of the appointment order for the reason that the Fast Track Court, Roopnagar, had been withdrawn and, therefore, was no more in existence.

With the re-establishment of the Fast Track Court again, subsequent

appointment was made on a fresh advertisement having been issued. The appellant slept over his rights and it is only in the year 2018 he had woken up and submitted a legal notice and that too, according to him, after the coming into force of the 2016 Act, claiming continuance and regularization in service.

All these facts show that from 22.10.2007 onwards, appellant had not been serving with the respondent-Department as his services had been dispensed with in accordance with the terms of the contract and especially because of the abolition of the Fast Track Court, where he was appointed purely on temporary basis on a fixed salary. The law on this aspect has been referred to by the learned Single Judge in detail, which could not be distinguished by counsel for the appellant.

In our considered view, there is nothing wrong in the judgment passed by learned Single Judge, which would call for any interference by this court and, thus, the appeal stands dismissed on the grounds of delay as well as merits.

As the main appeal stands dismissed, no orders are required to be passed on CM-44-LPA-2022.

(AUGUSTINE GEORGE MASIH)

JUDGE

May 18, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No