

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-1849-2019
Date of decision: 12.05.2022

Lokesh Rana and others

..... *Petitioners*

Versus

Union of India and others

.....*Respondents*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Inder Pal Goyat, Advocate for the petitioners

Mr. Satya Pal Jain, Senior Advocate
Additional Solicitor General of India
with Mr. Parvesh K. Saini, Advocate
for the respondents/UOI

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Rajbir Sehrawat, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing impugned advertisement No. A-01/10(2)/2018-19/NISE dated 09.01.2019 (Annexure P-17), vide which, 38 posts of Engineers/Scientists at three levels, already occupied by the petitioners on contract basis, are sought to be filled up on contract basis and thereby the petitioners are sought to be replaced by another set of contractual employees by the respondent-institute. Further prayer has been made for issuance of a writ in the nature

of mandamus, directing respondent No. 2 to allow the petitioners to continue on the posts held by them and respondent No. 2 may be directed not to replace the existing contractual scientists by another set of contractual/temporary employees till these posts are filled by regular employees.

The case of the petitioners, as pleaded in the writ petition and as submitted by counsel for the petitioners is that in the year 2014, the petitioners were appointed with the respondent-institute on the posts of Junior Research Fellows/Senior Research Fellows and Research Associates purely on contract basis. Their initial period of the contract of service was for a period of one year. However, the same has been continued from time-to-time upto 2019. Thereafter, the respondents have stopped the extension of the contract of the petitioners. The action of the respondents is based on irrelevant consideration because they have taken action against the petitioners on account of the petitioners having claimed higher salary vide Civil Writ Petition No. 29800 of 2018. Moreover, the respondents have advertised same posts for being filled up, again on contract basis. Counsel for the petitioners has further submitted that it is settled position in law that contractual employees cannot be replaced by another set of contractual employees. Hence, the present writ petition, challenging the impugned advertisement dated 09.01.2019 (Annexure P-17).

On the other hand, counsel for the respondents have submitted that the process of recruitment, pursuant to the advertisement (Annexure P-17) already stands completed. Therefore, the present writ petition itself has

been rendered infructuous. The petitioners are continuing in position only because of the interim order of status quo regarding service of the petitioners granted by the Court. The appointment of the petitioners was specifically for a limited period; on contract basis. The last extension of contract of the petitioners had expired way back on 31.01.2019. Thereafter, there has been no extension of contract of service of the petitioners. However, the petitioners had to be kept in service because of the interim order passed by this court. As on today, the petitioners are rendered totally surplus because of the posts; which were occupied by the petitioners, already stands filled up by the advertisement (Annexure P-17). Still further, the petitioners had participated in the process of selection pursuant to the impugned advertisement and two of the petitioners have even been selected and appointed. Counsel for the respondents has further submitted that the principle of “*contractual employees cannot be replaced by another set of contractual employees*” is not applicable qua the posts which are sanctioned purely on contract basis. This principle can be applied for regular cadre posts and only till regular appointment against regular posts is made. Moreover, contract of service cannot be specifically enforced by the petitioners.

Having heard counsel for the parties, this Court does not find any substance in the arguments raised by counsel for the petitioners. It is not even in dispute that the posts, which the petitioners occupied, were sanctioned and filled up by the competent authority purely on contract basis. No regular cadre of the posts, which the petitioners occupied was

sanctioned by the competent authority in the respondent-institute. The posts now stand filled up through the process of open competition, after due advertisement (Annexure P-17), in which even the petitioners had participated. The selected candidates have already been appointed through the process of selection, impugned in the present writ petition. Hence, there is no justification for keeping the present writ petition alive any more.

Although, counsel for the petitioners has submitted that the petitioners could not have been replaced by another set of contractual employees, however, this concept is not available to the petitioners because the posts, which were occupied by the petitioners, itself were sanctioned on contractual basis. There is not regular cadre for these posts. Therefore, the petitioners cannot be permitted to argue that once they are appointed on the said posts, they can never be replaced by any other person. Moreover, once a cadre itself is contractual, then there cannot be a bar on the competent authority from filling up the post every year or after a particular duration by inviting fresh talent from the open market. A cadre which is contractual in nature cannot be held to be semi-permanent in favour of the persons who are first appointed, though only on contract basis, because doing so would tantamount to violation of rights of other persons; who became eligible for the said post after appointment of the petitioners. Continuing the petitioners on contract basis for an indefinite period itself would be violative of Article of 14 of the Constitution of India, discriminating against those persons who became eligible for the posts after the appointment of the petitioners against these posts. Hence, this concept of non-replacement of the contractual

employee by another set of contractual employee is not applicable in the case of the petitioners.

In view of the above, finding no merits, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

May 12, 2022
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No