

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

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CWP-4330-2022

Date of decision : 04.03.2022

Prabhu Nath Shahi and others

....Petitioners

V/s

U.T. Chandigarh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Rishav Sharma, Advocate for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

The challenge in the present writ petition is to the order dated 25.02.2022 (Annexure P-12), passed by the Central Administrative Tribunal, Chandigarh Bench, whereby claim of the petitioners for regularization has been rejected.

The Tribunal vide impugned order has come to the conclusion that the department had advertised 14 posts of Forest Guard and 6 posts of Forester on regular basis and that the appointment of the petitioners was on the basis of walk-in-interview of ex-servicemen for the purpose of only looking at the emergent need of acute shortage of field staff in the department at that stage. After examining the record in detail it also, came to the conclusion that the process for making regular appointment had been initiated vide advertisement dated 05.05.2012, which was yet to be finalized and recourse had been taken to fill up the post in between and the process of recruitment which had been carried out was on the basis of walk-in-interview and in accordance with the recruitment Rules. But no such declaration would be granted that the word 'contractual appointment' mentioned in the appointment order is a misnomer. It also noticed that the selected candidates had also been appointed and the regular process of recruitment had

been completed and therefore, the applicants (petitioners herein) could not be

allowed to continue further as per the terms of their appointment letters which were only for the limited period till such regular appointment are made. Resultantly, the Original Application was dismissed.

Counsel for the petitioners has made earnest efforts to convince us that the order is not sustainable and that the petitioners have been appointed as per the Forest Department Group 'C' posts (Executive Section) Recruitment Rules, 2001 (for short 'Rules, 2001') and were duly qualified and therefore, they are liable to be regularized.

Counsel has thus, relied upon Note 3 of the Rules, 2001 to point out that the appointment to the posts of Forest Ranger, Forester and Forest Guard by direct recruitment has to be made on merit basis as per the procedure laid down in Note 16. It is contended that as per Note 16 of the Rules, 2001, there is exemption for the Ex-servicemen from the 'Physical Efficiency Test' (PET) and 'Written Test', which is mandatory under Note 16 (b) of the Rules, 2001 for the candidates who applied for the direct recruitment. It is, thus, contended that the procedure had been apparently followed and therefore, the petitioners were wrongly treated as contractual employees. It is further pointed out that in pursuance of the interim order passed by the Tribunal, the petitioners had been protected and their services were not dispensed with till the decision of the Original Application.

A perusal of the paper-book would go on to show that the walk-in-interview for filling up the 7 posts of Forest Guard (on contract basis) from Ex-servicemen/Ex-Forest Guard (Annexure A-7), was called initially on 13.03.2013 for a period of one year. The consolidated contractual amount was stated to be ₹22,300/-. Similarly for the posts of Forester, the interview was fixed on 18.12.2013 for the 7 posts and the consolidated contractual amount payable was

appointed as Forester (under Ex-Serviceman category) in Forest and Wildlife Department, U.T. Chandigarh on contractual basis on a consolidated amount of ₹33,100/- which was up to the year 31.12.2014 or filling up of the post of regular Forester by the department whichever is earlier. This ground of higher contractual amount apparently is on the basis of a even subsequent advertisement issued in February, 2015 (Annexure A-3), where the consolidated contractual amount for the post of Forester was ₹33100/-

The terms of the appointment letter were explicitly clear that it was a contractual appointment and will not bestow any claim of regular appointment against any posts in the department. Clause 8 of the appointment letter further provided that petitioner No.1 was not eligible for membership towards GPF/CPF/GIS etc. while Clause 9 of the appointment letter provided that no government residential accommodation was to be provided. The extension in service was therefore, granted from time to time for a period of a year by specifying at all time's that the assignment was on contractual basis and till the end of the year or till the filling of the post by regular recruitment, which ever was earlier. Apparently, petitioner No.1 continued in service as the contractual period was extended and his last extension was upto 31.12.2020. One such letter dated 03.01.2020 would go on to show that the contractual period was extended up to 31.12.2020 or till filling up the posts by regular recruitment, whichever was earlier, on the same terms and conditions as stipulated in the assignment letter. The contents of the said letter read as under:-

“No. FOR/2020/F-638/7634

Dated: 03-01-2020

To

Sh. Prabhu Nath Shahi, Forester,
(On Contract),
S/o Sh. Kashi Nath Shahi,
House No. 4009, 1st Floor, Sector -46D,
Chandigarh

Subject: Assignment on Contractual basis as Forester (Ex-Serviceman) in Forest & Wildlife Department, U.T., Chandigarh – Extension of period of contract.

Reference this office letter No. FOR/2019/3209 dated 04.01.2019, vide which your contract period was extended upto 31.12.2019.

In this reference, it is informed that your contract period is hereby further extended with immediate effect upto 31.12.2020 or filling of these posts by regular recruitment, whichever is earlier on the same terms & conditions as stipulated in your assignment letter.”

It is not disputed that an advertisement dated 28.09.2020 was issued whereby online applications were invited from the eligible candidates to fill up the 6 posts of Forester (on regular basis) in the scale of ₹10300-34800+4400 grade pay and 14 posts of Forest Guard (on regular basis) in the scale of ₹10300-34800 + 3200 grade pay, which was subject to further revision. The period of probation of 3 years was provided and during the said period “Fixed Monthly Emoluments” equivalent to minimum of the pay band of the post was to be paid and grade pay, increment or any other allowance, except traveling allowance, was not to be paid. The age limit for the eligible candidates was 18-37 years as on 01.09.2020. The merit list for selection was to be prepared on the basis of total marks obtained in Objective Type Test of 80 marks and qualifying marks was prescribed to be 40% for all candidates.

It is apparent that only when regular advertisement was issued on 28.09.2020, the petitioners apprehending that they would be dislocated thus, filed the Original Application seeking regularization on account of the fact that their representation had been rejected on 05.02.2020 (Annexure A-1). It was crystal clear to the petitioners from the earlier period from December, 2013, when they

had been offered the appointment letter, their assignments were purely on contractual basis and they could not be allowed to continue further as per the terms of their appointment letter, which was only for the limited period or till regular appointment is made, whichever is earlier. Reference has already been made to the advertisement in question in pursuance to which they had applied which was also specific to the extent that it was a contractual appointment where consolidated remuneration was fixed for the petitioners and was not in the pay-scale as per the Rules, 2001. The rejection on 05.02.2020 (Annexure A/1) would also go on to show that the Conservator of Forests, Chandigarh Administration referred to Clause No.7 of the appointment letter to dispel any misconception that petitioners had been appointed on contractual basis and not on regular basis and it would not bestow any claim of regular appointment against any posts in the department. Clauses 6 to 9 of the appointment letter reads as under:-

- “6. The service rendered on contract basis under this Department shall not count towards the benefit of pay fixation, leave, pension or gratuity etc.
7. This offer of appointment and service rendered under this Department will not bestow upon you any claim for regular appointment against any post in this Department.
8. You will not be eligible for membership towards GPF/CPF/GIS etc
9. No Govt. residential accommodation will be provided.”

In such circumstances, this Court is of the considered opinion that the petitioners were well aware of the terms of the contract and they were appointed for a particular period which was extended time and again and eventually till the regular recruitment process has been initiated on 28.09.2020.

The Tribunal has recorded the fact that same has been completed and selected candidates have already been appointed. It is not the case of the petitioners, at any

stage, that they themselves had in pursuance of the said advertisement applied or agitated for the grievance at that point of time that they should also be allowed to take part in the selection process as per the Rules, 2001 whereby certain benefits are to be granted to ex-servicemen as they are exempted from the Physical Efficiency Test and Written Test, which is mandatory under Note 16 (b) for the candidates who apply for direct recruitment. Their only claim was for regularization and it has been rightly held that their appointments were not as per the 2001 Rules. The said claim was justifiably rejected by the Tribunal, keeping in view the fact that the advertisement itself was of contractual appointment, specifying the terms of appointment. Similarly the petitioners are bound by the appointment letter which was in consonance of the terms of the advertisement also. Moreover, they were never liable to be paid the amount as has been given to the regular employees and neither there was any mention that their appointment was governed by the Rules in question, or they were on probation.

Resultantly, we do not find that there seems to be any patent illegality or irregularity in the order passed by the Tribunal, which would warrant interference under the extra ordinary writ jurisdiction of the Court.

Accordingly, the writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 04, 2022

Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No