

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

LPA No.513 of 2022(O&M)

Date of decision: 04.07.2022

Lokesh Rana and another

... Appellants

Versus

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

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

Mr. Satya Pal Jain, Addl. Solicitor General of India, with
Mr. Parvesh K. Saini, Senior Panel Counsel,
for the respondent-UI.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 12.05.2022, vide which the writ petition preferred by the appellants has since been dismissed. We may point out that out of 20 petitioners before the learned Single Judge, only two have chosen to assail the impugned judgment and are before us.

Learned counsel for the appellants submits that vide advertisement dated 09.01.2019, online applications were invited by the National Institute of Solar Energy, Gurugram, Haryana (respondent No.2) for appointment to the posts of Engineers/Scientists on contract basis for a period of one year. He submits that the appellants who were appointed in April, 2014 as Research Scientists or Junior/Senior Research Scientists, were already working on the said posts. And, albeit their initial appointment was for a period of one year but as their contract of service was renewed from

time to time, they continued to serve the respondent-Institute till 2019. Therefore, it is urged the limited grievance that the appellants have is that vide advertisement under challenge they were being replaced by another set of contractual employees, which was impermissible in view of the decisions rendered by the Supreme Court as also this Court in Hargurpratap Singh v. State of Punjab & others, 2007(13) SCC 292; Shiv Kumar and another v. State of Haryana and another, 2017(5) SLR 634; Parmjit Singh and others v. State of Punjab and others, 2016 LIC 2244; Mrs. Menka and others v. State of Haryana & ors., 2016(4) SCT 540; Vinod Kumar Soni and others v. State of Haryana and others, 2017(1) SCT 71.

We have heard learned counsel for the appellants and perused the record.

The posts that were held by the appellants were **sanctioned** and **filled** by the authorities purely on contractual basis. No regular cadre of the posts that were occupied by the appellants was ever sanctioned by the competent authority. Therefore, the argument that appellants could not be replaced by another set of contractual employees till the process of regular recruitments was carried out by the respondent-Institute is wholly misplaced. Upon being pointedly asked, learned counsel for the appellants failed to substantiate that if the posts occupied by the appellants were sanctioned purely on contractual basis and never formed part of the permanent regular cadre, they would still have a right to continue against the said posts in perpetuity. It was in this backdrop, even the learned Single Judge has observed, and in our opinion rightly so, that “***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.” Further, records show that pursuant to the advertisement under challenge, the process of recruitment had since been concluded. Not only that even the appellants competed for selection pursuant to the said advertisement and two of them had even been selected and appointed. It is also an undisputed fact that the contract of appointment of the appellants has come to an end as it has not been continued after 2019 and the posts now stand filled up by persons engaged pursuant to the impugned advertisement.

In view of the aforesaid facts, the reliance placed by learned counsel for the appellants upon the decision of the Supreme Court in **Hargurpratap Singh (supra)**, is misconceived, as that case was with respect to the employees who had been engaged on ad hoc basis for an indefinite period against permanent vacant posts and in that context it was held one ad-hoc arrangement could not be replaced by another. Whereas, the present appellants have been engaged on contractual basis only for a definite, fixed and limited period of time against unsanctioned posts and, therefore, the present case is not that where one ad-hoc arrangement is being replaced by another ad-hoc arrangement. Similarly, reliance placed upon the decisions of this Court in **Shiv Kumar (supra)**; **Parmjit Singh (supra)** (LPA-1446-2016 & LPA-1447-2016 pending); **Mrs. Menka (supra)** (LPA-275-2017 pending) and **Vinod Kumar Soni (supra)**, is also misplaced, as those cases were allowed by relying upon the decision in **Hargurpratap Singh (supra)**, which, as we have clarified above, is a case of ad hoc appointees being replaced by another set of ad-hoc appointees and not of contractual appointees engaged on un-sanctioned posts, therefore, as the abovesaid judgments are based on a misreading of the judgment of the

Supreme Court, they have to be confined to the facts of that particular case and do not help the appellants case.

On the contrary, the Supreme Court, in the cases of **Yogesh Mahajan v. Prof. R. C. Deka Director All India, 2018 (3) SCC 218** and **Gridco Limited and another v. Sadananda Doloi and others, 2011(15) SCC 16**, has clearly held that it is a settled law that no contractual employee has a right to have his contract renewed from time to time and can be discontinued after the contractual period is over. In the cases of **State of Uttar Pradesh and others v. Ex-Pilot Officer Arun Govil, 1989 (Supp.) 2 SCC 593** and, **State of Orissa v. Chandra Sekhar Mishra, 2002 (10) SCC 583**, the Supreme Court has further held that a person appointed on contractual basis is entitled to continue as a contractual employee only till the period of his contract or for the period extended from time to time, and not beyond that, and that after the lapse of the contractual period, the employee has no right to continue as such and on his disengagement cannot be directed to be reinstated by the High Court.

In the case of **Union of India and others v. N. Murugesan and others 2022(2) SCC 25**, the Supreme Court, though with reference to appointment on a very high post, has further held that in the cases of tenure appointment, the principle and doctrine of ‘**approbate and reprobate**’ would also apply, and a person, with his eyes open and full knowledge, having taken the advantage of obtaining a contractual appointment, cannot subsequently challenge its terms and conditions and seek status of a permanent employee.

The facts of the present case undisputedly establish that the contractual appointment of the appellants has come to an end in 2019 and

that fresh appointments have also been made pursuant to the impugned advertisement in which the appellants had also participated and two of them have also been selected and appointed. In the backdrop of the aforesaid admitted facts, the law is settled that once the period of contractual appointment is over, the High Court, in exercise of its extra ordinary power under Article 226 of the Constitution of India, cannot direct continuance of service beyond the contractual period as that would amount to grant of an open ended permanent appointment by the High Court even in the absence of any order of appointment or engagement on the part of the employer. The direction seeking continuation after the contractual period is over, therefore, cannot be granted and has rightly been rejected.

In view of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

04.07.2022

Rajan

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO