

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

1933 (4 cases)

CWP No.10489 of 2011 (O&M)
DATE OF DECISION: 03rd AUGUST, 2022

**Post Graduate Institute of Medical Education & Research and
another**

.... Petitioners

Versus

Avadh Naresh Pandey and others

.... Respondents

2. CWP No.10322 of 2011 (O&M)

**Post Graduate Institute of Medical Education & Research and
another**

.... Petitioners

Versus

Vikas Kapoor and others

.... Respondents

3. CWP No.10344 of 2011 (O&M)

**Post Graduate Institute of Medical Education & Research and
another**

.... Petitioners

Versus

Hem Lata and others

.... Respondents

4. CWP No.10490 of 2011 (O&M)

**Post Graduate Institute of Medical Education & Research and
another**

.... Petitioners

Versus

Neeru Moudgil and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present : Mr. Amit Jhanji, Senior Advocate with
Mr. Abhishek K.Premi, Advocate,
for the petitioners in all cases.**

Mr. Jagdish Manchanda, Advocate,
for the respondent-workman in all cases.

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RAJBIR SEHRAWAT, J. (Oral)

This order shall dispose of the aforementioned four writ petitions because almost similar facts and same proposition of law are involved in the matter.

For the sake of brevity, the facts are being taken as mentioned in CWP No.10489 of 2011.

The brief facts, as involved in the present matter, are that the respondent-workman was appointed as Research Fellow (Non Medical) in the year 1994 vide letter dated 09.11.1994. He was appointed after being sponsored by the Employment Exchange and after having being selected by the Committee through the process of interview. Even, the medical examination qua the medical fitness was conducted just like the regular appointees. Thereafter, the service of the respondents-workmen continued with the petitioner-Institute. However, the petitioner-institute used to issue fresh appointment letters to the respondents-workmen every year. Accordingly, the respondents-workmen used to work 240 days in almost all the years. However, ultimately the services of the respondents-workmen were dispensed with in the year 2004. Initially some proceedings were undertaken before this Court as well. Ultimately, the matter was taken to the Labour Court; as a labour dispute. The Central Government had referred the dispute to the Central Government Industrial Tribunal-cum-Labour Court (for short, the Labour Court). That reference has been answered in favour of the respondents-workmen. Hence, the present petition has been filed.

Arguing the case, learned counsel for the petitioner-employer has submitted that the respondents were being engaged as Research Fellows for the particular research projects; as and when the research project was allotted to some department. Accordingly the services of the respondents were continued in the said projects so long as the research project continued. But the same had to be dispensed with on expiry of the research project. The net result has been that although the respondents-workmen have been working for long number of years, however, not in continuity; but with breaks which were necessitated on account of expiry of the project and till allocation of new project where the respondents would be adjusted. The Labour Court has wrongly inferred that there would always be some research project in the petitioner-institute because it is an Institute of Medical Education and Research. Despite being a research based institute, continuity of duration of the project where the services of the respondents-workmen could be utilized could not be guaranteed. There is no permanent cadre of research fellows in the institute. The Labour Court has totally misunderstood the work of research fellows in the institute by assuming that the respondents were doing only clerical work. The research work can never be said to be the clerical work, as such. The respondents-workmen could not have even been continued by the petitioner-institute in absence of any project/research scheme. The funds, from which the salary of the respondents-workmen was to be paid, would come only from the research project, which is bound in terms of the duration, as well as, of the financial allocations. Therefore, no continuity in payment of salary to the respondents-workmen could have been possible. Moreover, the

Labour Court has shown scant regard for the evidence which has come on file. Rather, the Labour Court has proceeded on the basis of his subjective assumptions which are neither in consonance with the legal provisions, nor justified as per the facts. The counsel has further submitted that since the respondents-workmen were engaged as research fellows, therefore, they did not fall within the definition of 'workmen'. The Labour Court has wrongly recorded the finding that the respondents-workmen were covered by the definition of 'workmen'. It is also asserted by the counsel for the petitioners that later on, as a matter of policy, the petitioner-institute had started practice of outsourcing the man power for research project to the extent possible. As a result, subsequently the respondents have been engaged through outsourcing agency. Hence, the respondents-workmen were not even directly in the employment of the petitioner-institute. Therefore, no award could have been passed against the petitioner-institute.

On the other hand, learned counsel for the respondents-workmen has submitted that the respondents had been continuing from the year 1994 till 2006. Thereafter, as well, the respondents-workmen have again been engaged by the petitioner-institute; from time to time, though through outsourcing agency. However, the net result is that the respondents-workmen are in continuous service with petitioner-institute since 1994. Although the petitioner-institute has resorted to engagement of the man power through outsourcing agency, however, since the petitioner-institute is having direct control and supervision over the service of the respondents, therefore, the respondents shall be deemed to be in the direct employment of the petitioner-institute. Moreover, with

the passage of long span of time with the petitioner-institute, the respondents-workmen have even been rendered as over-age and, therefore, as ineligible for employment anywhere else. Therefore, the Labour Court has rightly passed the award and has rightly quashed the termination order passed by the petitioner-institute. The Labour Court has rightly passed the order that the respondents shall be deemed and considered to be in the service of the petitioner-institute as temporary employees. The award passed by the Labour Court deserves to be upheld.

Having heard the learned counsel for the parties this Court finds substance in the argument raised by the counsel for the petitioner-employer. The perusal of the record shows that till the time the respondents-workmen had approached the labour authorities they were being appointed under the particular projects and for a limited purpose. An example to that effect is found in Annexure P-2, the relevant portion of which is reproduced as under:

“Letter No.71/25-Edu-94/62130 dated 09.11.1994

Subject: Contract of Employment on the tenure post of Research Fellow (Non-Med.) on adhoc basis against the reserved post for 5 months and 24 days only in public interest under the Institute Research Scheme(s) sanctioned to the Department of Anatomy, PGI, Chandigarh.
Against the reserved post of SC category.

XXXX

XXXX

XXXX

1. Your contract of appointment is purely on tenure post and on adhoc basic for a

period of 5 months and 24 days w.e.f.
8.10.94 (FN) to 31.3.95 (AN) you're
your services are terminable without
any prior notice from either side."

XXXX XXXX XXXX

"Letter No.71/25-Edu-94/18404 dated 22.05.1995
Subject: Contract of Employment on the
Contract post of Research Fellow (Non-
Med.) under the Institute Research
Scheme(s) entitled "Blood supply of
spleen".
On adhoc basis against the Reserved
post of SC Category.

XXXX XXXX XXXX

1. This appointment is Co-terminus with
the Research Project (Name of the
Project(s) "Blood supply of spleen."

XXXX XXXX XXXX

"Letter No.71/25-Edu-94/27639 dated 08.06.1996
Subject: Contract of Employment on the
Contract post of Res. Fellow (Non-
Med.) on adhoc basis against the
reserve post for Scheduled Caste
category under the Institute Research
Scheme(s) entitled, Blood Supply of
Spleen.

XXXX XXXX XXXX

1. This appointment is Co-terminus with
the Research Project (Name of the
Project(s) "Blood supply of spleen."

XXXX XXXX XXXX

“Letter No.71/25-Edu-96/36187 dated 31.07.1996

Subject: Contract of Employment on the Contract post of Res. Fellow (Non-Med.) under the Institute Research Scheme(s) entitled, “Role of Costal cartilage calcification in determination of age and identification of Sex.

XXXX XXXX XXXX

1. This appointment is Co-terminus with the Research Project (Name of the Project(s) “Role of Costal Cartilage calcification in determination of age and identification of Sex.”

XXXX XXXX XXXX

“Letter No.71/25-Edu-96/21988 dated 08.05.1997

Subject: Contract of Employment on the Contract post of Res. Fellow (Non Med) under the Institute Research Scheme(s) entitled Estimation of time of Death by Potassium level in the vitreous humour.

XXXX XXXX XXXX

1. This appointment is Co-terminus with the Research Project (Name of Project(s) Estimation of time of Death by Potassium level in the vitreous humour.

Whenever the aforementioned project(s) end(s), your contract appointment shall be terminated immediately without issuing any notice.”

XXXX XXXX XXXX

“Letter No.71/5-Edu-96/2507 dated 14.06.2005

Subject: Contract of employment on the contract post of Research Fellow (Non-Med.), under the Institute Research Scheme(s) entitled, 1 “Estimation of time since death from changes in blood enzymes concentration”, 2. “To supply the coronary artery system using postmortem coronary angiography and correlate it histologically” sanctioned to the department of Forensic Medicine, PGI, Chanidgarh w.e.f. 1.04.05(FN) to 31.3.06(AN).

XXXX	XXXX	XXXX
1.	This appointment, co-terminus with the Institute Research Scheme(s) titled, 1 “Estimation of time since death from changes in blood enzymes concentration”, 2. “To study the coronary artery system using postmortem coronary angiography and correlate it histologically” sanctioned to the department of Forensic Medicine, PGI, Chandigarh for the year 2005-2006. Whenever the aforementioned project(s) end(s), your contract appointment shall stand terminated immediately without issuing any notice.”	

XXXX	XXXX	XXXX
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The above said terms and conditions of the employment of the respondents-workmen clearly shows that they were employed in and

for the purpose of specified research projects under the schemes of the said projects. The terms of appointment itself specified that the employment of the respondents-workmen would stand exhausted on a particular date or on termination of research project against which they were employed. In view of this situation, the services of the respondents-workmen were terminated in compliance of the service contract of employee or as per the terms of the contract of employment. This kind of termination is excluded from the definition of retrenchment, as such, by the provision as contained under Section 2(oo)(bb) of the Industrial Disputes Act, 1947. Since the termination of respondents-workmen was not a retrenchment within the definition as specified under Section 2(oo) of the Act, therefore, the Labour Court could not have entered into the adjudication upon the validity of the termination of service so as to set aside the same on the ground of being allegedly, in violation of provisions of the Act.

This Court also finds that the Labour Court has proceeded in the matter on the basis of its inherent feeling, statedly, dictated by its conscience, instead of acting on the evidence or the material produced before it. The approach of the Labour Court in presuming the entire institute as a unit and then to observe that since it is a Post Graduate Institute of Medical Research, therefore there would always be some research work, and hence the petitioner should not have been retrenched, is altogether non-sustainable. As mentioned above, it is not even in disputed that the respondents-workman were engaged under different research projects, from time to time. This itself is sufficient to show that though the research activity may be one of the main activities with the

petitioner-institute, however, neither it is continuous on one project nor there is any guarantee that at every single minute there will be a research project available for employment of respondents-workmen. Needless to say that the petitioner-institute is an institute of tertiary healthcare and super-specialty research. Therefore, the research project would also be of the level of and above the post-graduate research in medical field. Hence, keeping in view the requirement of a particular research project the service of specified kind of qualified persons may be required. By no means; it can be said that the respondents-workmen could have been adjusted against all and every research project; because there would always be some project in the petitioner-Institute. The respondents workmen could have been employed only in those projects where they fulfilled the demands and requirements of the concerned research project. Had they been so employed and their services were dispensed with on termination of the research project as such, then no fault could be found with this action of the petitioner-Institute.

Another aspect which has to be borne in mind is that there is nothing on record to show that the petitioner-Institute has created any regular cadre of research fellows, despite being an institute of medical research. This fact itself shows that since every research fellow cannot be appointed in each and every research project, therefore, the possibility of regular cadre of research fellows stands obviated. Although, the counsel for the respondents-workmen has referred to a decision taken in the Board of Management of Institute on 14.05.1993 to submit that a research scheme regular cadre was created in the institute, however, the perusal of that document itself shows that the cadre created under that

decision is not regarding research fellows, as such. Rather, it is only the lower level official working in the lab or a *Safai Wala*, Peon, as well as the ministerial staff which has been sanctioned under the scheme. The obvious purpose of creation of this cadre is to create a basic infrastructure for facilitating, managing and administering the research projects. In this decision post of only three research fellows have been sanctioned. However, even these posts have not been created in any particular pay scale, like the other posts. Rather, these have, again, been created on the basis of fixed salary. It is obvious that the said post of research fellows would be filled up or might have been filled up as per the relevant rules made by the petitioner-Institute for the said purpose. Hence, even that document is of no help to the case of the respondents-workmen.

In view of the above, finding the award passed by the Labour Court to be non-sustainable the same is set aside. The writ petitions filed by the petitioner-Institute are allowed.

The pending miscellaneous applications, if any, are also disposed of accordingly.

03rd AUGUST, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes