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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27.07.2022

Pronounced on: 07.10.2022

+ **LPA 684/2018 & CM APPL. 51386/2018**

SANGHAMITRA MOHANTY

..... Appellant

Through: Mr. Vikas Dhawan, Sr. Adv.
with Mr. Sambit Nanda, Mr.
S.P. Das, Mr. Satyabrata Parda
and Mr. Koushal Dogra, Advs.
along with the appellant in
person.

versus

HSCC (INDIA) LTD & ANR

..... Respondents

Through: Mr. Saurabh Mishra, Adv. for
R-1.
Ms. Monika Arora, Adv. for R-
2/UOI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This appeal yet again raises the usual controversy concerning the rights of an employee appointed on contractual basis by a public authority. The short question posed in the present appeal is whether the appellant, who was a contractual employee of

Respondent No.1, a government owned company, could have been replaced by another contractual employee.

2. The brief facts necessary to decide the controversy involved herein are that on 10.06.2015 the respondent no.1 published an advertisement for filling up various posts on immediate absorption/contract on a regular pay scale, the appointment was to be on contractual basis for a period of two years, extendable on requirement and depending on the performance of the candidate.
3. The appellant applied for the post of Executive Officer to CEO (E-3); she was interviewed and based on the interview, she was offered an appointment on 07.10.2015 for the lower post of Assistant Manager in the IDA pay scale of Rs.16,400-40,500, on contractual basis, for a period of two years from the date of taking up the employment, with starting basic pay @ Rs.16,400/- per month as mentioned in the offer of appointment.
4. The letter of appointment stated that the appellant would be eligible for consideration for absorption on regular basis, subject to availability of a vacancy and based on consistent record of satisfactory performance, as per the provisions under the respondent no.1's Recruitment Rules. The appellant joined duty as an Assistant Manager on contract basis for two years w.e.f. 23.10.2015.
5. The case of the appellant as borne out from the writ petition is that her work experience, and the duties discharged by her while

working as an Assistant Manager with the respondent no.1, were in the field of Public Relations. Since the work experience and the nature of duties discharged by the appellant while working with the respondent no.1 is of relevance to the controversy involved in the present appeal, it would be apt to extract the relevant paragraphs from the writ petition, which are as under:-

“5. That, earlier, the petitioner was working in private corporations in the health sector and had a working experience of about 15 years, inter alia with Health Positive Lifestyle Disease Management & Res. Inst. Pvt. Ltd. (as Manager, Corporate Communication), Location Labs (as Manager, Corporate Communication) and Bhopal Memorial Hospital & Research Centre (as Public Relations Officer).

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11. *That on 23.10.2015, the petitioner joined the Respondent No.1 organisation and was reporting to the Chief General Manager of the Human Resources Department. The nature of work which the petitioner performed in the Respondent No.1 in the said post was of permanent, regular and perennial in nature. Some of the aspects of the job profile of the petitioner in the Respondent No.1 are as follows:*

- i) Providing support with coordination of public relations and global media activities.*
- ii) Performing as spokesperson for the company to media in as suitable.*

- iii) *Providing support to coordinate critical enterprise communications to assure information released on time to all stakeholders.*
- iv) *Writing and editing materials for interacting with employees, media and varied key audiences pertinent to news and issues with management.*
- v) *Ensuring presentation of required sustainability and corporate reputation.*
- vi) *Supporting review and preparing media Q&A documents for company and the CMD.*
- vii) *Heading responsibility for annual report, in-House Journal and support with sustainability report.*
- viii) *Supporting with Corporate Reputation Management and Crises Communications Planning.*
- ix) *Managing, writing and editing edit all employee communications inclusive of newsletter articles, video scripts, news updates, company collateral materials.*
- x) *Preparing MEMC Website content, draft or review website content of company along with Digital Strategies and Social Media.*
- xi) *Ensuring to periodically measure communication delivery methods value to assure processes are effectual as well as cost efficient.*

- xii) *Managing all communications clients, vendors etc.*
- xiii) *Supporting CMD in collaborating with business leaders to streamline, coordinate and improve communication with all employees.*
- xiv) *Overseeing all communications associate and Event Management for the company.*
- xv) *Ensuring establishment establish and attainment of aggressive goals as well as professional developmental plans.*
- xvi) *All designing work related to in-House Journal, Annual Report, Corporate Brochure, Website etc.*
- xvii) *All day to day work in CMS Secretariat as per the requirement in the advertisement.*
- xviii) *Handling Media coverage of various events at different sites of HSCC pan India and closely follow them on day to day basis.*
- xix) *Co-ordination with Various Ministries.*
- xx) *Greetings and wishes for Clients and Ministers on various occasion.*
- xxi) *Organising internal training programmes pan India.*
- xxii) *Designing Stalls and organising Events for the company such as BRICS, FICCI, Healthcare Sabha, Business Today Events, and International Arogya Mela etc.*

- xxiii) *Preparing briefing and speeches for the CMD.*
- xxiv) *Preparing presentations of the company for various clients.*
- xxv) *Managing and Co-ordinations International Clients of HSCC In India.*
- xxvi) *Responsibility for various nominations of the company for different Awards and accolades.*
- xxvii) *Keeping a close eye on the photographs of various sites and keep updating it in the website and co-ordinate with several sites for the same.*
- xxviii) *Addressing the media at the time of crisis.*
- xxix) *Representing the company in various media events.*
- xxx) *Supporting the Business Development team as in when required.”*

6. The stand taken by the respondent no.1 in its counter affidavit as to the appellant's duties, reads as under:

“10. It is submitted that there is no department of public relation in the HSCC (India) Ltd. i.e. Respondent No.1 in the present petition. It is further submitted that the petitioner was looking after day to day work of office assignment and only if the need arose, the petitioner looked after the public relations in HSCC.”

7. The appellant in her rejoinder, however, refuted the above stand of

the respondent no.1, in the following terms:-

“4.It is denied that there is no department of public relation in the respondent no.1. The functions of public relations are carried out by the Human Resource Department. The petitioner was appointed as Assistant Manager and were reporting to the Chief General Manager, Human Resources.”

8. The appellant's term of two years expired on 22.10.2017. However, she was permitted to work till the end of the month i.e. 31st October 2017. On the expiry of the original contract period, she was given another extension of a month i.e. till the end of November 2017. According to the respondent no.1, extension for the month of November was granted at the appellant's request, as a delegation from Mauritius was visiting India from 01.11.2017 to 06.11.2017 and she wanted to avail this opportunity to have good exposure for her future job prospects. This, however, is refuted by the appellant in her rejoinder. According to her, the contract was renewed and extended because the respondent no.1 was satisfied with her work performance as well as for the reason that her service was required by the said respondent. Ordinarily, an employer retains an employee only when some value and benefit is to be achieved from such employment and surely the employer would not be doing any charity or indulging in generosity by granting the extension.

9. It is not in dispute that the services of the appellant were

terminated on 30.11.2017 and thereafter she did not come to the office. On 25.02.2018, she requested for the continuation of her tenure and emphasized that her appointment was as Assistant Manager, Public Relation (E-1). The said representation was replied to by the respondent no.1 by its letter dated 05.03.2018. This communication was impugned by the appellant in W.P.(C) 4561/2018, which was disposed-off vide order dated 01.05.2018, with the following directions:-

“3.In the facts and circumstances of this case, it is deemed fit and appropriate to call upon the first respondent to reconsider petitioner's representation (Annexure P-7 Colly) and to pass a speaking order on petitioner's Representation of 25.02.2018 (Annexure P-7 Colly) within a period of four weeks and to convey the fate of Representation to petitioner within a week thereafter,.....”

10. Pursuant thereto, the respondent no.1 disposed of the appellant's representation of 25.02.2018 by a speaking order/reply dated 02.06.2018 clarifying that the appellant's service was not continued and there was no renewal of the contract. Admittedly, the appellant had stopped attending office. The respondent no.1 also denied the appellant's assertion that there is any vacancy in PR functions. In response to yet another assertion of the appellant as regards to her performance being outstanding throughout, the respondent no.1 responded by saying that “*during the service you have been issued memos on account of unauthorised absence from*

the duty, not discharging your duties diligently. You have also been issued memo for negligence of duties.” The respondent further clarified to the appellant that “there will be no renewal of your contract of employment. As such you cannot be considered for continuation of your service.”

11. The aforesaid speaking order/reply dated 02.06.2018 of the respondent no.1 was impugned only in July 2018 in W.P.(C) 7242/2018, seeking following reliefs:-

“a) Quash and set aside the communication dated 02.06.2018 of the Respondent No. 1; and

b) Pass a writ of mandamus and/or order directing the respondents to reinstate and/or continue the petitioner in employment; and

c) Pass a writ of mandamus and/or order directing the respondents to regularise and absorb the petitioner on regular basis with the Respondent No. 1; and

d) Pass a writ of mandamus and/or order directing the Respondent No. 1 to make payment to the petitioner of the arrears of salary as per the Seventh Pay Commission for the period since January 2017.”

12. In the meanwhile an advertisement dated 18.04.2018 was issued by the respondent no.1 for filling up posts at various levels in different disciplines including that of Human Resource Management on contract/immediate absorption basis.

13. The relief sought in the writ petition was essentially for the

appellant's reinstatement and regularisation with consequential relief of arrears of salary. Interestingly, there is no challenge to the subsequent recruitment initiated by an advertisement issued on 18.04.2018 nor was any right to continue in service pleaded, premised on the decisions of ***State of Haryana and Ors. vs. Piara Singh and Ors.: (1992) 4 SCC 118*** and ***Abhinav Chaudhary & Ors. vs. Delhi Technological University & Anr.: 2015 SCC OnLine Del 6780***. The argument based on these decisions seems to have been articulated by the appellant for the first time at the stage of final arguments before the learned Single Judge.

14. The appellant's contention for regularization on the ground that under the employment policy, the officers appointed on a contract could be considered for regularization in the respondent no.1 company after completion of three years of service, based on three ACRs whereas the appellant had completed two years of service was rejected in the impugned order. It has also rejected the appellant's submission that a contractual employee cannot be replaced by another contractual employee and held as under:-

*“20. Thus, I find no substance in the submissions made by learned counsel appearing on behalf of the petitioner that the post of Assistant Manager (Public Relation) was to be filled up vide the advertisement dated 18.04.2018. The petitioner has taken the shelter of the judgment of this court in **Abhinav Chaudhary & Ors. (supra)** on the ground that a contract employee cannot be*

*replaced by another contract employee. I find no substance in this argument too on the ground that in the case of **Abhinav Chaudhary & Ors. (supra)**, the employee was terminated and in his place some other contractual employees were to be selected whereas, in the present case, the petitioner was on the post of Assistant Manager, Public Relation and the said post has not been replaced by advertisement dated 18.04.2018. Moreover, the petitioner's tenure for contract was for a period of two years to be renewed based upon the performance and requirement of the company.*

15. Mr Vikas Dhawan, the learned senior counsel for the appellant has confined his submissions to the limited question as noted at the outset. The relief for regularization has not been pressed. Asserting the appellant's claim to the post in the discipline of Human Resource Management Department ('HRM') advertised on 18.04.2018, the learned senior counsel submits that appellant was working in the Department of HRM. Inviting attention of the court to the advertisement dated 10.06.2015, wherein the post of Assistant Manager has been categorised at the level of E-1, he submits that although the appellant's appointment letter did not specify any department, the only post, apart from Engineering and Architecture Department, where the respondent no.1 had advertised recruitment at the level of E-1 grade was in the Human Resource Management Department, therefore, it cannot be disputed that the appellant was recruited to the HRM Department.

Referring to paragraph 11 of the writ petition, he contends that a major portion of the appellant's role involved communications and collaboration within the respondent no.1, including its employees, as well as with the media and clientele of respondent no.1; that the appellant was performing functions which broadly fell within the domain of HRM; that the appellant was reporting to the Chief General Manager of the HR Department which implies that the appellant was working as Assistant Manager in HRM (reference is made to the stand taken by the respondent no. 1 in paragraph 11 of the para-wise reply of respondent no.1's counter affidavit); that as the appellant was recruited to, and was working in, the HRM Department as an Assistant Manager on contractual basis, an advertisement was issued on 18.04.2018 seeking to fill up post(s) in the discipline of HRM on contract basis to replace appellant, is contrary to law.

16. Placing reliance on the decisions of *State of Haryana and Ors. etc. vs. Piara Singh and Ors. etc.*: (1992) 4 SCC 118, *Hargurpratap Singh v. State of Punjab*: (2007) 13 SCC 292 and *Praveen Khan v. Govt. NCT of Delhi*: 2010 SCC OnLine CAT 2313, the learned counsel urged that the replacement of a contractual employee by another contractual employee has been held to be unlawful by the Supreme Court as well as by various High Courts.
17. Reliance has also been placed on the decisions of *State & Ors. vs. Sarla Devi Gaur*: 2010 SCC OnLine Raj 4307, *Barinder Kaur vs.*

Guru Nanak Dev University: 2015 SCC OnLine P&H 12156 and *Raj Kumar vs. University of Delhi: 2019 SCC OnLine Del 6493*, to submit that a writ of mandamus could be issued directing the reinstatement or prohibiting the removal, of a contractual employee, who has been or is proposed to be, replaced by another contractual employee.

18. On the other hand, Mr Saurabh Mishra, the learned counsel for the respondent no.1, refutes the aforesaid contentions. He says that there is no infirmity in the impugned order; that it has rightly observed that the respondent had every right to terminate the services of the appellant on completion of the contractual period of two years. He relies on the decisions of the Supreme Court in – (i) *Director, Institute of Management Development, U.P. vs. Pushpa Srivastava: (1992) 4 SCC 33* and (ii) *Gridco Limited & Anr. vs. Sadananda Doloi & Ors.: (2011) 15 SCC 16*, to contend that if appointments are purely ad-hoc and on a contractual basis for a limited period, then the right to remain in the post comes to an end upon expiry of the contractual period by efflux of time and the appellant cannot claim any protection against such terms contained in his appointment letter. Inviting the court's attention to the pleadings in the writ petition and the documents annexed thereto, the learned counsel submits that the appellant herself has admitted on multiple occasions that she was appointed as Assistant Manager, Public Relations, therefore, the argument that the appellant was appointed as Assistant Manager in the Department

of Human Resources which furnishes a cause of action to lay claim to the subsequently advertised post in the discipline of HRM, has no legs to stand on and is merely an afterthought.

19. We may now take note of the relevant principles settled by the Supreme Court regarding the rights of a contractual employee. In *Yogesh Mahajan vs. Professor R. C. Deka, Director, All India Institute of Medical Sciences: (2018) 3 SCC 218*, the Supreme Court while considering the question concerning the right of a contractual employee to continue in service after the contract has expired by efflux of time has observed as under:-

“6. *It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30-6-2010.....*”

20. To the same effect is the decision of the Supreme Court in *Director, Institute of Management Development, U.P.* (supra), wherein it was observed as under:-

“20. *.....To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post.....*”

21. In *Gridco Limited & Anr.* (supra), the Supreme Court, after

noticing how the law with regard to the scope of judicial review in respect of a termination order passed by a public authority in the case of a contractual employee has evolved, held as under:-

“38. *A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.*

39. *A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority*

sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

22. The decision in **Piara Singh** (supra), more particularly, paragraphs 45 and 46 as relied upon by the learned senior counsel for the appellant, strikes at the arbitrariness in the action of an appointing authority in – (i) keeping the regular appointments at abeyance for the sake of ad hoc/temporary employees who have continued for long against the sanctioned posts; and (ii) replacing ad hoc or temporary employee by another ad hoc or temporary employee. The principles enunciated therein, are reproduced hereunder:

“45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection / appointment. If he gets selected, well and good, if he does not, he must give way to

*the regularly selected candidate. **The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.***

46. *Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.*”

23. We need not multiply the references to other decisions cited by the appellant, as they essentially follow the aforesaid rationale of **Piara Singh** (supra).
24. It is beyond any cavil that an employee appointed on contract by a public authority has no right to continue after the expiry of the contract period by efflux of time. The only exception being a limited right articulated in paragraph 46 of the decision in **Piara Singh** (supra), that an employee appointed on contract cannot be replaced by another contractual employee, he can only be replaced by a regularly selected employee. Therefore, the basic point for determination in this appeal is whether the appellant has any right to continue in service after the expiry of her contractual term by efflux of time, in terms of the said judgment.
25. It is submitted that the appellant had been discharging the duties relating to the Human Resource Management; her reporting was

also to the Chief General Manager, HR Department; and the vacancy in the discipline of HRM sought to be filled on contract/immediate absorption basis by an advertisement issued on 18.04.2018 was essentially for the post, which was occupied by the appellant, therefore, the action of the respondent no.1 in filling the said post again on a contract basis was contrary to the *dicta* in **Piara Singh**. While examining the relevant factual aspects of this case on the anvil of the principles aforesaid, it is observed at the threshold that the very basis on which the appellant claims her right to continue on the post of Assistant Manager, is flawed.

26. We do not find any substance in this contention for more than one reason. *Firstly*, it was the case of the appellant herself that she was appointed as Assistant Manager, Public Relations; *secondly*, the entire previous experience of the appellant as mentioned in paragraph 5 of the writ petition was in corporate communication and public relations and not in the discipline of Human Resources, and *thirdly*, the nature of duties which the appellant claims to have been performing while working as Assistant Manager with the respondent no.1, are all concerning public relations, media activities, event management, coordination with clients, etc.; none of which have the attributes of Human Resource Management. The mere fact that there was no separate department of Public Relations or that the appellant was reporting to the Chief General Manager, HR Department does not establish that the post of Assistant Manager held by her was in the discipline of HRM and

not in Public Relations.

27. Apart from the work experience of the appellant not being in the field of the Human Resource Management, the appellant has not pleaded that she possesses the requisite qualification for the post of Assistant Manager (HR) which, as borne out from the first advertisement dated 10.06.2015 (Annexure P-6), is MBA (HR) (full time course) having minimum 60% marks from a reputed recognized University/Institute.
28. Furthermore, the relief sought in the writ petition is for the appellant's reinstatement and regularization with consequential relief of arrears of salary. As noticed above, the relief of regularization is not being pressed by the appellant any more. The only surviving substantive relief is of appellant's reinstatement in service, which is essentially premised on the ground that no show cause notice was given to the appellant before her termination, therefore, the same falls foul of principles of natural justice as adumbrated in Article 14 of the Constitution of India. Conspicuously, neither has any challenge been laid to the advertisement issued on 18.04.2018, nor is there a ground in the writ based on the dicta of *Piara Singh*. It is the said advertisement, which according to the learned senior counsel, gave the cause to the appellant to claim a right in terms of the judgment of *Piara Singh*, but interestingly, there is no reference to the advertisement in the entire pleadings. Therefore, the appellant is not entitled to the relief claimed as it is settled legal proposition that as a rule,

relief not founded on the pleadings should not be granted.¹

29. Even if the rigours of the pleadings are relaxed, there is another related aspect of lack of promptitude on part of the appellant, which may have given rise to a vested right of a third party, and this cannot be overlooked. The advertisement for fresh appointments to fill the posts under various disciplines including Human Resource Management (HRM) was issued on 18.04.2018, but a challenge to the same came only about three months later in the month of July 2018. An assertion of right in terms of the dicta of *Piara Singh* has been articulated for the first time before the Ld. Single Judge at the stage of final arguments and that too without there being any ground or factual foundation in that regard in the writ petition. In the interim, there was no direction of the writ court restraining respondent no.1 from filling-up the post of Assistant Manager in the discipline of Human Resource at Level E-1. No such interim protection was either pressed for or granted even during the pendency of the present appeal. As a result, the rights of a candidate, who was appointed as an Assistant Manager in the discipline of HRM pursuant to the advertisement of 18.04.2018, may have crystallized during the intervening period. This being the position, it would be inequitable to interfere at this stage.

30. That apart, the incumbent of the said post, who is a necessary party, has not been arrayed as a respondent either in the writ

¹ State of Orissa & Anr. v. Mamata Mohanty, (2011) 3 SCC 436, para 55

petition or in the present appeal. The relief sought by the appellant cannot be granted without displacing the said incumbent. Since the incumbent of the post is not before us, therefore, we find it difficult to entertain the claim of the appellant. We are fortified in our view by the decision of the Supreme Court in ***J.S. Yadav v. State of Uttar Pradesh, (2011) 6 SCC 570***, wherein, while dealing with a similar situation, it was held as under:

“31. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-plaintiff.”

31. The conclusion of the preceding discussion is that the appellant, after the expiry of the contract period of two years by efflux of time, has no right to ask for an extension of her contract. The reliance placed by the appellant on the judgment of ***Piara Singh*** (supra), in our view, would not enure to her benefit.

32. In view of the preceding discussion, we do not find any merit in the appeal. Accordingly, it is dismissed.

VIKAS MAHAJAN, J

NAJMI WAZIRI, J

OCTOBER 07, 2022

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