

CWP-15888-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15888-2021 (O&M)

Date of Decision: 14.03.2023

RAJESH KUMAR

.. Petitioner

Vs.

UNION OF INDIA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Puja Chopra, Advocate for the petitioner.

Mr. Karan Kumar Jund, Advocate
for respondent-Union of India.

...

Manoj Bajaj, J. (Oral)

CM-566-CWP-2023

Application is allowed, subject to all just exceptions. Short
reply by way of affidavit along with Annexure R-1 on behalf of respondents
No.1 to 5 is taken on record.

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Petitioner has filed this writ petition under Article 226
Constitution of India for issuance of a writ in the nature of Certiorari for
quashing advertisement dated 24.07.2021 (Annexure P-1), whereby
applications have been invited by respondent No.4 for filling up various
posts, including the post of Nursing Assistant, in Ex-servicemen
Contributory Health Scheme (ECHS) Polyclinics as well as for quashing the
letter dated 22.12.2017 (Annexure P-12A), whereby the terms and
conditions of services of the contractual employees working under ECHS
have been changed, on the ground that the action of the respondents is

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illegal, arbitrary, discriminatory and violative of Articles 14 and 16 Constitution of India. Further, prayer has been made for issuance of a writ in the nature of Mandamus prohibiting the respondents from changing the terms and conditions of model service contract dated 22.09.2003 (Annexure P-12B) and further directing them to amend the agreement (Annexure P-9A) between employer & petitioner.

Learned counsel for the petitioner submits that the petitioner had served Indian Army for approximately 26 years as Nursing Assistant, who retired on 31.12.2016 and thereafter, he was engaged as Nursing Assistant on 02.11.2017 at ECHS, Polyclinics, Samana for a period of one year. The said appointment was contractual in nature and as the work and performance of the petitioner was found satisfactory, therefore, in the subsequent years, the petitioner was engaged on the similar terms and conditions and his latest appointment letter dated 11.11.2020 is Annexure P-9. She has further submitted that as per this appointment letter, the petitioner was engaged w.e.f. 18.11.2020 to 17.11.2021 on contract basis, but now the respondents have issued the impugned advertisement dated 24.07.2021 (Annexure P-1), thereby inviting applications for filling up the post of Nursing Assistant and it would result in substitution of the petitioner's services by another contractual employee. According to the learned counsel, the action of the respondents in carrying out this exercise repeatedly is meaningless and as the petitioner has been engaged on contract basis, he can continue in service till he attains the age of 58 years. Learned counsel has drawn the attention of the Court to the letter dated 22.12.2017 (Annexure P-12A) addressed by the Director (OPS & Coord) and addressed to various headquarters including all Regional Centers ECHS, thereby

issuing guidelines relating to the engagement of the contractual employees, and submitted that the terms and conditions of services of the contractual employees have been unilaterally changed, therefore, this action of the respondents is illegal, and the agreement entered into with the petitioner deserves to be modified. Ms. Puja Chopra, learned counsel for the petitioner has vehemently argued that there is nothing against the petitioner, who is sincerely performing his duties, therefore, the contract executed in favour of the petitioner deserves to be modified and he be allowed to continue till the age of 58 years.

The prayer is opposed by learned counsel for the respondents, who referred to the short reply filed by Lt Col. S.R. Bhakar, Officiating OIC, ECHS (Cell), Station Headquarters, Military Station, Patiala and highlighted that the ECHS scheme is based on the contribution by the Ex-servicemen and its primary object is to render medical care to the Ex-servicemen and their dependants. According to him, at the same time through the scheme, large number of Ex-servicemen, who have superannuated from the defence forces are provided temporary employment for a limited period on rotational basis, and the nature of appointment is purely contractual with a maximum period of two years. According to learned counsel the renewal of contract after every 11 months is based upon conduct and performance of such employees. He submits that the tenure of the petitioner has already ended, but by virtue of the interim order dated 18.08.2021, the petitioner is still continuing as Nursing Assistant. He prays that the writ petition be dismissed.

After hearing the learned counsel for the parties and considering their rival submissions, this Court finds that as far as the nature

of appointment of petitioner to the post of Nursing Assistant is concerned, it is not disputed by the learned counsel for the parties that the same is contractual in nature. The claim of the petitioner that he is entitled to continue on this post till he attains the age of 58 years is apparently misconceived, as during the course of hearing, it is not disputed by the learned counsel for the petitioner that after petitioner's retirement from army in December, 2016, he was initially appointed in the year 2017 on contract basis for a period of one year followed by his similar yearly appointment till November, 2020. Notably, the previous appointment of the petitioner was also pursuant to the similar advertisement, which is under challenge in this writ petition, but no such grievance was ever raised by the petitioner when he was initially engaged. Above all, during the course of hearing, it is not disputed by the learned counsel that pursuant to the impugned advertisement, the petitioner did not apply again for his engagement as Nursing Assistant and period of his last engagement ended on 17.11.2021.

Admittedly, for the engagement of petitioner as Nursing Assistant, he and the employer entered into a written contract laying down the terms and conditions, and once the petitioner had accepted the appointment for a limited period, he would be estopped from raising any grievance in respect of this nature of employment, much less the tenure of contract by raising defects in his engagement. The impugned communication (Annexure P-12A) on behalf of MD, ECHS has only streamlined and evolved norms to ensure that quality man power is engaged by ECHS, which also lays down the employment age, duration, selection norms, conditions of eligibility etc. and consistently this has been followed.

Concededly, the petitioner had been engaged subsequent to these guidelines

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in the year 2018, who accepted all such terms and conditions, therefore, in this background, this Court has no hesitation in holding that the entire claim of the petitioner is devoid of merits, as it is not a case of filling up a regular post on temporary basis, and such appointments are being made on rotational basis in terms of the scheme of employment.

Resultantly, no case is made out to exercise the extraordinary writ jurisdiction under Article 226 Constitution of India.

Dismissed.

14.03.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No