

CWP-3476-2015

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2023:PHHC:134881

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

CWP-3476-2015

Date of decision : 16.10.2023

Sukhdeep Singh

...Petitioner

Vs.

**Punjab Water Supply and Sewerage
Board and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Amarjit Singh, Advocate
for the petitioner.

Mr. Vijay Kumar Kaushal, Advocate
for respondent No.1.

Mr. Arun Gupta, AAG, Punjab
for respondent Nos.3 and 4.

DEEPAK MANCHANDA, J.(Oral)

This writ petition has been filed under Articles 226/227 of Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to allow the petitioner to continue as Pump Operator in Galiara Project, where similarly situated employees are still continuing with respondent No.2. Further, though the service of the petitioner came to an end on 30.09.2011, but his extension was recommended vide office note dated 28.11.2011 (Annexure P-2), therefore, prayer is for grant of all the consequential benefits of back salary as has been granted to the similarly situated other 12 co-employees, who had been adjusted.

The facts in brief leading to the present petition are that petitioner being holder of Diploma in ITI (Electrical) was appointed as Pump Operator

vide letter No.2318 dated 22.02.2010 (Annexure P-1) on contract basis upto 31.07.2010 by Superintending Engineer, Galiara Project, Amritsar with the approval of respondent No.3. As per terms and conditions of the appointment letter, petitioner was paid salary according to the rates fixed by the Deputy Commissioner. The petitioner, along with other 12 employees, were assigned the work of Pump Operator and to operate & supervise the Fire Fighting System of Galiara Project, which was run by respondent No.3. Vide order dated 28.11.2011 (Annexure P-2), the services of the petitioner was extended upto 29.11.2011 and vide order No.1027 dated 29.11.2011 (Annexure P-4), Punjab Government decided to merge Galiara Project, Amritsar alongwith its staff with Punjab Water Supply and Sewerage Board. Thereafter, on 16.02.2012 (Annexure P-5), Punjab Government merged the Galiara Project Amritsar under the control and supervision of Amritsar Development Authority alongwith the staff with the Deputy Commissioner, Amritsar as it's Project Director. However, petitioner was not adjusted at the time of merger alongwith other 12 employees despite the fact that his services were extended upto 29.11.2011 in the Galiara Project, Amritsar vide order dated 28.11.2011 (Annexure P-2). In this regard, representations dated 10.03.2014 and 10.11.2014 (Annexures P-7 and P-8 respectively), have been moved by the petitioner, but no action has been taken. Hence the present writ petition.

Learned counsel for the petitioner contends that the petitioner was not adjusted at the time of merger alongwith other 12 employees of the Galiara Project, Amritsar who are still continuing and inspite of the fact that extension of the petitioner was approved vide order dated 28.11.2011 (Annexure P-2) and several representations were made to the respondents in order to adjust the

petitioner, but he had been discriminated. Learned counsel further contends that since initially the petitioner was appointed on contract basis with the Galiara Project Amritsar under the supervision of Deputy Commissioner, Amritsar, who was the Project Director, Galiara Project, Amritsar, which was later on merged with the Punjab Water Supply and Sewerage Board, whereas other 12 employees concededly had been benefited from the decision of the merger, but he also being similarly situated employee, can't be deprived of the benefit of merger.

Vide order dated 26.02.2015, notice of motion was issued.

Learned counsel for respondent No.1 i.e. Punjab Water Supply and Sewerage Board while relying upon the affidavit dated 14.07.2016 submits that the petitioner was neither appointed by the answering department nor he was given extension in service as the same was under the administrative control of respondent No.3 i.e. Deputy Commissioner, Amritsar, Galiara Project, Amritsar, who was Project Director of the said project. He further submits that the said project was recommended/decided to be merged in Punjab Water Supply and Sewerage Board by the Government of Punjab, Department of Local Government vide its order bearing No.1027 dated 29.11.2011 (Annexure P-4) but the name of the petitioner was never figured in the list of employees, who were merged with respondent No.1 and according to the said list, the petitioner was never on the roles of respondent No.1.

Learned State counsel representing respondent Nos.3 and 4 refers to the order dated 04.07.2017 passed by this Court vide which a specific affidavit of respondent No.3 was directed to be filed by this Court to apprise that on what basis the name of the petitioner was not recommended for

adjustment at the stage of merger of Galiara Project, Amritsar with the Punjab Water Supply and Sewerage Board-respondent No.1 on 29.11.2011. In compliance of the order dated 04.07.2017, an affidavit dated 16.08.2017 was filed and learned State counsel while relying upon the same contends that vide letter No.2318 dated 22.02.2010 (Annexure P-1), the appointment of the petitioner as Pump Operator was on the contract basis, which was valid upto 31.07.2010 on certain terms and conditions and as per the said conditions it was clearly mentioned that the services of the petitioner would be automatically terminated after the expiry of contract period without giving any notice. He further contends that petitioner's appointment was on contract basis, who was engaged on the principle as and when the work was available, therefore, the services of the petitioner were also extended thrice i.e. from 01.08.2010 to 31.12.2010, thereafter, he was given extension w.e.f.01.07.2011 to 30.09.2011 and lastly his period was extended from 02.10.2011 to 29.11.2011 vide office order dated 28.11.2011 and thereafter no extension was granted and on the expiry of the lastly extended period, the services of the petitioner were terminated without giving any notice. Learned State counsel also contends that in the affidavit dated 16.08.2017, it is specifically mentioned that since no extension was granted to the petitioner after 29.11.2011, his services were automatically terminated and was not entitled for regularization in service on merger of Galiara Project with respondent No.1.

Having heard the learned counsel for the parties.

After perusal of the material available on record, this Court finds that vide Annexure P-4 i.e. office order No.1027 dated 29.11.2011, it was decided to merge Galiara Project with respondent No.1 i.e. Punjab Water

Supply and Sewerage Board and thereafter vide memo No.10/46/11(2)-3SS-2/360 dated 16.02.2012 (Annexure P-5) issued by the State Government, it is specifically mentioned that the orders regarding functioning of Galiara Project, Amritsar along with complete staff by Punjab Water Supply and Sewerage Board were passed and on reconsideration, the government has decided to merge the Galiara Project, Amritsar to any local authority and was accordingly merged with Amritsar Development Authority, Amritsar. The bare reading of the Annexure P-5, shows that finally the merger took place by this very order dated 16.02.2012, whereas the petitioner has pleaded contrary to the said fact by saying that the merger took place on 29.11.2011 so the benefit of same should have been extended to petitioner also along with other similarly situated employees, but that is not the situation. Finally, the merger was vide order dated 16.02.2012 and by that time extended period of the petitioner on contract basis had already been expired. The Annexure P-2, which is the office noting where extension was recommended to be extended from 02.10.2011 to 31.12.2011 and as per the said annexure, infact approval of extension was given up-to 29.11.2011. Further, as per the affidavit dated 16.08.2017, a specific stand has been taken by the learned State counsel while referring to the same that there was no approval regarding the appointment of the petitioner between intervening period from 02.10.2011 to 23.11.2011, which has weightage as the name of the petitioner was not sent to the government as employee of Galiara Project. Even as per Annexure P-3, i.e. list of the employees, same also endorses the stand taken by the learned State counsel, as no approval was accorded by the authority. Hence petitioner cannot be treated in continuation of service, which was totally on contract basis and for the

limited period already over, even the extended period which were granted to the petitioner were also for the specific time, whereas petitioner had sought extensions thereon, but failed after 29.11.2011. Further, the petitioner cannot equate himself with the other similarly situated employees, who were working in the project and their period was not ended, whereas the petitioner's continuation on contract basis in the project was not approved by the authority after 29.11.2011. Hence, his case is distinguishable from the other aforementioned employees.

In this regard, reference can be made to the decision of this Court passed in CWP-26616-2021, titled as “Pawan Kumar Pundir Vs. State of Haryana and others”, decided on 12.04.2023, wherein it was observed that when the appointment is contractual and by efflux of time, the appointment comes to an end, a contractual employee has no right to continue whatsoever on the post beyond stipulated period.

Further, in “Satish Kumar and others Vs. State of Haryana and another, 2022 (2) PLR 106”, this issued was also dealt with and the relevant observations read as under:

*“11. Now the question arises as to whether on expiry of the contract period, the petitioners have got any vested right to continue in service, the answer cannot be in affirmative. The petitioners cannot go beyond the terms and conditions of the appointment letters. It is clearly mentioned in their appointment letters that they had been appointed for one year or till appointment of regular incumbents, whichever was earlier. Though their period stood extended but after expiry of period of last extension, they cannot insist to continue in service. The petitioners are relying upon judgment by the Apex Court i.e. **Hargurpratap Singh Versus State of Punjab and others, 2007(13) SCC 292** wherein while dealing with the case of ad hoc employees seeking minimum pay scale and continuance till regular incumbents joined, it was observed that though the appellants may not be entitled to regular appointment as*

such it cannot be said that they will not be entitled to the minimum of the pay scale nor that should not be continued till regular incumbents are appointed. However, when the case of the petitioners is examined in light of this judgment, it comes out that the petitioners cannot insist for continuance in service by extension of their contracts. As already observed, they had been initially appointed for one year and on expiry of that term were granted extensions. On completion of last extension, they are taken to be relieved. As regards their plea that they are not being allowed to join, the stand taken by the respondent No.2 is that the corporation is in process of restructuring and even the requisition sent to Staff Selection Commission for filling up regular posts including those of Junior engineers has been withdrawn. Since there is no work available services of the petitioners are not required. As such the petitioners cannot claim that they be allowed to join and work when no such work is available. Without doing active work they cannot possibly claim wages for that period.

12. In Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences 2018 (2) Apex Court Judgments (SC) 56, it was observed that since appointment of employee on contract basis is not made in accordance with any regular procedure by following necessary rules, no right accrues to such type of employee for regularisation of services and there is no statutory right of a contract employee for renewal of contract from time to time. In a judgment by a Division Bench of this Court – **Jyoti and others vs. The State of Haryana and others, in LPA No. 40 of 2021 in CWP 121 of 2021, decided on**

14.1.2021, following principles were laid down :-

“ (i) principle of 'last come first go' is applicable to a case of retrenchment but not in the case where initial appointment of an employee is against public policy or the employer finds the work and conduct of an employee to be not satisfactory;

(ii) in case the work and conduct of an employee is not found to be satisfactory, then the services of such an employee, although being a senior, pales into insignificance and the services of such an employee can be terminated in accordance with the terms and conditions of such employee;

(iii) a contractual / temporary employee cannot claim any protection against termination so long as the action taken by the authority is not shown to be vitiated by the infirmities viz. Illegality, perversity, unreasonableness, unfairness or irrationality and so long as the action is not demonstrably defiant of logic;

(iv) renewal of contract cannot be sought by a temporary / contractual employee as a matter of right as its renewal of

employment depends upon the perception of management as to the usefulness of the employee and the need for an incumbent in the position held by such employee.”

13. Merely on account of petitioners working on contract basis for some time does not bestow upon them any right for extension of their contract period or their made regular employees. There cannot be any automatic extension of period. Rather, as observed Supra, there are several factors which are to be taken into consideration for that purpose, to say, availability of posts, an employee working on contract basis possessing necessary educational qualifications and expertise for that post, his work and conduct while working on contract basis, etc. Therefore, the petitioners cannot claim extension of contract period and then continuity in service as such, merely for the reason that they are working in the respondent for some time. The requirement of manpower varies from time to time. The respondent can certainly hire additional work-force having necessary qualification, experience and expertise, by way of outsourcing and petitioners cannot find any fault with such policy of the respondent – Corporation and seek that this circular be not acted upon.

Further, in “**Lokesh Rana and another Vs. Union of India and others**” passed in LPA No.513-2022 on 04.07.2022, it has been observed as under:-

*“6. 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.*

*7. 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 ‘**approve 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”.*

Moreover, there is nothing on record to show that under which rule of law/policy or statutory provisions the contractual employee has a right to continuation on the contract basis once his services have already been terminated on account of expiry of contract in the year 2011, where no approval was accorded by the authority for his continuation in service after expiry of the contract as per the conditions, which were even otherwise accepted by him vide appointment letter and now the same cannot be claimed as a right on the plea that all other similarly situated employees got the benefit of continuation.

In the present case, the sole basis for claiming benefit is ‘**Office Note**’ i.e. Annexure P-2 when the time period was extended upto 29.11.2011. The same cannot be treated as an order, which has no sanctity in the eyes of law. Since the approval of the extended period was based upon the office note and no formal order was passed, the said extended period cannot be treated as a valid period until and unless formal order of extension is passed by the authority. This issue has already been dealt by the Hon’ble Apex Court in the judgment rendered in “**Mahadev and Others Vs. Smt.Sovan Devi and others**”

2022 AIR (Supreme Court) 4071 and observed as under:-

“15. This Court in Municipal Committee v. Jai Narayan & Co.2022 SCC Online SC 376 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual. It was held as under:

16. This Court in a judgment reported as State of Uttaranchal v. Sunil Kumar Vaish, (2011) 8 SCC 670 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It

merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:

"24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2)."

In view of the above discussion, present writ petition being devoid of merits is dismissed.

(DEEPAK MANCHANDA)
JUDGE

16.10.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No