



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: July 14, 2023*

+ W.P.(C) 9319/2023, CM APPLs. 35472/2023, 35473/2023 & 35474/2023

KULDEEP KUMAR MALHOTRA AND ORS.

..... Petitioners

Through: Mr. Manjeet Singh Reen, Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advs.

AND

+ W.P.(C) 9320/2023, CM APPLs. 35480/2023, 35481/2023 & 35482/2023

UMA SHANKER BHARTI

..... Petitioner

Through: Mr. Arun Bhardwaj, Sr. Adv. with Mr. Manjeet Singh, Mr. Abhishek Sharma and Mr. Gauraan, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

..... Respondents

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA



V. KAMESWAR RAO, J. (ORAL)

CM APPLs. 35473/2023 & 35474/2023 in W.P.(C) 9319/2023
CM APPLs. 35481/2023 & 35482/2023 in W.P.(C) 9320/2023

Exemption allowed subject to all just exceptions.

Applications are disposed of.

W.P.(C) 9319/2023, CM APPL. 35472/2023
W.P.(C) 9320/2023, CM APPL. 35480/2023

1. These two petitions have been filed by the petitioners challenging order dated July 04, 2023 in O.A. 1678/2022 and O.A.1695/2022 whereby the Tribunal has dismissed the O.As'. filed by the petitioners herein being bereft of any merit.
2. Suffice to state that the petitioners herein are Ex-Serviceman who retired from Indian Army on completion of their normal tenure. After their retirement they were engaged as Typist-cum-Clerk in the respondent/Delhi Development Authority ('DDA', in short) on different dates in the year 2010/2012, on contract basis.
3. The initial term of engagement was for six months on a consolidated remuneration, however, the term was extended and at the same time the letter of appointment stipulated that the contract may also be terminated at any time. The petitioners continued to be engaged on contract basis on the position of Typist-cum-Clerk till the year 2022 when the notice of termination was issued to them on June 07, 2022.
4. The petitions have been filed challenging the notice of termination dated June 07, 2022. One of the reliefs in the O.A. was also for quashing of the policy dated December 05, 2018. The case of the petitioners before the Tribunal was that during their engagement as



Typist-cum-Clerk they were governed by policy notified on December 30, 2017 which stipulated that the age limit would not be beyond 65 years. However, there was a provision that even this age limit 65 years may be relaxed in public interest in deserving and exceptional circumstances. Whereas, the policy which was issued on December 05, 2018, had restricted the period of contract to only five years. It was their case that the subsequent policy of 2018 had adversely affected their engagement as Typist-cum-Clerk.

5. The challenge to the policy of 2018 was also on the ground that the same was issued without the approval of competent authority. That apart, it was also their case that by operating the policy of 2018 the respondent DDA could not have violated the law laid down by the Supreme Court in the case of *State of Haryana v. Piara Singh, (1992) 4 SCC 118*, wherein, the Court categorically held that contractual employees cannot be replaced by another set of contractual employees which the respondent intends to do by introducing the policy of the 2018.

6. Whereas, the case of the respondents before the Tribunal was that the petitioners have no right over the appointment. Moreso, in view of the terms set out in their initial engagement which stipulated that their services could be terminated at any point of time.

7. That apart, the contract staff having been appointed for a specific purpose, such engagement cannot be for any indefinite period and the policy which is general in nature is applicable to all and, cannot be the subject matter of challenge.



8. It was stated that initially the DDA has framed its own policy and guidelines but in the year 2018 when the Government of India framed uniform guidelines with respect to the engagement of Consultants/Advisors containing terms and conditions, DDA being the Government organization, adopted those uniform guidelines. Reliance has been placed on the judgment of the Supreme Court in the case of ***Harsh Ajay Singh v. Union of India, W.P.(C) 11011/2022***.

9. It was the case of the respondents that the petitioners have been engaged after their retirement. The respondents also to look for the younger and efficient manpower. Moreover, the petitioners are in receipt of regular pension and post retirement, they cannot claim vested right to continue with the engagement. It was also stated that the judgment of the Supreme Court in ***Piara Singh (supra)*** would not come to the aid of the petitioners as the facts in the said judgment would not bear any similarity to the present cases and further the same was considered by the Bench of the Supreme Court in ***State of Karnataka v. Uma Devi, (2006) 4 SCC 1***.

10. The Tribunal rejected the O.As. filed by the petitioners by stating in paragraphs 21, 22, 23 and 24 as under:-

“21. We have gone through the provisions of the policy both of the year 2017 and the revised one of 2018. The said policy is for engagement of consultants. We are not sure whether the engagement of the present applicants as Typist cum Clerk would strictly fall within the purview of these policies. However, even if we were to assume that the provisions of this policy would govern their engagement, we are not convinced that the revised policy of 2018 causes any prejudice to the applicants as the policy is applicable for all engagements of consultants in the



organisation and it has nowhere been shown that this policy has been enacted only with respect to the present applicants. We are also not convinced that the applicants can nurse any grievance with respect to the discriminatory treatment. Moreover, as elaborately explained by learned counsel for the respondents, the revised policy is on the basis of a uniform policy notified by the Govt. of India and DDA being a subordinate agency of the Union Government, has rightly adopted the same. The argument that it does not have the approval of the LG is therefore, not maintainable. Moreover, a policy cannot be termed bad on a mere technicality.

22. The applicants were engaged for a period of six months initially and have continued in this capacity for more than 10 years now. It is pertinent to note that the applicants are Ex-servicemen who retired from the Army on completion of their normal tenure and are drawing pension accordingly. How could they claim an indefinite continuation of a contractual engagement post retirement is inexplicable. The terms and conditions of their initial engagement have no ambiguity. Besides placing a challenge upon the revised policy of the year 2018, the applicants have not been able to show us any decision or action of the respondents which is in violation of the terms and conditions set forth in their engagement.

23. We agree with the arguments put forth by the respondents that contractual staff, as the term itself indicates, is appointed for specific purposes and for a specified period of time. A contractual appointment cannot be open ended. Moreover, the applicants have enjoyed the benefit of continued appointment for more than 10 years. They certainly do not enjoy any vested right for continuation for an indefinite period, as they are contractual staff who were engaged for a limited period and for discharge of certain defined duties.

24. We have also carefully gone through the judgments being relied upon by the learned counsel in support of their respective arguments. We have no doubt in our mind



that the adjudication of the present issue would rest on the facts of the case rather than any law laid down. Moreover, the support drawn by the applicants from the Hon'ble Supreme Court judgment in Piara Singh (supra) quoted in one of the preceding paragraphs, would not be applicable in the present circumstances as the present applicants have not been appointed on any particular post but merely engaged for a limited period i.e. six months initially and for some specific tasks."

11. The submission of Mr. Arun Bhardwaj, learned Senior Counsel for the petitioners, is on the similar lines, as was the stand of the petitioners before the Tribunal. He heavily relied upon the judgment of the Supreme Court in the **Piara Singh (supra)** to contend that the respondents cannot resort to hire and fire policy. According to him, in terms of the policy of the 2018, the engagement of the petitioners as Consultants/Advisors being for five years, the same would have the effect of replacing Consultants/Advisors after every five years which shall not be inconsonance with the said judgment. He also submits, the reliance placed by the Tribunal on the judgment of the **Uma Devi (supra)** is totally misplaced inasmuch as in the said judgment, the Supreme Court has not varied the judgment in the case of **Piara Singh (supra)**.

12. In fact, he submits that one of the persons namely, Vijay Singh Verma appointed along with the petitioners on contractual basis has been granted the extension up to January 21, 2021 but the same benefit has been denied to the petitioners herein.



13. According to him, the office order dated June 07, 2022 not to renew the contract of the petitioners does not disclose any reason for giving notice to the petitioners. It is apparent on record that since the posts of Typist-cum-Clerk on contract basis are still vacant and the services are still required for the said post, the petitioners have genuine apprehension in their mind that the respondents may engage another set of employees on contract basis by replacing the petitioners.

14. He states that the petitioners must be allowed to continue and should not be disengaged as they have a right accrued in their favour till they attain the age of 65 years.

15. On the other hand, Mr. Arun Birbal, learned counsel appearing for the DDA would contest the petition by stating that the Tribunal is justified in dismissing the O.A. According to him, when the petitioners were engaged, there was a clear stipulation in the said letter that their engagement shall be for a period of six months and it was also stipulated that their engagement can be terminated. The new policy of 2018 clearly state that the engagement of Consultants/Advisors shall be for a period of five years. He submits, the right of the petitioners to seek engagement as Typist-cum-Clerk would not be taken away in terms of the new policy of 2018. In other words, they are also within their right to apply for engagement as Typist-cum-Clerk/Consultants/Advisors, and if are found fit, they can be engaged for a period of five years. That apart, it is his submission that the real intent of the policy of 2018 is also to give opportunities to youngsters to earn livelihood



by applying for the engagement as Consultants/Advisors in DDA. According to him, no prejudice has been caused to them, in terms of the policy of 2018. He submits that the Tribunal has rightly held that the ratio of judgment in the case of *Piara Singh (supra)*, is not applicable to the facts of these cases inasmuch as their engagement is not against a post nor their engagement is pending regular appointment on the said post. He seeks the dismissal of writ petitions.

16. Having heard the learned counsel for the parties and perused the record, we are of the view, the Tribunal is justified in rejecting the O.As.

17. The petitioners who are Ex-Serviceman, having retired from the Indian Army, were engaged as Typist-cum-Clerk in the DDA, initially, for a period of six months. Pursuant thereto, they continued for almost 12 years. In terms of the policy of the DDA of 2017, their engagement could have continued till 65 years. DDA having framed a new policy for engagement of Consultants/Advisors which include engagement as Typist-cum-Clerk, the DDA is within its right to give effect to the said policy.

18. The reasons given by the DDA for the policy is to attract fresh talent. That apart, it is their case also that the petitioners are not precluded from being engaged as Consultants/Advisors, if they are found fit. If that be so, their consideration having not been effected, merely because the DDA has framed a policy which entails engagement of Consultants/Advisors for every five years, the same cannot be said to be arbitrary. The reliance placed by



petitioners on the judgment of *Piara Singh (supra)* has no applicability in the facts of these cases as the engagement is as per the policy of the year 2018, and in that sense, the engagement is not pending regular appointment. In other words, it is an ongoing process whosoever found fit for being engaged, shall be engaged and everyone will have equal opportunity for engagement.

19. We are in agreement with the conclusion arrived at by the Tribunal in paragraphs 21 to 24 which we have reproduced above.

20. Mr. Bhardwaj has relied upon the following judgments in support of his submission that *ad hoc*/contractual employees cannot be replaced by other *ad hoc*/contract employees.

- i. ***Manish Gupta & Anr. v. President, Jan Bhagidari Samiti & Ors., 2022 SCC OnLine SC 485.***
- ii. ***Murad Ali Sajan & Ors. v. UT of J&K & Ors., W.P.(C) 2635/2022. (High Court of Jammu & Kashmir and Ladakh)***
- iii. ***Hargurpratap Singh v. State of Punjab, (2007) 13 SCC 292.***
- iv. ***Dheeru Nayak v. Union of India & Ors., SCC OnLine Kar 4236 (Uttarakhand High Court)***
- v. ***Dr. Prabha Negi v. Union of India & Ors., W.P.(S/B) No. 122/2018 (Uttarakhand High Court)***
- vi. ***Ramakant Pipalwa v. State of Rajasthan & Ors., S.B. Civil Writ Petition 7456/2012 (Rajasthan High Court)***



21. We have seen the judgments. The same have no applicability to the facts which arises for consideration in these writ petitions:

22. In fact, it must be stated that the policy of 2018 is of the DDA, and it is within its right to frame the same for engagement of Consultants/Advisors with a purpose. They justify the same on the ground, the Government of India has framed one. So, in that sense, by this policy a uniformity has been brought about for appointment of Consultants/Advisors. A similar issue has been settled by a Coordinate Bench of this Court in the case of **Harsh Ajay Singh (supra)**, wherein this Court has held as under:-

“.....This Court does not find any fault with this decision of the Government, which was carried out in good faith, and in larger public interest.

87. We have gone through the genesis of the two principles of equity, and the jurisprudence governing their applicability. We have also had the occasion to go through certain cases, with similar facts; wherein a recruitment process was halted midway. It emerges that firstly, the Petitioners have no vested right to seek such recruitment, and secondly, that promissory estoppel and legitimate expectation find themselves severely restricted by the overarching concerns of public interest.

88. We have extensively gone through the Agnipath Scheme, and can conclusively state that this Scheme was made in national interest, to ensure that the Armed Forces are better equipped. Due to this, this Court finds that the Petitioners have no vested right to claim that the recruitment under the 2019 Notification and CEE Examination needs to be completed. Furthermore, both promissory estoppel and legitimate expectation cannot be applied in the instant case to



force the Government to complete the recruitment keeping in mind larger public interest.”

23. In view of our above discussion, these writ petitions and connected applications are dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 14, 2023/ds



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