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

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Date of Decision: 31.08.2023

% **LPA 615/2023 and C.M. Nos. 45014-45016/2023 & 45021/2023**

DELHI SKILL AND ENTREPRENEURSHIP UNIVERSITY

..... Appellant

Through: Ms. Avnish Ahlawat, Standing Counsel with Ms. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam & Mr. Mohnish Sehrawat, Advocates for respondent/ GNCTD.

versus

NEERU KALHER AND ORS.

..... Respondents

Through: Mr. Shivendra Singh & Mr. Bikram Dwivedi, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, C.J. (ORAL)

1. The present Letters Patent Appeal (LPA) arises out of judgment dated 21.03.2023, passed by the Learned Single Judge in W.P.(C) No. 6014/2021 (the “**Impugned Judgment**”), whereby the Writ Petition preferred by the Respondents herein was allowed and consequentially, the Appellant University was directed to renew the service contracts of the Respondents until regular appointments were made to the post of Master Trainers.



2. The facts of the case reveal that the six Respondents were appointed as Master Trainers at the World Class Skill Centre (the “WCSC”), Vivek Vihar on a contractual basis by the Department of Training and Technical Education, Govt. of NCT of Delhi (the “DTTE”). While each Respondent was appointed on a different date between 2015 to 2018, the fact relevant to the present matter is that all their contracts were extended from time to time, without any break, until 31.03.2021.

3. During the Respondents’ employment with the WCSC, vide notification dated 26.05.2020, the Delhi Skill and Entrepreneurship University Act, 2019 (the “Act”) was notified and subsequently, the Appellant University came into existence on 15.08.2020. It is pertinent to note that the DTTE is the parent department which exercises functional and financial control over the WCSCs and the Appellant University.

4. Thereafter, the DTTE vide notification dated 20.01.2021, integrated six existing WCSCs, including the one located in Vivek Vihar, into the Appellant University for all academic and certification purposes. To effectuate this integration, the said notification directed the transfer of all 58 sanctioned posts of the WCSCs, to the Appellant University, on existing terms and conditions (hereinafter, referred to as “**Integration Notification**”). The integration of WSCSs into the Appellant University essentially amounted only to a change in management as the WSCSs continued to operate in the same premises and the Respondents continued to undertake the same work.

5. On 08.02.2021, a meeting was conducted by the Appellant University



wherein all Master Trainers working at the WCSCs, which included the Respondents, were allotted work, and were asked to report to WCSC Dwarka for their duties from 09.02.2021. An order to this effect was also passed by the Appellant University on 08.02.2021. The Respondents promptly complied with this directive and were assured that their contracts would be renewed in a timely manner as the integration was merely procedural.

6. Apprehending non-renewal of their contracts against the backdrop of the COVID-19 pandemic, the Respondents made representation dated 25.03.2021 to the Chief Minister of Delhi, requesting his intervention to ensure renewal of their contracts with the Appellant University/DTTE. In the meantime, the Respondent's contracts with DTTE came to an end on 31.03.2021. The representation dated 25.03.2021, was forwarded to the Appellant University on 07.04.2023 but no action was taken in response to the same.

7. Thereafter, confirming the apprehension of the Respondents, the Appellant University issued advertisement dated 08.06.2021, inviting fresh applications for the contractual position of Master Trainer (the "**Advertisement**").

8. Aggrieved by the Advertisement, the Respondents-herein preferred the underlying writ petition seeking to quash the Advertisement on the ground that it arbitrarily sought to replace them despite their eligibility and substantial experience. Before the Ld. Single Judge, the Respondents-herein placed reliance inter alia on the binding dictum of the Supreme Court in *State of Haryana & Ors. Vs. Piara Singh & Ors.*, (1992) 4 SCC 118, wherein it



was held that replacement of contractual employees by appointing fresh contractual employees to the same position amounts to arbitrary action by the employer; and, contractual employees can only be replaced by regularly selected employees. It is material to clarify that in the underlying writ petition, the Respondents-herein did not make a claim for regularization, they merely asserted their rights to continue in contractual positions until regular employees are appointed to the post of Master Trainers.

9. In the Impugned Judgment, the Learned Single Judge agreed with the contentions of the Respondents-herein and held that in view of the decision in *Piara Singh* (supra), the Respondents-herein being contractual employees, could not be replaced by another set of contractual employees. The Court also emphasized the enhanced expectation of fairness that binds the State and its instrumentalities as they must fulfill the role of model employers. Therefore, the Advertisement was held to be arbitrary, and the Appellant University was directed to renew the service contracts of the Respondents-herein until regular employees were appointed to the posts of Master Trainers.

10. In the present appeal, Learned Counsel for the Appellant University submits that the Respondents, having accepted the terms and conditions of their contractual employment, have no right to seek a continuation of their service beyond the period of contract. In this context, he contends that the Impugned Judgment goes above and beyond the service contracts and permits the Respondents to hold the posts of Master Trainer in perpetuity. He submits that the Impugned Judgment violates the decisions of the Supreme Court in *Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors.*, (2006)



4 SCC 1, and *Vidyavardhaka Sangha vs. YD Deshpande*, (2006) 12 SCC 482.

11. Learned Counsel for the Appellant University also submits that the principle emerging from *Piara Singh* (supra), i.e., contractual employees cannot be replaced by fresh contractual employees, is not applicable to the facts at hand as the nature of the post of Master Trainer is inherently temporary. He submits that *Piara Singh* (supra) emerged in a context where there existed prolonged contractual employment against regular posts. In this regard, he places reliance on the judgment of this Court in *Mohit Dahiya vs. Delhi Pollution Control Committee*, WP (C) No. 4418 of 2020.

12. Heard Learned Counsel for the parties and perused the record. With the consent of both parties, the matter is being disposed of at the admission stage itself.

13. A Constitution Bench of the Apex Court in *Uma Devi* (supra), *inter alia*, laid down the principle that contractual employees, regardless of their length of service, do not acquire a right to be absorbed in regular service or to be made permanent employees. This principle emerged against the backdrop of cases wherein Courts were directing regularization of temporary/contractual employees, effectively replacing the constitutional scheme of public employment. However, in the present case, the Respondents have neither demanded regularization, nor have they been granted regularization by the Learned Single Judge; the Impugned Judgment merely protects the rights of the contractual employees until they are replaced by regularly appointed employees. Thus, in the considered opinion of this court, the



reliance placed by the Appellant University on ***Uma Devi*** (supra) is entirely misplaced and does not in any way inure to their benefit.

14. Reliance placed on ***YD Deshpande*** (supra) is similarly misplaced as the Court therein was also dealing with a claim for regularization made by contractual employees as the scheme for contractual employment itself was discontinued by the employer. It was within this limited context that the Court echoed the position in ***Uma Devi*** (supra) and held that contractual employees therein did not have a right to continue in their posts/seek regularization after the cessation of their contracts. The present case is entirely distinguishable from ***YD Deshpande*** (supra) on facts as there is no demand for regularization made by the Respondents-herein and more importantly, the scheme under which the Respondents-herein were employed is still continuing.

15. Learned Counsel for the Appellant University has also endeavored to distinguish the present case from the binding dictum of the court in ***Piara Singh*** (supra) and in that regard, reliance has been placed on ***Mohit Dahiya*** (supra). While it is true that ***Piara Singh*** (supra) dealt with prolonged engagement of contractual employees against regular posts, it cannot be said that the benefit of the principle established therein will only accrue to similarly placed employees. At this stage, it is pertinent elaborate on the context within which the protection granted by ***Piara Singh*** (supra) emerged:

“21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making



*rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. **The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer...*** (emphasis supplied)

16. Thus, the Court in **Piara Singh** (supra) held against replacement of existing contractual employees with fresh contractual employees with the sole objective of protecting contractual employees, who otherwise lack security of tenure, against arbitrary actions of an employer which would result in a loss of livelihood for such contractual employees. Therefore, it flows that the law laid down in **Piara Singh** (supra) is applicable to all such cases wherein employers seek to arbitrarily replace existing contractual employees without any change in the scheme of engagement; objective of engagement; nature of service or flow of work, as has been done in the present case.

17. In the case of **Mohit Dahiya** (supra), the Learned Single Judge therein held that **Piara Singh** (supra) was not applicable on a factual finding that the concerned post of Trainee Engineer necessitated a limited contractual engagement as it was for the purpose of training employees, akin to interns/trainees in research institutes. It was within this specific context that



the employees-therein were not permitted to seek a renewal of their contracts.

The relevant portions of the judgment are reproduced hereunder:

“17. On a nuanced scrutiny of the Minutes of Meeting referred to above, the Court is of the view that the Respondent is right in contending that the appointment of the Petitioner as a Trainee was not a contractual employment as broadly understood in service jurisprudence against any sanctioned post. The appointment is akin to the appointment of interns/trainees in Research Institutes as brought out by the Respondent. The objective behind the engagement for temporary spells is to provide assistance to the Department and at the same time, help the Trainees to gain experience which increases their knowledge, exposure and confidence and gives a pedestal to secure a job in future. Petitioner therefore is not right in contending that he was appointed as an ad hoc/contractual employee as the nature of engagement is not even remotely close to an ‘employment’ in a Government Department.

18. Reliance by the Petitioner on the judgement of Piara Singh (supra) in my view does not inure to his benefit as by a plain reading of the judgement it is evident that the Supreme Court in the said case was concerned with appointments against the regular posts and was not dealing with a case where engagements are made on temporary basis, to impart training and not to confer employment...” (emphasis supplied)

18. On a perusal of the afore-extracted judgement, it becomes clear that the Learned Single Judge therein aptly delineated cases wherein contracts of existing contractual employees cannot be renewed as it would wholly transgress the nature and objective of the engagement itself. In such cases, **Piara Singh** (supra) will rightly not be applicable as the action of the employer in replacing contractual employees is not arbitrary but rather fully justified. The same cannot be said for the present case. Merely because



regular appointments to the post of Master Trainer have not yet been advertised, it cannot be said that the nature of the Master Trainer post itself is inherently temporary. To the contrary, the fact the one-year contracts of the Respondents were regularly renewed proves that there is a regular flow of work against the post of Master Trainers. Furthermore, it is admitted by the Appellant University that the purpose of the Advertisement was only to attract the best available talent, not to effect any change in the scheme or objective of contractual engagement. The Appellant University has also neither argued that the posts of Master trainer is designed to impart training to the Respondents like in the case of ***Mohit Dahiya*** (supra) or that the nature of services provided by the Respondents is such that it necessitates temporary/contractual engagement. Under these circumstances, the action of the Appellant University in displacing existing contractual employees is undoubtedly arbitrary and hence, the Respondents will be entitled to the protection granted by ***Piara Singh*** (supra) until regular appointments are made to the post of Master Trainers.

19. Recently, in ***Manish Gupta & Anr vs. President, Jan Bhagidari Samiti & Ors.***, 2022 SCC OnLine SC 485, the Apex Court dealt with a similar situation wherein despite an existing scheme for contractual appointment of lecturers in State Colleges, a fresh advertisement for contractual appointment to the same post was issued. The existing contractual lecturers therein challenged the advertisement. The Court upheld the direction of the Learned Single Judge permitting the existing employees to continue until regular appointments were made and observed as follows:

“12. A perusal of the advertisement dated 24th June, 2016



issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of Rattan Lal v. State of Haryana and on the order of this Court in the case of Hargurpratap Singh v. State of Punjab.

13. In that view of the matter, we do not find that an error was committed by the learned single judge of the High Court by directing the writ petitioners to continue to work on their respective posts till regular selections are made ... ” (emphasis supplied)

20. Furthermore, in addition to the reliance placed on *Piara Singh* (supra), the Learned Single Judge also rightly referred to the dicta of the Apex Court in *Hargurpratap Singh v. State of Punjab and Another*, (2007) 13 SCC 292, and *Mohd. Abdul Kadir and Another v. Director General of Police, Assam and Others*, (2009) 6 SCC 611. These judgments build upon the principle enunciated in *Piara Singh* (supra) and expand the scope of its protection granted to contractual employees.

21. The decision in *Hargurpratap Singh* (supra) dealt with a situation



wherein ad-hoc teachers appointed in State colleges were being replaced by new ad-hoc recruits. The court held:

*“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear 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 they should not be continued till regular incumbents are appointed. **The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.**” (emphasis supplied)*

22. Similarly, the case of **Mohd. Abdul Kadir** (supra) involved a situation wherein servicemen were being subjected to re-selection after the expiry of their contracts despite the fact that the scheme under which they were appointed was not discontinued. The Court held:

*“17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. **Ad-hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service***



or the scheme, they will not be entitled to regularisation nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and reappointment every year should be avoided, and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminous with the Scheme... ” (emphasis supplied)

23. The principles emerging from the afore-stated precedents are squarely applicable to the case at hand. The Appellant University, without effecting any change to their scheme of employing Master Trainers sought to replace the Respondents with similarly situated fresh contractual employees. It is pertinent to note that the Appellant University has not alleged any deficiency in services provided by the Respondents or any instance of misconduct. They have failed to provide any rationale justifying the replacement of the Respondents other than asserting their desire to attract fresh talent. The action of replacing contractual faculty members who possess experience is not only unfair to the Respondents but is also detrimental for the University and its students. Under these circumstances, this Court finds no reason to interfere with the finding of the Learned Single Judge that the action of the Appellant University is untenable by virtue of being contrary to the law laid down in **Piara Singh** (supra).

24. In light of the aforesaid, we find no infirmity with the Impugned



Judgment and the directions passed by the Learned Single Judge therein.
Accordingly, the present LPA is dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 31, 2023