

CWP-17054 of 2019 (O&M)

2024 P-IHC:093745



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

CWP-17054 of 2019 (O&M)

Date of decision: 24.07.2024

Mayank Goswami

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Santosh Kumar Sharma, Advocate, for the petitioner.
Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. Petitioner has filed the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari*, quashing the order dated 18.06.2019 (Annexure P-8), vide which his services have been terminated by respondent No.2.

2. Brief facts as have been pleaded in the petition are that the petitioner was appointed as draftsman vide order dated 01.01.2011 under Outsourcing Policy Part-I and he continued upto 20.01.2015. Thereafter, again he was appointed as draftsman from 01.10.2016 to 31.03.2017 and still further he was again appointed as draftsman at Saraswati Heritage Circle, Kurukshetra, from 01.04.2017 to 31.03.2018. The petitioner was still further appointed as draftsman vide order dated 03.04.2018 on contract basis under Outsourcing Policy Part-II of the Government of Haryana. The relevant clauses from the appointment letter are as under:

“1. The appointment is purely on contract basis for a period not exceeded one year or till regular candidate is



appointed, whichever is earlier on the initial pay of Draftsman as admissible from time to time of fresh entrant regular employees after 01.01.2016 subject to minimum of Rs.8100/- per month or as fixed by the State Government (in General Administration Department from time to time) whichever is higher.

2. You will have to execute a specific contract on Non-Judicial Stamp Paper of Rs.15/- duly certified by the Notary Public in respect of your contractual offer.

3. The contract can be terminated at any time without assigning any reason within 24 hours notice.

x x x x

8. This offer of appointment will not count as service and will not bestow upon you any claim from regular appointment against any post.

x x x x

19. You will not claim for your engagement against sanctioned strength seniority and salary in time scale.”

The services of the petitioner were further extended upto 31.03.2020 vide order dated 01.04.2019. Thereafter, the services of the petitioner have been terminated vide impugned order dated 18.06.2019 (Annexure P-8) on the ground that the extension given to him upto 31.03.2020 was contrary to Outsourcing Policy Part-II dated 06.04.2015. The said order reads as under: -

“It has been observed by the under signed that One No.DHD, D/Man, SDC & Stenographer were initially engaged under outsourcing policy part II vide this office No. 2708/12G, Dated 03/04/2018, 2711/12G dated 03/04/2018, 2699/12G dated 03/04/2018 and No.2702/12G dated 03/04/2018 for the period from 03/04/2018 to 02/04/2019. Thereafter their services have been extended upto 31/03/2020 vide this office order



No.4283-87/12-G dated 01/04/2019 which is contrary to outsourcing policy part-II dated 06/04/2015.

The operative part of the outsourcing policy part-II issued by Haryana Government General Administration Department in General Services-II Branch No.16/07/2015-1GSII dated 06/04/2015 as under:-

i) In emergent cases involving public interest, where the sanctioned vacant post of Group-C and D categories exist, the person(s) can be engaged by sending requisition to the Employment Exchange and by advertisement in the newspaper, purely on contract basis, initially for a period not exceeding one year or till the regular selected candidates are appointed, whichever is earlier, on 50% of the initial Pay (pay in Pay Band Pay+DA as admissible from time to time).

Keeping in view stated above, the services in respect of S/Shri. Harbir Singh, DHD, 2, Manyank Goswami, D/Man, 3. Suresh Kumar, SDC and 4. Pawan Kumar Gupta, Stenographer are hereby terminated with immediate effect as extended as being illegally, unlawful and violation of outsource policy part II as above.

*(V.K.Kamboj)
Superintending Engineer
SYL WS Circle, Ambala”*

3. Written statement dated 29.08.2019 on behalf of the respondents has been filed to the writ petition, wherein claim of the petitioner has been contested and it has been stated that services of the petitioner were engaged on contract basis under Outsourcing Policy Part-II due to shortage of regular staff for a period of one year. The said contract was completed on 02.04.2019



Superintending Engineer SYL W.S. Circle, Ambala, and whereas as per Government instructions outsourcing policy, the persons can be engaged through Outsourcing Policy Part-II by the Haryana Government for one year only and thereafter for extension or reappointment, the approval of the Finance Department, Haryana, is required to be obtained and in this case, no approval has been sought by the then Superintending Engineer for continuing the services of the petitioner, therefore, the petitioner is not entitled to continue in service without approval of the Finance Department, Haryana. Apart from this, reference is made to instructions dated 13.06.2019 issued by the Government whereby the approval of the competent authority i.e. Chief Secretary and Finance Department is mandatory to grant further extension to the contractual employee. It has further been stated that there are five sanctioned posts of drawing establishment in the office of respondent No.2 against which three regular employees and one senior retired official on contract basis are working and there is no necessity of engagement of draftsman on contractual basis under Outsourcing Policy Part-II of the Government as this is extra burden on the State exchequer. It has further been submitted that out of above three regular employees, one draftsman has been recruited recently in November, 2018 through Haryana Staff Selection Commission on regular basis.

4. Notice of motion in the present case was issued on 25.06.2019 and operation of the impugned order was stayed till next date of hearing, which was extended vide order dated 12.09.2019 and thereafter the respondent-State filed an application bearing CM

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No.19587 of 2019 for vacation of stay, granted vide order dated 25.06.2019 in which notice was issued on 06.01.2020 for 22.04.2020. Thereafter, another application dated 19.02.2020 bearing CM No.3206 of 2020 was again filed by the State for vacation of stay order dated 25.06.2019, reiterating the averments made in the written statement, in which notice was issued on 28.02.2020 for 27.03.2020. In the application for vacation of stay bearing CM No.3206 of 2020, it has further been submitted that one Sh. Rahul has been appointed on regular basis on the recommendation of the Secretary, Haryana Staff Selection Commission, Panchkula, vide order dated 11.02.2020 (Annexure R-10) and he submitted his joining report on 13.02.2020 (Annexure R-11).

5. Learned counsel for the petitioner has contended that the action of the respondents in terminating the services of the petitioner vide order dated 18.06.2019, is totally illegal as the services of the petitioner have already been extended upto 31.03.2020 and, therefore, the said period could not have been curtailed by the respondents. He further submitted that the person, namely, Sh. Rahul, who was appointed on regular basis has already resigned from service vide his resignation letter dated 21.06.2021 and the same has been accepted by the respondents on 23.06.2020.

6. *Per contra*, learned State counsel submitted that the extension granted to the petitioner by the then Superintending Engineer SYL W.S. Circle, Ambala, vide letter dated 01.04.2019 was totally illegal as the approval of the Finance Department, Haryana, was neither



sought nor accorded and, therefore, the said extension granted by the then Superintending Engineer has been annulled and the services of the petitioner have rightly been terminated.

7. I have heard learned counsel for the parties and perused the record.

8. In order to adjudicate upon the present *lis*, it is relevant to give reference to the Outsourcing Policy Part-II, which has been circulated by the Government vide letter dated 06.04.2015. Part-II of the said policy deals with engagement of a person where regular posts exist and the same reads as under: -

“PART-II ENGAGEMENT OF PERSONS ON CONTRACT BASIS WHERE REGULAR POSTS EXIST

- i) *In emergent cases involving public interest, where the sanctioned vacant posts of Group-C and D categories exist, the person(s) can be engaged by sending requisition to the Employment Exchange and by advertisement in the newspapers, purely on contract basis, initially for a period not exceeding one year or till the regular selected candidates are appointed, whichever is earlier, on 50% of the initial pay (pay in Pay Band+Grade Pay+ DA as admissible from time to time) of fresh entrant regular employee after 01.01.2006 subject to minimum of Rs.8100/- per month or as fixed by the State Government (in General Administration Department) from time to time.*
- ii) *In doing so, it should, however, be clearly stipulated in the advertisement as well as in the offer letter that such engagement which they are so engaged or in any other office in the State Government.*



- iii) *For this, no approval of Finance Department is required. If, however, higher wages are proposed to be paid, then approval of Finance department will have to be obtained by giving proper justification.*
- iv) *During the period of contractual engagement, the department shall, however, endeavour to fill up the vacant posts by regular mode of recruitment, as prescribed in the Departmental Service Rules.*
- v) *If for any reason, the process of recruitment of regular candidate(s) cannot be completed within the period of one year, then approval of Finance Department shall be obtained giving full justification for engagement of person(s) already engaged for a further period of one year or till regular selected candidates are appointed, whichever is earlier. In this regard, proposal should be sent to concerned Branch of Finance Department for consideration.”*

9. As per Part-II of the policy dated 06.04.2015, in emergent cases involving public interest, where the sanctioned Group ‘C’ and ‘D’ categories exist, person(s) can be engaged by sending requisition to the employment exchange by advertisement in the newspapers, purely on contract basis initially for a period not exceeding one year or till the regular selected candidates are appointed, whichever is earlier. During the period of said contractual engagement, the department shall endeavour to fill up the vacant posts by regular mode of recruitment, as prescribed in the departmental service rules and if for any reason, the process of recruitment of regular candidate(s) cannot be completed within the period of one year, then approval of the Finance Department shall be obtained giving full justification for engagement of person(s)



already engaged for a further period of one year or till regular selected candidates are appointed, whichever is earlier.

10. Admittedly, the petitioner was engaged as draftsman on contract basis under Outsourcing Policy Part-II of the Haryana Government for one year or till arrival of regular employee, whichever is earlier, vide order dated 03.04.2018. The said contract was completed on 02.04.2019 and he was granted one-year extension upto 31.03.2020 by the then Superintending Engineer SYL W.S. Circle, Ambala, vide letter dated 01.04.2019. It is the case of the respondents that the said extension granted by the Superintending Engineer was against the Outsourcing Policy Part-II because as per the said policy, persons can be engaged on contract basis for one year only and thereafter for extension or reappointment, the approval of the Finance Department, Haryana, is required to be obtained and since in the present case no approval was sought by the then Superintending Engineer for continuing the services of the petitioner, therefore, the said extension has rightly been annulled and services of the petitioner have been terminated.

11. It is also an admitted fact that the regular incumbent, namely, Sh. Rahul had been appointed vide letter dated 11.02.2020 and he joined as such on 13.02.2020 and as per learned counsel for the petitioner he has resigned on 21.06.2020, which has been accepted by the department on 23.06.2020. Once the services of the petitioner were engaged on contractual basis for one year from 03.04.2018 to 02.04.2019 and having completed the said period, the extension could



have been granted only after approval of the Finance Department and proposal to this effect was required to be sent by the then Superintending Engineer giving full justification for extension of the engagement. Having not been done so, the petitioner has no right to claim continuation in service, in violation of Clause (v) of Outsourcing Policy Part-II of the State Government.

12. It is well settled proposition of law that contractual employee has no legal right to continue in service or seek permanency.

13. The Hon'ble Supreme Court in the case of ***Dhananjay v. Chief Executive, Zila Parishad, Jalna, 2003(1) SCT 822*** has held as under: -

“4. It is not in dispute that the appellant was appointed on a temporary basis; his services could be terminated without notice and without assigning any reason within a period of one year. In fact, his services were terminated within a period of one year under Rule 5(1) of the Central Civil Services (Temporary Service) Rules. The only question that is required to be answered is: whether the order of termination of services is simpliciter or is punitive attaching stigma to the appellant. No doubt in the order of suspension passed on July 1, 1987 keeping the appellant under suspension, an enquiry was directed against the appellant in regard to the alleged misconduct. But, no enquiry was held pursuant to the said order, having regard to the Government Order dated November 24, 1987 that service of a temporary servant could be discharged within a period of one year without keeping him under suspension and without holding an enquiry. Although initially the enquiry was ordered, in view of this Government Order, the respondent did not proceed to hold



any enquiry. In the criminal case filed against the appellant, he was acquitted.

5. *Para 2 of the impugned order of termination of services makes a mention of the fact that the appellant was suspended. The learned counsel for the appellant, pointing out this paragraph, submitted that it would cast stigma on the appellant and it would adversely affect his prospects. The High Court, in dismissing the writ petition, relied on the decision of this Court in the case of Bihari Lal aforementioned. Para 5 of the said judgment reads thus:*

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Service (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a



temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would, be a charter for him to indulge with impunity in misappropriation of public money."

6. *If we look to the paragraph extracted above, it becomes clear that the facts of that case are almost similar to the facts of the present case. Although a distinction was sought to be made to contend that judgment has no application to the facts of the present case, we are unable to agree with the submission. Merely because the appellant was kept under suspension, that, by itself, is not indicative that the respondent had intended from the beginning to get rid of the services of the appellant by holding an enquiry. It is not the case of the appellant that in spite of the fact that his services were needed, the order of termination of services was passed. Even though the appellant was acquitted in the criminal case launched against him on the basis of the complaint made by the respondent, is also not a factor to indicate that the respondent wanted to take action against the appellant on his misconduct to remove him from service.*

7. *In our view, having regard to the facts and circumstances of the case, it is not possible to hold that the order of termination of services was not simpliciter or the misconduct was the foundation for passing such order. Even if an enquiry was ordered to find out or verify the truth or otherwise and the allegation by itself does not establish that the respondent had any such design to somehow remove the appellant from services, in our view, the*



High Court was right in dismissing the writ petition in the light of the facts of the present case and the judgment of this Court, referred to above.”

14. Further, the Hon’ble Supreme Court in **Yogesh Mahajan v. Professor R.C. Deka, 2018(1) S.C.T. 690** has held 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 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner.

8. Insofar as the final submission of the petitioner to the effect that some persons were appointed as Technical



Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”

15. The Hon’ble Supreme Court in ***Indian Drugs & Pharmaceuticals Limited v. Workmen, Indian Drugs & Pharmaceuticals Limited, 2007(1) S.C.T. 214*** has held that a daily rated or casual worker is only a temporary employee and has no right to continue in service. The operative part of the said judgment is reproduced as under:-

*“13. It may be mentioned that a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post vide **State of Uttar Pradesh & Anr. v. Kaushal Kishore Shukla, 1991(1) SCT 760 (SC) : 1991(1) SCC 691**. The term 'temporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily rated employee, ad hoc employee, etc.*

14. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary

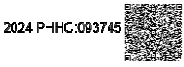


employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation.”

16. Further reference may be made to the judgment of the Hon’ble Supreme Court passed in ***Secretary, State of Karnataka and others V. Umadevi and others, 2006(2) S.C.T. 462***. The relevant portion from the said judgment is as under:-

“34.Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35 to 37. XXXX XXXX XXXX



38. *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”*

17. Finding the present writ petition devoid of any merit, the same is dismissed with no order as to costs.

18. Pending application(s), if any, stand(s) disposed of accordingly.

24.07.2024
R.S.

(NAMIT KUMAR)
JUDGE

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