

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-1052-2018
Date of Decision : 15.01.2024

Sanjiv KumarPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Mehak Bedi, Advocate for
Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has approached this Court by filing the instant writ petition under Article 226 of the Constitution of India for issuance of directions to the respondents to allow the petitioner to join his duties as he has been removed from the service without assigning any reason.

2. It has been averred in the petition that the petitioner is working as a Gardener (Mali) in Municipal Council, Nangal Township from the year 2012 and the petitioner was issued engagement letter dated 28.12.2016 (Annexure P-1) on contract basis for a period of one year. The terms and conditions of the contract are as under :-

“Subject:- Contractual engagement.

You are hereby offered contractual appointment on the following terms and conditions as per approval given by Govt. Notification No.62-Leg/2016 dated 24.12.2016 & Municipal Council Nangal’s Resolution No.10 dated

26.12.2016. If you are willing to work, you may report to the Executive Officer Municipal Council Nangal within 7 days of the receipt of this letter of engagement. The contract engagement is subject to the approval of Resolution No.10 dated 26.12.2016 by the Director Local Govt. Punjab.

1. That you shall be required to discharge the duties attached to the post of MALI;

2. That this engagement is purely contractual basis and is of the period of one year from the date of joining unless it is not revoked/terminated any time during the contract period for any reason;

3. That your contractual engagement shall be governed by the provisions of Rule 1.4 of the Volume I Civil Service Rules, 1970;

4. That during the period this contract subsists, you shall be paid fixed contractual amount of as per DC rate per month;

5. That you shall be required to work on all working days and in case of any absence, the contractual amount shall be paid on pro rate basis;

6. That this engagement shall be construed as 'Appointment to any post in the council' and accordingly you shall not be allowed to any benefit available to the employees of the council;

7. That you shall always submit to the orders of the Executive Officer and/or other officers under which you are asked to work;

8. That this contract can be terminated any time without any previous notice on the basis of medical evidence declaring you unfit or you are becoming incapacitated to discharge the normal duties and the decision of the Executive Officer of the council in this regard shall be final and binding;

9. That on expiry of the contract period, the Contractual engagement without any further notice etc. shall automatically stand terminated."

3. Since the abovesaid contract has not been renewed,

the petitioner has approached this Court with a prayer that he should be

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allowed to continue in service.

4. I have heard learned counsel for the parties and have gone through the relevant documents.

5. Although, it has been averred that the petitioner is working since 2012, however, no document to this effect has been attached with the present writ petition except the engagement letter dated 28.12.2016 (Annexure P-1) whereby the petitioner was engaged on contract basis for a period of one year. Since the engagement of the petitioner was on contractual basis which has not been renewed by the respondents/authorities, no legal right has accrued in favour of the petitioner for continuation in service. It is a well settled proposition of law that the appointments made on contract/ad-hoc basis does not confer any right upon the employee. Even the engagement of the petitioner is not in conformity with the provisions of Articles 14 and 16 of the Constitution of India as it is not the case of the petitioner that he was engaged after following the due procedure of making appointments that is advertising the post, seeking applications from the eligible candidates and thereafter, after following the process of selection. There is no violation of any legal or fundamental right of the petitioner. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court passed in ***Secretary, State of Karnataka and others Vs. Umadevi and others : 2006(2) S.C.T. 462***. The relevant portion from the said judgment is as under :-

“34.Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our

Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. 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.

36. *While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is*

temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

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.”*

6. In view of the above, finding no merit in the instant writ petition, the same is dismissed with no order as to costs.

15.01.2024

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No