



**Central Administrative Tribunal
Principal Bench, New Delhi**

**O.A. No.2112 of 2020
M.A. No.2709 of 2020**

Orders reserved on :15.02.2021

Orders pronounced on : 05.03.2021

**Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

1. Ashok Kumar
Aged about 32 years
S/o Sh. Meghraj Singh
R/o Vill. Sherpur, Gulavathi Rural,
Nathugari, Bulandshahar,
Uttar Pradesh.
2. Monu,
Aged about 32 years,
S/o Sh. Tani Ram,
R/o D-1, Pradhan Enclave,
Burari, Delhi-110084.
3. Devender
Aged about 39 years
S/o Sh. Mahavir Prasad,
R/o D-98, South Ganesh Nagar,
Shakarpur,
Delhi-110092.

Group 'C'

(Contractual Drivers)

...

Applicants

(through Advocate Shri Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Sachivalya
I.P. Estate,
New Delhi-110002.



2. Department of Forest and Wild Life (GNCT of Delhi)
Through its Secretary,
A-Block, 2nd Floor,
Vikas Bhawan, I.P. Estate,
New Delhi-110 002.

... Respondents

(through Advocate Ms. Esha Mazumdar)

O R D E R

Hon'ble Mr. R. N. Singh, Member (J):

In the present Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants, three in numbers, are aggrieved by the order dated 31.8.2020 (Annexure A/1) to the extent as provided therein in the said order that their contractual engagement will not be continued w.e.f. 1.1.2021. The applicants are further aggrieved that in spite of the work against which they have been engaged and have been continuing is of a perennial nature, the respondents have not extended their aforesaid contractual engagements and have orally asked the applicants not to come to duty w.e.f. 1.1.2021.

2. Pursuant to notice from this Tribunal, the respondents have filed their reply and additional

affidavit and the applicants have also filed a consolidated rejoinder in response to the said reply and additional affidavit filed on behalf of the respondents.



3. The applicants have filed aforesaid MA No.2709/2020 seeking permission to file the aforesaid OA jointly. No counter reply has been filed by the respondents to such MA and no serious objection has also been advanced on behalf of the respondents to such MA. Moreover, it is the fact that the applicants are similarly placed and a common/identical cause has been raised by all of them in the present OA. Accordingly, the MA is allowed.

4. The applicants have prayed for the following reliefs in the OA:-

- “(a) Direct the respondents not to replace or substitute the Applicants (contractual drivers) unless by way of regular appointments and
- (b) if need be, quash and set aside the impugned stipulation contained in order dated 31.08.2020 restricting the contractual engagement of the Applicants to the post of driver upto 31.12.2020.
- (c) Direct the respondents to issue necessary appointment orders for



extension/ engagement of Applicants contractual service.

- (d) Accord all consequential benefits.
- (e) Award costs of the proceedings in favour of the Applicant.”

5. The facts leading to the present Original Application are that the applicants were engaged as Drivers on contract basis w.e.f. 16.5.2014, 16.8.2014 and 15.5.2016 respectively. Except for some intermediate/technical breaks, the applicants have been continuing as such lastly in view of the aforesaid order dated 3.8.2020.

6. Shri Luthra, learned counsel for the applicants, argues that once the job/work against which the applicants have been engaged and continuing as such, of course, with technical breaks all along since 2014, the respondents are not justified in disengaging the applicants' such services and that too by replacing them by another set of contractual employees or through any outsource agency.

7. Shri Luthra, further submits that replacement of one set of contractual employees with another set of



such employees is against the settled principles of law, as a contractual employee can only be replaced/substituted by regularly selected candidate and the respondents can disengage the services of the applicants only when there is no work available against which the applicants have been engaged and have been continuing for around six years and/or when the posts against which the applicants have been engaged are filled by the respondents by regular selection in accordance with the relevant rules. To strengthen his submissions, learned counsel for the applicants has placed reliance upon the Judgment of the Hon'ble Delhi High Court dated 3.11.2014 in Writ Petition (Civil) No.1741/2014, titled **Narinder Singh Ahuja and others** vs. **The Secretary, Ministry of Health and Family Welfare and others** (Annexure A/6). He further submits that the aforesaid Judgment of the Hon'ble Delhi High Court has been upheld by the Hon'ble Apex Court in as much as SLP (Civil) No.8706/2015 filed by the Union of India against the same has been rejected by the Hon'ble Supreme Court vide Judgment dated 27.3.2015 (Annexure A/7). He has



further placed reliance upon the Order/Judgment of a coordinate Bench of this Tribunal dated 12.8.2016 in OA No.2149/2016, titled **Ms. Shikha Jain and others** vs. **Union of India and another** (Annexure A/8). The said Order/Judgment of this Tribunal has also been upheld by the Hon'ble Delhi High Court vide Judgment dated 27.7.2017 in Writ Petition (Civil) No.5073/2017 (Annexure A/9). Further reliance has been placed by the learned counsel for the applicants on the law laid down by the Hon'ble Apex Court in the case of **State of Haryana and others** vs. **Piara Singh and others**, reported in 1992 (4) SCC 118, (Annexure A/10). Learned counsel for the applicants further submits that the applicants have been performing their duties to the entire satisfaction of the authorities concerned.

8. *Per contra*, with the assistance of reply and additional affidavit filed on behalf of the respondents, Ms. Esha Mazumdar, learned counsel for the respondents, has vehemently opposed the OA and the claim of the applicants made therein. Learned counsel for the respondents does not dispute the engagement of



the applicants as contractual Drivers under the respondents from the year 2014 onwards. However, she submits that in the last order of engagement, i.e., the order dated 31.8.2020, it is clearly mentioned that the contract will not be extended further beyond 31.12.2020. She submits that alternative arrangement of employment has been made keeping in view the amended provisions of General Finance Rules (GFRs), 2017. She also submits that such decision has been taken by the Department of Forests and Wildlife, Govt. of Delhi, in consonance to the prescribed rules of the General Finance Rules (GFRs). In para 1 of the counter reply, it has been contended by the respondents that amended Rule 147 of GFRs provides as under:-

“The ministries or departments have been delegated full powers to make procurement of goods and services that are not available on GeM. Common use Goods and services available on GeM are required to be available on GeM to be procured mandatorily through GeM as per Rule 149”.

9. She further submits that oral complaints regarding performance of the applicants have been received in the past and the work performance of the



applicants has remained unsatisfactory. However, it is not the case of the respondents that the applicants were being disengaged or were not being continued on the ground of their unsatisfactory performance or lack of suitability in any manner. She further contends that the terms and conditions as set out in the engagement order specifically provides that the engagement was purely on temporary basis and disengagement after 31.12.2020 is only due to the amendment/change in General Finance Rules, 2017 and the Department is duty bound to comply with the directions set out by the Government. It is further submitted on behalf of the respondents that as per the amended provisions under Rule 149 of the General Finance Rules, the procurement of goods and services will mandatorily be done through goods and services available on GeM (Government marketplace) platform and hiring of services of Drivers is available on the aforesaid platform. She argues that department concerned is required to follow the instructions of the Government for hiring Drivers from GeM platform and services of the Drivers are taken from contracted vendors available on the GeM platform. She



further adds that if at all, these Drivers wish to continue in the Department of Forests and Wildlife, the applicants herein may approach the vendors who may be hired from GeM portal/platform. She further argues that the judgments referred to and relied upon on behalf of the applicants are of no help to the applicants. In the additional affidavit, filed on behalf of the respondents, it is asserted that amendments in the GFR Rules were incorporated in the year 2019 vide OM dated 2.4.2019 and in para 4 of the additional affidavit it is stated that the amended Rule 147 of General Finance Rules provides as under:-

“The ministries or departments have been delegated full powers to make procurement of goods and services that are not available on GeM. Common use Goods and services available on GeM are required to be available on GeM to be procured mandatorily through GeM as per Rule 149”.

In paragraphs 5 to 13 of the said additional affidavit, the respondents have explained as to how they have not been able to hire the services of contractual Drivers through the aforesaid portal earlier and have now invited the bids by the said portal on 8.1.2021 (Annexure R/6).



10. In rejoinder, the learned counsel for the applicants has reiterated the facts as precisely noted hereinabove and has submitted that amendment in the GFR for procuring goods and services of Drivers through GeM (Government e-marketing) is not applicable in the present case. He argues that once the replacement of existing contractual employees is not permitted under the law laid down by the Hon'ble Supreme Court and the Hon'ble High Court that itself remained prohibited offline or online. He emphasises that the applicants are continuously working, of course, with technical breaks on contract basis for more than six years and they can be replaced only by regularly selected persons and not by another set of contract employees. He further argues that oral complaints referred to by the respondents are nothing but an afterthought. It is an admitted case that applicants were not being disengaged on the ground of their lacking suitability and for want of their satisfactory performance. He argues that merely for the reasons that the instructions have been issued by the Government to avail goods and services through e-marketing portal of the Government, the rights accrued



to the applicants to continue on the work/post under preference to juniors, freshers or outsiders in view of the law laid down by the Hon'ble Supreme Court and Hon'ble High Court cannot be taken away. The said mode of availing the services may be applicable in case of post or work against which the applicants have not been engaged. Learned counsel for the applicants further submits that department has around 21 or 22 official vehicles and only seven regular Drivers are available. A few persons like the applicants have been working on contract basis and probably, there is a shortfall. At the best, the respondents can resort to GeM portal to meet such shortfall and not to replace the applicants.

11. We have heard the learned counsels for the parties and we have also perused the pleadings available on record and have gone through various judgments referred to and relied upon by the learned counsel for the applicants. It is not in dispute that the applicants have been engaged as contractual Drivers by the respondents and they have been continuing as



such, of course, with certain breaks since 2014. It is also not in dispute that the respondents are still in need of hiring the services of contractual Drivers. It is also not the case of the respondents that the applicants are being denied continuation of their services as contractual Drivers w.e.f. 1.1.2021 on the ground of their proved unsuitability for the post. It is also not the case of the respondents that any statutory provision provides that the vacant post can be filled up on contract basis only by outsourcing and even the persons who have already been working against such regular post on contract basis are required to be replaced by persons outsourced on contract basis through aforesaid GeM portal. The Hon'ble Apex Court in **Piara Singh's** case (supra) ruled in paras 45 and 46 as under:-

45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must



give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

12. In the case of **Narinder Singh Ahuja** (supra), the petitioners were aggrieved by an Order dated 10.1.2014 passed by this Tribunal in OA 1016/2013, wherein the petitioners had initially approached this Tribunal vide said OA on being aggrieved by non-extension of their contractual appointments. They had complained about the respondents' action in discontinuing the petitioners' contracts. This Tribunal has dismissed the said OA vide order/judgment dated 10.1.2014 and thus the petitioners therein in the said OA approached the Hon'ble High Court of Delhi vide Writ Petition (Civil) No.1741/2014 and the Hon'ble High Court of Delhi vide

very detailed discussion has ruled in paragraphs 15 to

17 as under:-



15. *In the opinion of this Court, since the respondents nowhere dispute that there is need for the performance of the work that the petitioners were discharging all along and there is also no dispute that the project and funding (for the project) would continue till 2017, the decision to discontinue the petitioners' engagement is based only on the policy to outsource the contractual employment to a third party. The petitioners are not insisting on regularization, given the nature of the employment or engagement, which is project based. However apart from the decision to "outsource" engagement of contract employment to a third agency, there is no rationale to discontinue the petitioner's contracts. The jurisdiction that the employees engaged through the contractor are paid lower wages is arbitrary, because the "outsourced" or outsourcing agency would have to be paid its service charges. The lower wages paid, therefore, is, in effect, because of the charges/fees paid to the contractor/outsourced agency. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is not their replacement with regular appointees, but instead, with another set of contractual employees. The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended.*

16. *For the above reasons, this court is of opinion that the CAT erred in law, in holding that the petitioners could not complain against*



the discontinuance of their contractual employment. Accordingly, a direction is issued to the respondents to continue the petitioners in contractual employment on annual renewal basis, till the currency of the RNTCP scheme/project in 2017. An appropriate consequential order shall be issued by the respondents within eight weeks from today.

17. The impugned order of the CAT is accordingly set aside; the writ petition is allowed in terms of the above directions.”

13. The said judgment dated 3.11.2014 of the Hon'ble High Court of Delhi in **Narinder Singh Ahuja's** case (supra) was challenged by the Union of India before the Hon'ble Supreme Court and the Hon'ble Apex Court has dismissed the Special Leave to Appeal (Civil) No.8706/2018 vide Order/Judgment dated 27.3.2015 (Annexure A/7). In **Shikha Jain's** case (supra), the applicants, eight in numbers, who had been working as Programme Assistant on contract basis in the National Aids Control Organization of Ministry of Health and Family Welfare, Govt. of India, have approached this Tribunal vide OA No.2149/2016. The grievance of the applicants therein was that the respondents have not been extending their respective contract beyond 30.6.2016 mainly on the ground that the respondents



have decided to hire the support staff from the domestic budgetary support through an outsource agency. After considering various decisions of the Hon'ble Supreme Court as well as the judgement of the Hon'ble Delhi High Court in **Narinder Singh Ahuja's** case (supra), this Tribunal held in paragraphs 9 and 12 of the Order/judgment dated 12.8.2016 (Annexure A/8) as under:-

“9. Admittedly, it is not the case of the respondents that there is no work available after 30.06.2016. On the other hand, it is specifically stated that they will hire the support staff through an outsourced agency. That means that the respondents are intending to replace the applicants, who are working on contract basis, for the last few years, with another set of contract employees, may be, through outsourced agencies. The said action of replacing one set of contract employees with another set of contract employees is clearly against to the settled principles of law. Even the aforesaid decision of the Hon'ble High Court is to the same effect.”

“12. In the circumstances and for the aforesaid reasons the OA is partly allowed and accordingly, the respondents are directed to continue the applicants on the same terms and conditions as long as there is work or till the vacancies are filled up on regular basis. No order as to costs.”



14. The Order/Judgment of this Tribunal in **Shikha Jain's** case (supra) was challenged by the Union of India before the Hon'ble High Court of Delhi vide writ Petition (Civil) No.5073/2017 and the Hon'ble High Court had dismissed the said Writ Petition vide Order/Judgment dated 27.3.2017 (Annexure A/9) and in paragraphs 13 to 15 of the said Order/Judgment, the Hon'ble Delhi High Court has ruled as under:-

*"13. The Tribunal has placed reliance on the decision of this Court in **Narinder Singh Ahuja and Others Vs. The Secretary, Ministry of Health And Family Welfare & Others**, W.P. (C.) No. 1741/2014 decided on 03.11.2014. In paragraph 15 of this decision, the Division Bench held as follows:*

"15. In the opinion of this Court, since the respondents nowhere dispute that there is need for the performance of the work that the petitioners were discharging all along and there is also no dispute that the project and funding (for the project) would continue till 2017, the decision to discontinue the petitioners' engagement is based only on the policy to outsource the contractual employment to a third party. The petitioners are not insisting on regularization, given the nature of the employment or engagement, which is project based. However apart from the decision to "outsource" engagement of contract employment to a third agency, there is no rationale to discontinue the



petitioners' contracts. The justification that the employees engaged through the contractor are paid lower wages is arbitrary, because the "outsourced" or outsourcing agency would have to be paid its service charges. The lower wages paid, therefore, is, in effect, because of the charges/fees paid to the contractor/outsourced agency. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is not their replacement with regular appointees, but instead, with another set of contractual employees. The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended."

14. The aforesaid decision has been relied upon by the Tribunal in the impugned order, since the endeavour of the petitioners is to replace the respondents with an outsourcing agency on contract basis. Learned counsel for the respondents has pointed out that the said decision has been affirmed by the Supreme Court with the dismissal of the Special Leave Petition on 27.03.2015 vide Special Leave Petition (Civil) No.8706/2015.

15. In these circumstances, we find absolutely no merit in this petition. The same is, accordingly, dismissed."

15. From the law laid down by the Hon'ble Apex Court in **Piara Singh's** case (supra) and that by the Hon'ble High Court of Delhi in **Narinder Singh Ahuja's**



case (supra) and **Shikha Jain's** case (supra), it is evident that replacement of a contract employee(s) by fresher(s), junior(s) or even a staff from an outsource agency is prohibited. No statutory provision has been brought to our notice by the respondents, which takes away the right of preferential treatment to the daily wager or contractual employees, who are already engaged and are working for continuation on contract to junior(s), fresher(s) or the person(s) to be engaged through outsourcing agency to be taken away.

16. In view of the facts as noted hereinabove and law as laid down by the Hon'ble Supreme Court of India and Hon'ble High Court of Delhi, referred to hereinabove, we are of the considered view that action of the respondents of not continuing the engagement of the applicants as Driver on contract basis and their action of replacing them by another set of contractual employees through outsourcing is not tenable in the eyes of law.

17. In the result, for the foregoing reasons, the present OA is partly allowed and the respondents are



directed to continue the applicants on the same terms and conditions of on contract basis as long as there is work available with the respondents and/or till the vacancies are filled up on regular basis. The respondents are further directed to issue consequential order as expeditiously as possible and in any case within four weeks of receipt of a copy of this Order. No costs.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

/ravi/