

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/429/2018

Order reserved on 19.11.2020

DATE OF ORDER: 02.12.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

1. Prahlad Sahay Ghasal S/o Shri Nanu Ram Ghasal, aged about 34 years, R/o Ghasalo Ki Dhani, Sherawatpura, Amer, District Jaipur, Rajasthan – 302028. Presently working as I.T. Manager in ESIC Jaipur.
2. Chetan Mahaur S/o Shri Mangal Singh Mahaur, aged about 32 years, R/o Damapura, Gadarpura, Dholpur, Rajasthan – 328008. Presently working as I.T. Manager in ESIC Jaipur.
3. Anoop Singh Choudhary S/o Shri Ram Kanwar Choudhary, aged about 34 years, Village Kherli, District Alwar, Rajasthan – 321606. Presently working as I.T. Manager in Bhiwadi ESIC Modal Hospital.
4. Govind Krishna Sharma S/o Shri Sitaram Sharma, aged about 28 years, R/o 1-B, Vikas Nagar, Murlipura, Sikar Road, Jaipur, Rajasthan – 302039. Presently working as I.T. Assistant in ESIC Jaipur.
5. Dheeraj Singh Rawal S/o Shri Ishwar Singh Rawal, aged about 29 years, R/o 3023, Shreenath Footwear, Sector-9, Hiranmagri, Udaipur, Rajasthan – 313002. Presently working as I.T. Assistant in ESIC Jaipur.

6. Manish Ranjan S/o Shri Mukesh Thakur, aged about 28 years, R/o Post Office Bhowara, District Madhubani, Bihar – 847212. Presently working as I.T. Assistant at Bhiwari Modal Hospital, Alwar.
7. Sandeep Bhavsar S/o Shri Satyanarayan, aged about 31 years, R/o Namendra Bhawan, Sutharwala Udaipur, Rajasthan – 313001. Presently working as I.T. Assistant at ESIC, Sub Regional Office, Udaipur.

....Applicants

Shri Amit Mathur, counsel for applicants (through Video Conferencing).

VERSUS

1. Employees State Insurance Corporation through its Director General, Panchdeep Bhawan, Comrade Inderjeet Gupta (CIG) Marg, New Delhi – 110 002.
2. Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Bhawani Singh Marg, C-Scheme, Jaipur – 302005 (Raj.).

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"It is therefore prayed that the present original application made by the applicant may kindly be allowed and the order dated 31.05.2018 and

10.08.2018 (Annex-A/1) and A/2) may kindly be quashed. The respondents may be directed to allow the applicants continue in the service till the regular appointment is made.

Any other relief or direction which this honourable tribunal deems fit in the facts and circumstances of the case may also be passed in favour of applicants."

2. The brief facts of the case, as stated by the applicants, are that in 2016, an advertisement was issued in newspaper inviting applications for the post of I.T. Managers and I.T. Assistants and in lieu of the same, the applicants, as they were fulfilling the qualifications as well as experience required for the posts, were called for interview and, accordingly, selected for the said posts. At the time of joining, a contract was executed and applicants were issued appointment orders. The initial appointment was for a period of one year and was subsequently extended for further one year in 2017. As the extension period was about to expire in 2018, they were further granted extension of 03 months i.e. upto 31.08.2018. On 10.08.2018, another order was passed mentioning that in future I.T. Managers and I.T. Assistants will be engaged through an NCSI empanelled agencies. In Rajasthan Region, the engagement of I.T. Managers

and I.T. Assistants will be through SISL Infotech Pvt. Ltd. The same shows that respondents are willing to replace the present applicants by another set of employees and that too on higher pay. It is well settled by the Hon'ble Apex Court that one set of temporary/contractual/adhoc employees cannot be replaced by another set of contractual employees. As the applicants are rendering their services satisfactorily without any complaint, the services of the applicants cannot be discontinued as the appointment order of the applicants clearly mentioned that their services will be till completion of term or till completion of regular recruitment. Therefore, the impugned action of the respondents in engaging I.T. Managers and I.T. Assistants through contractors substituting the applicants is impermissible in law and such action is arbitrary, illegal and unjustified. Also no notice and opportunity of hearing was given to the applicants, so the action of respondents is against the principles of natural justice. As it is very clear that a temporary/adhoc/casual employee cannot be replaced by another employee of same capacity, therefore, the applicants are forced to approach this Tribunal that

they may be allowed to be continued till regular appointment is made.

3. This Tribunal issued notices to respondents and vide its order dated 31.08.2018, it was clearly stated that purely as a provisional measure, if the applicants are in contractual employment with the respondents as on date, then status quo may be maintained in this regard till the next date of hearing. The said interim relief is continued till date.

4. The respondents, after issue of notices, have filed their reply and raised preliminary objection against the jurisdiction of applicant No. 7 stating that he is neither resident nor working under the jurisdiction of this Tribunal. Also another objection was raised stating that the applicants are not similarly placed and, therefore, joint O.A. cannot be filed as there are two set of employees working in different cadres as well their appointing authorities are not same. On facts, it was stated that the applicants were engaged on contractual basis as per the guidelines issued by the Headquarter on 28.03.2016 (Annexure R/1). As per the tenure of engagement, it was clearly

mentioned that the engagement will be initially for one year and may be extended for another one year. It was also made clear that ESIC will reserve its right to terminate the engagement by giving one month's notice. As the engagement of the applicants was purely on contractual basis to meet the urgent nature of work through the agreement executed on 13.06.2016 and as the same was only for a period of one year and further clarified that it may be extended for another year, therefore, the same does not create any right in favour of the applicants to work further even after expiry of time period mentioned in the agreement. Respondents further stated that as the competent authority has decided that in future I.T. Managers and I.T. Assistants will be engaged through National Informatics Centre Services of India (NICSI - a Government of India Enterprises) empanelled agencies and all concerned Heads of Offices were requested to extend the contract of I.T. Managers and I.T. Assistants upto 31.08.2018. As discussed with the NICSI officials, it has been decided that ESIC would engage I.T. Managers and I.T. Assistants for its offices and hospitals through the IT Manpower supplying agencies empanelled by NICSI under Rate

Contract No. NIC/TPS/2016/43/RC/05 dated 17.01.2018 valid upto 04.01.2020. As per the same, I.T. Managers will be engaged against the Resource Category at Sl. No. 6 of the Rate contract i.e. Tech Lead Level 1/ Solution Architect/Security Expert with gross Hiring charges as Rs. 55,000/- per month. Also I.T. Assistants will be engaged against the Resource category at Sl. No.8 of the Rate contract i.e. Programmer/Technical Support Engineer/Testing Engineer with gross Hiring charges as Rs. 22,000/- per month. Therefore, it is made clear that the applicants have no right for their further continuance and, thus, the interim relief granted by this Tribunal vide order dated 31.08.2018 deserves to be vacated. In view of the above discussions, the applicants are not entitled for any relief and the present Original Application deserves to be dismissed being devoid of merits.

5. The respondents have also filed an M.A No. 291/524/2020 for early hearing of the O.A. and also filed M.A No. 291/525/2020 for taking documents on record. In M.A. for early hearing, the respondents pointed out that the applicants were engaged on

contractual basis initially for a period of one year, which was further extended by another one year. The selection was made by Interview Board after inviting applications through newspaper advertisement. Thereafter, as per Headquarters instruction dated 10.08.2018, I.T. Managers and I.T. Assistants were engaged through NICSi empanelled agencies and presently Headquarters issued instruction on 03.08.2020 to outsource the services of I.T. Managers and I.T. Assistants from GeM empanelled agencies. Therefore, in the garb of interim relief, the respondents are not in a position to implement the recent guidelines issued by the Headquarters and, as such, they are seriously prejudiced and pray that interim order be vacated else great injustice will be caused to them. The respondents, therefore, prayed that present O.A. be heard at the earliest in interest of justice. Also in M.A for taking documents on record, respondents want to bring on record order dated 03.08.2020 (Annexure MA/1) as well as order dated 22.01.2020 (Annexure MA/2). As per letter dated 22.01.2020, it was pointed that since the tenure of I.T. Managers and I.T. Assistants was getting over, ESIC explored the possibility of hiring technical

manpower through empanelled agencies of NICSI, on contract. As per order dated 03.08.2020, respondents state that the Standing Committee in its meeting held on 06.07.2020 has approved the ESIC may outsource the services of I.T. Managers and I.T. Assistants from GeM empanelled agencies as per the qualifications & experience as approved and which was being followed by NICSI.

6. Heard learned counsels for the parties through Video Conferencing and perused the material available on record and also the judgments produced by the parties.

7. Learned counsel for the applicant vehemently argued that the action of the respondents in substituting applicants from staff providing agency is illegal as they cannot substitute them and appoint other set of contractual employees with payment on higher side. Also the same is in violation of Articles 14, 16 and 21 of the Constitution of India. The applicants further added that discontinuing them will adversely affect their livelihood. Also substituting them with inexperienced employees in the same

capacity has no justification. As they have a right for appointment, their services cannot be discontinued. The applicant relied upon the judgment of Hon'ble Supreme Court in the case of State of Haryana and Ors. vs. Piara Singh and Ors., reported in (1992) 4 SCC 118, wherein it was held that one set of contractual employee cannot be replaced by another contractual employee.

8. On the other hand, learned counsel for the respondents stated that contractual employees have no right in their favour after expiry of their contract. As the applicants were bound by the terms of the contract, they have no right to continue in the posts and, therefore, they cannot be granted any relief and the interim relief be vacated in the interest of justice.

9. On careful consideration of the arguments of learned counsels for the parties and pleadings on record, we find that the applicants were engaged under a specific contract and they were supposed to abide by the terms and conditions contained therein. Once the applicants have accepted the nature of appointments, as well as terms and conditions of the

offer of appointments, they cannot wriggle out of those binding terms and conditions and they cannot make a hue and cry when their services are discontinued. It is also clear that the initial appointments were made in absence of any rules of recruitment governing the posts. The applicants were not appointed against any sanctioned posts but were only engaged to meet the exigencies of situation. If a contractual appointment is made, the appointment comes to an end at the end of contract. The Government or instrumentality of the State cannot confer any permanency of such employee either by way of regularization or by way of absorption. Some of the relevant clauses of the contract entered by the applicants are as under:-

1. The offer of appointment is purely on contract basis for a period of one year from the date of joining with no right to be absorbed in the organization.
2. The tenure for engagement will be only for one year extendable for another one year.
3. The appointing authority reserves right to terminate the appointee any time even before the tenure without assigning any reason or for failure to perform assigned duties to the

satisfaction by giving one month's notice or one month's salary in lieu of notice period. Similarly the engaged person will have to give one month prior notice for resigning or will have to pay an amount equivalent to one month's remuneration in lieu of the notice period.

10. Applicants have not even filed a rejoinder to contradict as to what has been pleaded by the respondents in their reply. It is absolutely clear that the nature and character of appointments of the applicants is very specific and is governed by terms and conditions laid down in contract. They cannot be allowed to turn around and claim that there has been violation of principles of natural justice. The contention of the applicants that they have been appointed on contract basis with due procedure, like advertisement and selection through interview and, therefore, it was in accordance of the Constitutional Scheme, cannot be accepted as the nature of appointments itself was only contractual and for a limited period.

11. The applicants have contended that the scheme specifically provided for contract appointments and that as such, they have gained experience were liable

to be continued in service in the best interest of the scheme as well. It was also contended that in identical cases, Hon'ble High Courts and other courts have directed the retention of the contract employees as long as the scheme continues.

12. In the present case, the applicants are I.T. Managers and I.T. Assistants. As per the letter dated 22.01.2020, it was pointed out that *"For IT support there was an urgent need of IT Professionals in the ESIC field offices to assist in dealing with the various issues after the O&M for project Panchdeep was awarded to M/s RailTel in Sept, 2016. The IT manpower was approved for deployment in the field offices by the ESI Corporation in its 166th Meeting. The IT Manager and IT Assistant were engaged on contractual basis for one year period which was extended by another one year. The selection was made by Interview Boards constituted in all Regional Offices after inviting the application through newspaper advertisement. Since the tenure of the IT Managers and IT Assistants was getting over, ESIC explored the possibility of hiring technical manpower through empanelled agencies of NCSI, on contract."*

IT Managers and IT Assistants for ESIC field offices were thus hired through NICSI. Since then ESIC has been hiring IT Managers and IT Assistants from empanelled agencies of NICSI after taking due approval of the Competent Authorities. The matter may kindly be brought to the notice of Hon'ble CAT. This issues with the approval of IC (ICT)."

Also as per letter dated 03.08.2020, it was pointed out that "the Standing Committee, *in its 219th Meeting held on 06.07.2020, has approved that ESIC may outsource the services of the IT Managers and IT Assistants from GeM empanelled agencies as per the qualifications & experience as approved and presently being followed through NICSI (as per Annexure 'A'), for a period of at least 2 years from the date of engagement. While bidding through GeM, the upper ceiling limit of the monthly remunerations against the IT Assistants and IT Managers may fixed as per the present rate through NICSI empanelled agencies, plus Service Charges of the agency and Taxes as applicable (Present rate: Rs. 69,260/- for the IT Manager and Rs. 27,704/- for the IT Assistant, plus Services charges & Taxes, plus 10% annual increment on*

remuneration). In few locations where the services were already obtained as per specified requirement through GeM empanelled agencies, those may continue as per the agreement signed. Those Hospitals, Dispensaries and other Offices where the services could not be arranged / hired through GeM due to Covid-19 lockdown conditions, have been granted one-time permission to avail services of the IT Managers and IT Assistants through NICSI for maximum 6 months w.e.f. 01.07.2020 or till obtaining the services through GeM, whichever is earlier. For any query related to bidding / tendering process / difficulty being faced on GeM Portal (apart from query related to Policy Formulation / implementation), the same may be dealt directly from GeM Support. This issues with the approval of competent authority.”

13. Therefore, assuming that the adhoc employees cannot be replaced by another adhoc employees as per judgment in the case of Piara Singh (supra), but in present case, the applicants were outsourced by different agencies purely on contract basis whether it is NICSI or GeM. Thus, when the applicants were made to sign a contract and were aware that they are

only for a period of one year, which may be extended for another year, then it is highly unfair on the part of applicants to claim that their services cannot be discontinued. As we look at the matter, the issue of termination of the services of an adhoc or contractual employee is strictly confined between the employer and the employee. The sole consideration here is whether the respondents have a legal right to terminate/discontinue the services of an adhoc/contractual employee or not. Viewed from the opposite angle, it is whether the latter has a legal right to continue in his post. It is clear that an employee appointed on contractual basis has no right to the said post. Now, if the employer has the power to discontinue the services of the employee in accordance with the terms of the contract, the employer can very well do so as it was clear that the employee was aware for how long he will be in service /work as he himself has also signed the contract.

14. The issue involved in the present Original Application is no longer res integra as the Hon'ble Supreme Court in a catena of decisions have made it clear that the employees appointed on contract basis

have no right to continue in service or for reinstatement after the period of contract is over. Admittedly, the applicants were appointed on contract basis and not in accordance with the Constitutional Scheme of employment. There is no fundamental right of those who have been employed on daily wages or temporarily or on contract basis to claim that they have a right to be absorbed in service or that they can continue beyond the period of contract.

15. As held by the Hon'ble Apex Court in the case of Rajasthan State Roadways Transport Corporation vs. Paramjeet Singh, reported in AIR 2019 SC 2610, contractual employees have no right to continuance or challenge their termination after the period of contract is over. It was further stated that when the terms of the appointment indicate that the employee was on a purely contractual appointment and that the services could be dispensed with without notice at any stage, then there is no breach of principles of natural justice and no notice is required. Also similar view was taken by the Hon'ble Apex Court in the case of Official Liquidator vs. Dayanand & Ors. (2008) 10 SCC 1, wherein it was pointed out that when the

advertisement as well as the appointment order made it clear that the selection and appointment was purely contractual, then the same does not create any right to the said post.

16. The Courts have held time and again that though even in contractual appointments, a State cannot act whimsically and capriciously or in an arbitrary manner but this principle cannot be extended to support the view that in every case it would be incumbent upon the State to extend a contract of employment on its expiry. In such like cases, State is not required to extend a contract of employment on its expiry. A party to a contract has no right to claim that the contract with him be extended even if such a right is not afforded to the party by the terms of the contract. Once the terms of contract have been duly performed and the contract has come to an end, there would be no obligation on the part of the State to extend the same. Admittedly, when in its 219th meeting held on 06.07.2020, it has been approved by the Standing Committee that ESIC may outsource the services of IT Managers and IT Assistants from GeM empanelled agencies, then applicants have no right to continue or

try to get their contract extended under the garb of interim orders of the Court. Since they were clearly put to notice that they are purely on contract only for a particular period or for another year, they have no right to continue any further. Thus, it is not possible to conclude that the decision of the respondents not to extend the contract of applicants was arbitrary or illegal as it is clear that outsourced employees cannot seek continuation of service on expiry of contract.

17. The argument of the applicants that they cannot be replaced by another set of adhoc employees also does not hold good in terms of the law laid down by the Hon'ble Apex Court in the case of State of Uttar Pradesh and another vs. Kaushal Kishore Shukla, reported in (1991) 1 SCC 691 wherein it has been held that services of a temporary employee can be dispensed with in terms of appointment.

18. The Hon'ble Apex Court in the case of Gridco Ltd. & Anr. vs. Sadananda Doloi and Ors. reported in AIR 2012 SC 729, in relation to contractual employees, in para 27 held as under:-

"27. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis."

19. In the conspectus of the aforesaid factual position and legal principles laid down by the Hon'ble Apex Court from time to time, we are of the firm view that this Original Application lacks any merit and is dismissed accordingly, leaving the parties to bear their own costs. In view of the observations made above, the interim relief of status quo granted to the applicants as on 31.08.2018 is hereby vacated.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER