

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/37/2020

Order reserved on 04.02.2021

Order pronounced on 12.02.2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Nisha Sharma d/o Sh. Tirath Ram R/o Village Patoli Brahmana, PO
Muthi, Tehsil & District Jammu.

.....Applicant

(Advocate: Mr. Ankesh Chandel)

Versus

1. State of Jammu & Kashmir, Through Principal Secretary, Home Department, Civil Secretariat, Jammu.
2. Director, Sainik Welfare Department, Amphalla, Jammu.
3. Zila Sainik Welfare Department, Amphalla, Jammu

.....Respondents

(Advocate: Mr. Amit Gupta, Id. Additional Advocate General)

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

The present petition has been filed by the applicant Nisha Sharma seeking the following reliefs:-



- “(a) An appropriate writ, order or direction in the nature of writ of certiorari quashing advertisement notice no. 234/ESTT/DSW/2019 dated 06 Feb 2019 issued by respondent no. 2 whereby two posts of Lady Assistant Zila Sainik Welfare Office one for Jammu and another for Srinagar, have been advertised in utter defiance and violation of the service condition envisaged in Government order No. Home-156(P) of 2007 dated 03.04.2007.
- (b) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondent no. 2 to grant extension to the appointment of the petitioner as Lady Assistant which is lapsing on 30th April, 2019 and allow her to continue serving as Lady Assistant for maximum of 12 years or till she attains the age of superannuation i.e., 60 years in terms of the service condition envisaged in Government order No. Home-156(P) of 2007 dated 03.04.2007.
- (c) An appropriate writ, order or direction in the nature of writ of mandamus directing the respondents to desist from replacing the petitioner working on contractual basis as Lady Assistant with another incumbent to be engaged on contractual basis.
- (d) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents 2 and 3 to allow the petitioner to continue serving as Lady Assistant and grant to the petitioner her salary and emoluments regularly without any hindrance, obstruction or interruption.
- (e) Any other relief, which this Hon’ble Court in the facts and circumstances of the case deems fit and proper.”

2. It is the case of the applicant that pursuant to an advertisement Notice No. 261/Estt/DSW/2013 dated 29.01.2013, she applied and vide order dated 23.04.2013 was appointed as Lady Assistant, Zila Sainik Welfare Office, Jammu on contractual basis for a period of three years on terms and conditions that she will not claim seniority/permanency of the service



rendered by her as the job is purely on contractual basis. Thereafter, her contractual appointment was extended for further period of three years vide order dated 9.07.2016. It is the further case of applicant that the respondents in violation of rules are not going to extend her contract and this is apparent from the fact the respondent have issued advertisement notice dated 06.02.2019 advertising for two posts of Lady Assistant, Zila Sainik Welfare Office, Jammu and Srinagar.

3. During the course of arguments, learned counsel for applicant reiterated the pleas raised by him in the T.A and submitted that applicant is entitled to relief of extension of the contract on basis of which the applicant had been given the employment in the respondent-organisation and even so, a contractual employee cannot be replaced by another contractual employee and also that her contract be extended as per the stipulation in Government order No. Home – 156 (P) of 2007 dated 03.04.2007 that a lady can serve maximum of 12 years or age of superannuation i.e. 60 years.

4. On the other hand, learned AAG submitted that the applicant was engaged on contractual basis and once the term of contract expires, the appointment came to an end by efflux of time and the contractual employee

has no right to continue in the employment of the respondents and to allow the O.A. would be to foist an employee upon an unwilling employer and the remedy, if any, is for the applicant is to file a suit for damage.



5. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record as well as the pleadings.

6. The terms and conditions in the contract relied upon by the applicant clearly indicates that the service of applicant would be for a period of three years and therefore, applicant has no cause of action to seek extension of her contract. Further, even in view of the law laid down by the Hon'ble Apex Court, applicant has no right to extension of his service/contract. This is more so when the respondents have initiated a process established by law to make appointments. The contention of applicant that she is entitled for extension of her contractual services is devoid of force and to be rejected. Respondents are under no legal obligation to enter into a fresh contract to extend the employment of the applicant.

7. It would be apt to note the observation of the Hon'ble Apex Court in State of Karnataka v/s Uma Devi, AIR 2006 SC 1806 that:-



"47. 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 cases concerned, in consultation with the Public Service Commission.

xx xx xx xx

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

And in Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad (2006) 7 SCC 684, the Hon'ble Apex Court has held as under:-



“25. The appellant submitted that he has been continued in service for 14 years and is entitled for regularization. This aspect of the matter has also been specifically dealt with by the said Constitution Bench in para 45 of the judgment and it was observed as under:

“45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. 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...”



8. In the present case, the terms and conditions of employment of applicant is governed by a contract and on the expiry of the term of the contract, the employment of applicant is not required to be terminated by notice. This point is further clear from the advertisement and the terms and conditions of appointment order and contract of the applicant. In the present case, it is not in dispute that the applicant had been engaged purely on contract basis. The terms of the contractual engagement were spelt out to the applicant at the time of her engagement, which, inter alia, included consolidated monthly salary payable to her, period of engagement as well as other conditions.

9. In the case of State of Maharashtra & others v. Anita & another etc. 2016 (5) SLR 136, the Hon'ble Apex Court has observed as below:-

“15. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government....



16.... the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment.”

10. It is also a settled law that in matter of contract between two parties, in the event of any breach of contract, the adversely affected party can seek enforcement of the contract or damages and nothing beyond that. The Hon'ble Apex Court in the case of:

A. Nandganj Sihori Sugar Co. Ltd. V. Badri Nath Dixit, (1991) 3 SCC 54 has held that “11..... Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts...”

B. Ramesh v/s UOI, (2019) 1 SCC (L&S) 525 that “If the writ petitioner has any personal grievance in relation to any of his



contractual personal rights flowing from any service conditions or any other agreement with the respondent No. 12 - Company, his legal remedy lies in filing Civil Suit or take recourse to any other civil law remedy for adjudication and enforcement of his rights *qua* respondent No. 12 -Company or anyone claiming through them as the case may be. The writ petition under Article 32 of the Constitution is not the remedy for agitating any such grievance.”

C. S.C.Anand v/s Union of India, AIR 1953 SC 250 that “14. There was no compulsion on the petitioner to enter into the contract he did. he was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived.

15. Article 16(1) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five year one) came to an end, he was not a permanent Government servant and Government was not bound either to re-employ him or to continue him in service. On the other hand, it was open to Government to



make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the employment was continued, it was in point of fact, and in the eyes of the law, under a new and fresh contract which was quite separate and distinct from the old even though many of its terms were the same. Article 16(1) deals with equality of opportunity in all matters relating to employment or appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the employment is permanent there are certain statutory guarantees but in the absence of any such limitations Government is, subject to the qualification mentioned above, as free to make special contracts of service with temporary employees, engaged in works of a temporary nature, as any other employer.”

D. Yogesh Mahajan v/s Professor R.C.Deka, (2018) SCC (L&S) 474
that “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.”

11. In the present case, the contract between the applicant and respondents was for a fixed period and on the expiry of the contract period, the contract stood concluded and therefore, the applicant has no legal right to seek further extension/appointment on the basis of a contract in which the fixed term had expired. When the applicant’s contract came to end by efflux of time, she is not permanent servant of the respondents and respondents were not bound either to re-employ her or to continue her in service or renew the contract. It is clear from the contract that the appointment of applicant was on contractual basis and in terms of agreement, the contract was for a period of three years. There is nothing on record to show that there

was any sanctioned post of permanent nature against which the applicant was appointed on permanent basis.



12. Learned counsel for applicant had relied upon the following citations in support of the case of applicant:-

- 1) Barinder Kaur v/s Guru Nanak Dev University, 2015 Legal Eagle (P&H) 344. However, the citation is distinguishable from the facts of the present case. In the present case, the post unlike in the cited case was created on contractual basis whereas in the case of Barinder Kaur, the appointment was a stop gap arrangement till the post is filled by regular appointment.
- 2) In case of State of Haryana Vs Piara Singh & Ors, 1992 (4) SCC-118, the appointment was made on adhoc or temporary basis and was not on regular basis by way of a contract as has been so done in the present case where the contractual posts were created by a Government order being contractual in nature were governed by the terms and conditions of the contract which was entered into between the applicant and the respondents. Hence, the facts of the present case are distinguishable from the cited case.
- 3) Order dated 28.12.2018 in LPA No. 229/2018 titled Mohd Yousaf Butt and ors vs State and ors passed by the Hon'ble High Court of J&K. In the cited case, again the appointments were made on temporary basis whereas in the instant case, the appointments were governed by contracts made in pursuance of

the order of the Government and could not be termed as Ad-hoc or temporary appointment.

- 4) Pinki Kumari & Ors vs State of Rajasthan, 2019 Legal Eagle (RAJ) 703. In the cited case, it comes out that the petitioners thereunder were appointed under Sarve Shiksha Abhiyan Project by way of an advertisement. In the present case, the employment of the applicant is traceable to a contract which again is referable to the order passed by the Government creating the post on contractual basis and in this sense the post was not ad-hoc or temporary but based on creation of post governed by a contract having a contractual period of fixed tenure.

13. In view of the facts of the case and the legal principles, we do not find any merit in this O.A., it is accordingly dismissed. In the circumstances of the case, parties are left to bear their own costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-

