

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. No. 61/544/2020

**Order reserved on 29.01.2021
Order pronounced on 04.02.2021**



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

Colonel Virender Singh (Retd), Age 57 years, S/o Late Sh. J.S. Dogra,
R/o H. No. 46-C, Lane No. 29, Tawi Vihar, Sidhra, Jammu

.....Applicant
(Advocate: Mr. Sachin Sharma, for Mr. Vikas Mangotra)

Versus

1. State of Jammu & Kashmir, Through Principal Secretary to Government, Home Department, Civil Secretariat, Srinagar.
2. Director, Sainik Welfare Department, Ambphalla, Jammu.
3. Sh. Harcharan Singh, Director, Sainik Welfare Department, Ambphalla, Jammu

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

(ORDER)
(DELIVERED BY HON'BLE MR. RAKESH SAGAR JAIN)



TA has been filed by the applicant Col. Verinder Singh seeking direction to extend the service of the applicant up to the age of superannuation as per SRO 7 of 1971 or on the analogy of similarly situated employees whose service have been extended up to the age of superannuation.

2. It is the case of the applicant that pursuant to an advertisement Notice No. 204/Estt/DSW/2016 dated 16.01.2016, he applied and was appointed as Zila Sainik Welfare Officer, Udhampur on contractual basis for a period of three years. As per SRO 7 of 1971 and Government Order dated 18.12.2017, he had submitted an application for extension of his services upto the age of his retirement. Since the respondents had not considered his application, he filed the present petition seeking a number of reliefs but during the arguments confined his arguments to the following relief:

“d. Writ, order or directions in the nature of Mandamus may kindly be issued directing the respondents to grant extension in the services/employment of the petitioner as Secretary/Zila Sainik Welfare Officer up to the age of superannuation i.e., 62 years, in terms of Recruitment Rules of 1971, which were applicable to the service conditions of the petitioner, when he joined his service as Zila Sainik Welfare Officer.”



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. It is argued by learned counsel for applicant that applicant is entitled for extension of his contractual services since similarly placed other contractual staff in the respondent's organization have been granted extension of their contracts.

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 T.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 his 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 he is entitled for extension of his contractual services since similarly placed other contractual staff in the respondent's organization have been granted extension of their contracts 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.

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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 on contract basis. The terms of the contractual engagement were spelt out to the applicant at the time of his engagement, which, inter alia, included consolidated monthly salary payable to him, 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 follows:-

“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 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, he is not permanent servants of the respondents and respondents were not bound either to re-employ him or to continue him in service or renew the contract. It is clear from the contract dated 26.10.2016 that the appointment of applicant was on contractual basis and in terms of agreement, the contract was for a period of three years which was never extended. 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. In view of the facts of the case and the legal principles, we do not find any merit in this T.A., it is accordingly dismissed. In the circumstances of the case, parties are left to bear their own costs.

(ANAND MATHUR)
MEMBER (A)
Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)