



**Central Administrative Tribunal
Jammu Bench, Jammu**

Hearing through video conferencing

O.A. No.61/1188/2020

This the 11th day, Friday of December, 2020

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Hon'ble Mr. Pradeep Kumar, Member (A)

Lt. Col. Nasib Singh (Retired), S/o. Shri Gandharb Singh,
Age:60 years, R/o. Village Dhar Dharochan, PO Seri
Panditan, Tehsil Bhalwal, Disrict Jammu-181 206.

.....Applicant

(Mr. Arif Javeed Khan, Advocate)

Versus

1. Union Territory of Jammu & Kashmir through
Principal Secretary, Home Department,
Civil Secretariat, Jammu/Srinagar;

2. Director, Sainik Welfare, Amphalla,
Jammu-180 016.

..... Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

OA has been filed by the applicant 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 as applicant's service is going to expire on 27.12.2020.

2. It is the case of the applicant that pursuant to an advertisement Notice No.74/Estt/DSW/2017 dated 05.07.2017 issued by the respondent No.2, he applied and was appointed as Zila Sainik Welfare Officer, Poonch 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 dated 08.07.2020 for extension of his services upto the age of his retirement. Since the respondents had not considered his application, he filed OA No.61/985/2020 which was disposed by the Tribunal by order dated 06.11.2020, with a direction to respondents to consider and decide his representation dated 28.09.2020 by passing a reasoned and speaking order within a period of two weeks.

Inspite of the said order, the respondents have not passed any order. Hence he filed the instant OA seeking the aforesaid relief.

3. Learned Counsel for applicant during course of arguments reiterated the pleas raised by him in the O.A and submitted that he entitled to relief of extension of the contract on which he had been given the employment in the respondent-organisation.

4. On the other hand, learned AAG submitted that the applicant who was engaged on contractual basis and once the term of contract expires, the contractual employee has no right to continue in the employment of the respondents. It was further argued by learned AAG that the appointments by the Government can be made only in accordance with rules and procedure relating to regular recruitment and it would be improper for the Courts to regularize services of temporary or contractual workers, who have not been appointed following the procedure laid down under Article 14, 16 and 309 of the Constitution, but instead purely on contract basis. It was further argued by respondents that the dispute in the present case is one of contract and contractual obligations by the contracting parties. The applicant entered into the contracts with the respondents of his own consent and free will. The employment by contracts are interim measures taken by the administration to tide over the immediate pressing problem faced in the running of the organization and these contracts are always subject to recruitment by way of regular appointment through the open merit system. The applicant has no right to

continue beyond the period of their contract and to allow the O.A. would be to foist employees upon an unwilling employer. There is no scope for applicant to seek the relief of furthering his appointment as he was appointed on contractual basis and the remedy, if any is for the applicants is to file a suit for damage, in case the applicants think that there has been a breach of contract by the respondents and when the appointment comes to an end by efflux of time the appointees have no right to continue in the post and to claim regularization. Therefore, the O.A. be dismissed.

5. We have heard and considered the arguments of the learned counsels for the parties and gone through pleading.

6. It is the case 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.

7. The terms and conditions 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, applicants have no right to extension of their service/contract. This is more so when the respondents have initiated a

process established by law to make appointments. 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 applicants. 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 them, 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 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...”

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 respondent and respondents were not bound either to re-employ him or to continue him in service or renew the contract.

12. We may also refer to law laid down by the Hon'ble Supreme Court of India in Director, Institute of Management Development, U.P. v/s Pushpa Srivastava, (1992) 4 SCC 33 wherein it is held as under:

“To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this

conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative."

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

(Pradeep Kumar)
Member (A)

(Rakesh Sagar Jain)
Member (J)

asvs