
(2019) 07 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11812 Of 2019

Durgesh Kumar Soni & Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 141

Citation : (2019) 07 MP CK 0089

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Pushyamitra Bhargava, Ashutosh Nimgaonkar, Amol Shrivastava

Final Decision : Dismissed

Judgement

By this petition the petitioners have prayed for a direction to the respondents not to terminate the contractual services of the petitioners and have

further sought a direction to continue the petitioners on the post of Data Entry Operator after 30.6.2019.

The case of the petitioners is that they were appointed on the post of Data Entry Operator on contract basis at different point of times between 2007

to 2015 and their contractual appointment was extended and is going to expire on 30.6.2019, therefore, they should be granted the relief as prayed for.

Learned counsel appearing for the petitioners submits that the CEO has already sent the communication dated 10.6.2019 (Annexure P/7) to extend

the petitioners' contract for six months and that in terms of the decision of the Cabinet dated 29.5.2018, the contract appointees have a right to

continue.

As against this, learned counsel for the respondent on instructions has opposed the petition.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the period of contract appointment of the petitioners is already over. They are seeking mandamus to extend the period of contract and allow them to work even though the contractual period has come to an end. Services of contract employee are governed by the terms of the contract and no legal right exists in favour of the petitioners to pray for such a direction.

This Court by order dated 30.8.2017 passed in WP No.5430/2017 considering the similar controversy and taking note of the earlier judgments on the point has held as under:-

6. The petitioners being contract appointees have limited rights and their contract can always be terminated as per terms of the contract.

7. Supreme court in the matter of Gridco Limited and another Vs. Sadananda Doloi and others reported in (2011) 15 SCC 16 while considering the issue of termination of contract appointment has held as under:-

41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.

8. In the matter of Gridco Limited and another (supra), Hon'ble Supreme Court has considered the earlier judgments on the point and in paragraph 38 has noted the shift in the legal position and held that with the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority.

Setting down the parameters of the judicial review in such matters, it has been held that the writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. But that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. In clear terms it has been held that the Court cannot sit in the armchair of the administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances.

9. In the matter of Satish Chandra Anand Vs. The Union of India, reported in AIR 1953 SC 250 the Four Judges Bench of Supreme court has laid

down that the termination of contract appointee after notice as per contract is neither a dismissal nor removal from service or reduction in rank but is an ordinary case of a contract being terminated by notice under one of its clauses and in such cases the remedy of writ is misconceived and if such an appointee has been denied any right under the contract, assuming he has any, then he should pursue in the ordinary Courts of the land such remedies for a breach as are open to him.

10. It is also settled that if the order of termination of a contract appointee is in innocuous and not on the basis of any allegation, no opportunity of hearing is necessary (See: Brahamdutta Gupta Vs. State of MP & others, reported in 2004(2) MPLJ 306).

11. In the matter of Vidyavardhaka Sangha and another Vs. Y.D. Deshpande and others reported in (2006) 12 SCC 482 in similar case where the contract appointment was for a fixed tenure the Supreme court has held as under:

4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time,

they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis.

The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-

settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons

holding such post have no right to continue on the post and ask for regularisation, etc.â??

12. In the matter of State of Karnataka Vs. Umadevi reported in (2006) 4 SCC 1 has held that if the appointment is contractual in nature, it comes to

an end at the end of the contract. In paragraph 53 as a one time measure the State Government and its instrumentality were directed to regularise the

service of such irregularly appointed who had worked for more than 10 years on duly sanctioned post and it was very categorically held that there

should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the

constitutional scheme.â??

The Principal Seat in the matter of Rajendra Prasad Bakoriya Vs. State of M.P. and others vide order dated 26.8.2016 passed in WP No.8150/2011

and in the matter of Shivratri Barmaiya Vs. State of M.P. and others vide order dated 11.11.2016 passed in WP No.15502/2016 has held that the writ

petition against the termination of contract appointment after tenure is over is not maintainable.

So far as the Cabinet decision dated 29.5.2018 is concerned, the said decision runs counter to the judgments of the Honâ??ble Supreme Court which

are binding precedent under Article 141 of the Constitution, specially the judgment of the Supreme Court in the case of Umadevi (supra). Hence the

petitioners are not entitled to the benefit of it.

So far as the reliance of the learned counsel for the petitioner on the communication dated 10.6.2019 is concerned, it has been pointed out by learned

counsel for the State that similar recommendations have already been rejected by the Commissioner, Cooperative and Registrar vide order dated

28.5.2019. Counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the matter of Hargurpratap Singh Vs. State of

Punjab and others reported in (2007) 13 SCC 292 but in that case one ad hoc appointee was sought to be replaced by another, which was not

approved by the Honâ??ble Supreme Court, but no such factual position in the present case has been pointed out. He has also placed reliance upon

order of the Division Bench dated 5.2.2018 passed in WA No.418/2017 in the case of State of M.P. Vs. Puneet Mohan Khare but that was also a

case where one contract appointee was sought to be substituted with another contract appointee, but in the present case no such material exists.

Having regard to the aforesaid, I am of the opinion that no case for any interference in the present writ petition is made out. The petition is accordingly dismissed.

C.C. as per rules.