
(2015) 06 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17836 of 2013 (O&M)

Joginder Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 179 PLR 699

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Ramneek Vasudeva, for the Appellant; Chetan Mittal, Senior Advocate as Assistant Solicitor General of India and Udit Garg, Senior Panel Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.

1. In the year 2003, the Ministry of Defence, Government of India introduced the Ex-Servicemen Contributory Health Scheme (hereinafter referred to as - the Scheme).

2. The Scheme aimed to provide medicare to ex-servicemen and their dependents through a network of polyclinics and service medical facilities spread across the country. The Scheme was a contributory Scheme and was to extend the earlier referred benefits on payment of contribution. The appointment of the staff, under the Scheme, was to be on contractual basis.

3. As per Appendix-A attached to the Scheme, for the category of Medical Officers/Specialists, Dental Officers and Officers Incharge of Poly Clinics, the age limit for contractual appointments was 65 years. So far as Nursing Assistants/Laboratory Assistants and Dental Assistants/Hygienists were concerned, the prescribed age limit for them was 55 years.

4. It is in pursuance to the Scheme that all the petitioners were appointed on

different dates on contractual basis, but before such appointments, an Agreement of service was duly entered into between the petitioners and respondents. The relevant portion of such Agreement in the case of one of the petitioners is reproduced below :-

"NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :-

1. xx xx xx xx

2. The engagement of the Engaged person for rendering his/her professional services shall be entirely contractual in nature and will be for a period of 12 months initially and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/ indicated in Appendix A to Government of India, Ministry of Defence letter No. 24(6)/03/US(WE) D (Res) dated 22 Sep 2003 or as amended from time to time. The renewal of contract will be subject to continued good conduct and performance of the Engager Person during the proceeding 12 months and existence of the requirement for services of the Engager person at the ECHS Polyclinic. A fresh contract will be executed for each renewal."

xx xx xx xx

"11. The ECHS shall have the right to terminate this agreement by giving one month's notice to the Engaged person or one month's consideration as compensation in lieu thereof without prejudice to the generality of the right of termination may be on any of the following grounds for which an opportunity to show cause will be afforded to him/her:-

- (a) Professional incompetence or misconduct or an act of moral turpitude.
- (b) Unsatisfactory performance of duty.
- (c) Arrest of conviction by a court of law for any offence.
- (d) Any act prejudicial to security or interest of the Organization (ECHS).
- (e) Absence of leave beyond 60 days.
- (f) Prolonged or habitual absence from duty without prior permission of the competent authority including prolonged absence due to medical illness.
- (g) Inadequate work load.
- (h) Breach/ violation of any provision of this agreement by the Engaged Persons.
- (i) Any other ground warranting his/her removal from the contractual arrangement.

12. The Engaged person will also have the right to terminate this agreement before the expiry of tenure of contractual appointment by giving one month's notice or by foregoing one month/s contractual amount as consideration for engagement of services."

5. All the petitioners had entered into identical agreements.
6. From a perusal of the above terms and conditions governing the services of the petitioners, it is clear that all appointments were initially to be for a period of 12 months. However, as per clause 2, the services were renewable for a further period of 12 months at a time up to attainment of the maximum age, as prescribed in Appendix-A attached to the Scheme dated 22.09.2003 (as amended from time to time). As per clause 2 of the Agreement, the renewal in the period of service was subject to only two riders i.e. good performance and existence of work which would require the services of the appointed person.
7. As per the above terms and conditions, all the petitioners were initially appointed for 12 months. Thereafter, on the same conditions, their services were renewed from time to time for 12 months at a time, but for the year under reference, their services were not renewed. Instead, the respondents got issued an advertisement inviting applications for appointment on contractual basis against the posts being held by the petitioners. Aggrieved by the action of non-renewal of their services, the petitioners have approached this Court through the present writ petitions.
8. I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.
9. Though this petition had been filed by four petitioners, at the time of hearing, learned counsel for the petitioners did not press the writ petition qua petitioner No. 1 (Joginder Singh) as during the pendency of the writ petition, he has attained the age of superannuation.
10. So far as petitioners No. 2 to 4 are concerned, learned counsel for the petitioners submitted that contractual employees like the petitioners cannot be replaced by another set of contractual employees. The petitioners further allege mala fide on the part of respondent No. 5, who was their Officer Incharge. It is submitted that respondent No. 5 falsely and for mala fide reasons, issued letters to the petitioners pointing out acts of omission and commission on their part and asking them to improve their working. It is further the case of the petitioners that respondent No. 5, in connivance with respondent No. 4 - the Staff Commander, in order to wreck vengeance against the petitioners, did not renew their services.
11. Per contra, learned counsel for the respondents submitted that the posts in question were contractual in nature and that renewal of the period of service could not be claimed by the petitioners as a matter of right. Even otherwise, renewal of the period of service was subject to good performance and so far as petitioners No. 2 to 4 were concerned, in spite of repeated warnings, they had not improved their performance, and therefore, were not granted renewal in their services. The series of letters, written to petitioners No. 2 to 4, asking them to improve their performance, have been appended with the written statement and were highlighted by learned counsel for the respondents at the time of hearing.

12. The terms of the Scheme, under which the petitioners have been appointed and the Agreement of service entered into between the parties bind them, especially when the same remains unchallenged by either side. Clause 2 of the Agreement of service, as reproduced above, clearly stipulates that the services of all the appointees like the petitioners, initially appointed for a period of 12 months, could be renewed, subject to good performance and existence of work warranting such extension. The record of the case shows that the petitioners' work and conduct has not been up to the mark. The record further reveals that the petitioners were put to adequate notice with regard to their poor performance on several occasions, but to no avail. The streak of bad performance continued. Resultantly, the petitioners had not been granted renewal in the period of their service. This is as per the Scheme under which they had been appointed and the Agreement of service which binds them.

13. The allegations of mala fide raised by the petitioners against respondent No. 5 have been gone into by me and I find them to be absolutely vague. The petitioners allege that respondent No. 5 connived with respondent No. 4 resulting in non-renewal of services of the petitioners. This fact remains unsubstantiated. Further, the record reveals that even the services of respondent No. 4 were also not renewed by respondent No. 5 showing that there was no connivance between the two.

14. The plea of violation of principles of natural justice, raised by the petitioners, also falls flat on perusal of the series of letters written by the respondents to the petitioners asking them to improve their performance as these letters have been duly received by them. Thus, each of the petitioners was put to adequate notice with regard to their poor performance and even after being put to notice, when there was no improvement in the level of their performance, their services, as per the terms and conditions of the Scheme, as also the Agreement governing their services, have not been extended.

15. Learned counsel for the petitioners have strenuously urged before me that the petitioners, who were contractual employees, could not be replaced by another set of contractual employees. To support their submission, they have relied upon several judgments of the Apex Court, this Court, as also other High Courts. In the case in hand, the posts in question are contractual in nature and as per the Scheme, are required to be filled up only on contractual basis. This part of the Scheme is not under challenge by the petitioners. That being so, posts, which are contractual in nature, would necessarily be filled up through employees, to be appointed on contract. The judgments cited by the counsel for the petitioners pertain to posts, which are regular in nature, wherein directions have been issued not to replace employees appointed on contract basis by another set of contractual employees till regular appointments are made. In view of the facts of the case in hand, this situation could not arise herein.

16. In view of the above, finding no illegality in the action of the respondents, I order dismissal of the writ petition, with no order as to costs.