

(2018) 11 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No.7242 Of 2018 & Civil Miscellaneous Appeal No. 27619, 27622 Of 2018

Sanghamitra Mohanty

APPELLANT

Vs

HSCC (INDIA) Limited And Anr

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Citation : (2018) 11 DEL CK 0036

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Ashok Kumar Pande, Satyabrate Pande, M. Parkaray, A. Pureshotham, Sandeep Sethi, Saurabh Mishra, Vivek Tyagi, Abhishek Singh, Monika Arora, Brajesh Kumar, Harsh Ahuja

Final Decision : Disposed Off

Judgement

1. Vide the present writ petition, the petitioner seeks the following directions to respondents :

a) Quash and set aside the communication dated 02.06.2018 of the Respondent No. 1; and

b) Pass a writ of mandamus and/or order directing the respondents to reinstate and/or continue the petitioner in employment; and

c) Pass a writ of mandamus and/or order directing the respondents to regularise and absorb the petitioner on regular basis with the Respondent No. 1;

and

d) Pass a writ of mandamus and/or order directing the Respondent No. 1 to make payment to the petitioner of the arrears of salary as per the Seventh

Pay Commission for the period since January 2017; and.....â??

2. The brief facts of the case are that pursuant to an advertisement dated

10.06.2015, issued by the respondent No. 1, for filling up the various posts on immediate absorption/on contract on regular pay scale, the petitioner applied for the post of Assistant Manager in the IDA pay scale of Rs.16400-40500 on contract basis for a period of two years from the date of taking up the employment with starting pay @ Rs.16400/- per month as per the terms and conditions set in the offer for appointment. Consequent upon the petitioner's acceptance for offer for appointment letter dated 07.10.2015, the petitioner was appointed as an Assistant Manager in the IDA pay scale of Rs.16,400-40,500 on contract basis with starting basic pay @ Rs.16,400.

3. In the appointment letter dated 07.10.2015, it was specifically stated that the employment will be on contract basis for a period of two years from the date of employment and the same would be terminable either as a result of non-renewal of the contract or on expiry thereof; unless renewed mutually, depending upon performance and requirement of the company. The appointment letter clearly stated that during this period of contract of employment, the service of the employee can be terminated any time by giving one months notice or pay in lieu thereof without assigning any reason by either side. The Management however reserved the right to decide the actual date of relieving depending upon the exigency of work/completion of pending work entrusted to the petitioner and furnishing "No Demand Certificate" and return of any items of tools property of the Project/Company at the disposal of the petitioner. The appointment letter also stated that notwithstanding the above terms and conditions of appointment on contract basis, the petitioner shall be eligible for consideration for absorption on regular basis; subject to availability of vacancy and consistent record of satisfactory performance as per provisions under the Company's Recruitment Rules.

4. Learned Sr. Counsel appearing for the petitioner submits that the petitioner was appointed for a period of two years, however, he continued upto November, 2017, over and above one month of the contract period. As per the Employee Manual 6.0 dated 01.07.2016 issued by HSCC (India) Ltd. (A Govt. Of India Enterprise), which is at Annexure P-5 of the paper-book, the employees engaged in the company on contract basis on regular pay scales are eligible to be considered for regularization as per the policy of the

company, depending upon the employee's performance and requirement in the company.

5. Ld. Counsel for the petitioner submitted that it is not in dispute that the petitioner completed two years and earned the salary for the month of November, 2017, which is evident from Annexure P-6 at page 87 of the writ petition. As per the terms of appointment, the respondent was suppose to issue a show cause notice to terminate the services of the petitioner, however, by not doing so, the petitioner was just asked by R-1 not to come in the office. Consequently, the petitioner had made a representation on 22.01.2018 to the Secretary, Ministry of Health and Family Welfare/Respondent No.

2 herein regarding her entitlement for regularisation and absorption on regular basis in the respondent No. 1. A reminder to the representation dated 22.01.2018 was also sent on 19.02.2018 by the petitioner. Thereafter, on 25.02.2018, the petitioner made a written representation to the CMD of the respondent No. 1 stating that the petitioner be reinstated in services and that her services be regularized with the respondent No. 1. The petitioner requested to give her the post and pay scale of Executive Officer (E3).

6. It is further submitted, in response to the representation filed by the petitioner, the respondent No. 1 replied vide a letter dated 05.03.2018 stating that the petitioner was no longer on the rolls of the respondent No. 1 and the petitioner was asked not to attend office as purportedly her tenure had expired. Thereafter, the respondent No. 1 issued an advertisement in the Newspaper on 18.04.2018 for recruitment to vacancies which clearly showed that there were vacancies in the respondent No. 1 organization, however, the respondent No. 1 had illegally denied regularization to the petitioner. The petitioner challenged the same by filing W.P.(C) 4561/2018 before this court. The said petition was disposed of by this court vide an order dated 01.05.2018, with a direction to the respondent No. 1 to consider the representation of the petitioner by passing a speaking order within a period of four weeks and to convey the fate of the representation to the petitioner within a week thereafter, so that the petitioner may avail of the remedies available in law, if need be. It was further directed that till it is so done, the process of filling up of one post of Assistant Manager (E-1) be not finalized.

7. Pursuant to the directions passed by this court as mentioned above, the

petitioner sent a communication dated 07.05.2018 to the respondent No. 1 to decide her representation with regard to regularization and absorption on regular basis. The same was rejected vide order dated 02.06.2018. Being aggrieved, the petitioner has filed the present writ petition. Learned counsel for the petitioner submits that as per the appointment letter dated 07.10.2015, the contract period was for two years to be renewed further depending upon the performance and requirement of the company. Since the period of the petitioner was extended and admittedly, he continued upto November, 2017, therefore, his services cannot be terminated without giving one month's notice or pay in lieu thereof to which, the respondent No. 1 has failed.

8. Ld. Counsel submits, thus, the decision taken by respondent No. 1 to terminate the services of the petitioner is illegal and arbitrary. To strengthen the arguments, learned counsel for the petitioner has relied upon the case of Abhinav Chaudhary & Ors. V. Delhi Technological University & Anr. in

W.P.(C) 3512/2014 and the batch decided by this court on 20.01.2015, wherein, the grievance of the petitioner therein was that a contractual

appointee cannot be replaced by any other contractual appointee. In view of ratio and spirit of the judgments of the Supreme Court in the case of

State of Haryana and Ors. etc. v. Piara Singh and Ors etc. (1992) 4 SCC 118; and in the case of Secretary, State of Karnataka v. Umadevi & Ors.

(2006) 4 SCC 1; and in the case of Mohd. Abdul Kadir and Anr. v. Director General of Police, Assam and Ors. (2009) 6 SCC 611, this court

observed as under :

.....5.....since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the

part of the respondent No. 1, the present writ petition is allowed and respondents are restrained from in any manner terminating the services of the

petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no.1/employer. Of course, this will not

disentitle the respondent no.1 to appoint any additional Assistant Professors with the respondent no. 1 in accordance with its applicable rules or issue

fresh advertisements having contractually substantially different terms than what the petitioners are presently working at.

6. The writ petition is allowed and disposed of in terms of the aforesaid

observations, leaving the parties to bear their own costs.â??

9. Learned counsel appearing on behalf of the petitioner submits that in *Abhinav Chaudhary & Ors. (supra)*, the petitioners, therein impugned the

action of the respondent therein of refusing to extend the contractual appointments of the petitioners and issuing a fresh advertisement for fresh

appointment for contractual period for the posts in question. The petitioners therein were working at the posts of Assistant Professors with the

respondent No. 1 since the year 2011 in terms of contractual appointment letters.

10. Learned counsel for the petitioner submits that the present case is squarely covered by the case of *Abhinav Chaudhary & Ors. (supra)* as the

services of the petitioner in the present case, who was working on contractual basis, were terminated and thereafter a Notification vide advertisement

dated 18.04.2018 for fresh appointments on the same posts was issued. Thus, it is submitted, the action of the respondents is illegal and arbitrary and

against the settled law.

11. On the other hand, learned Sr. Counsel appearing on behalf of respondent No. 1 submits that the petitioner was appointed as Assistant Manager,

Public Relations (E1) with regular pay scale of Rs.16400-40500 vide a letter dated 07.10.2015. The case of the petitioner is that the petitioner was

removed from the contract employment and a new advertisement dated 18.04.2018 was published for the same post, which is a wrong argument of

the petitioner, as is evident from the advertisement dated 18.04.2018. On a perusal of the aforesaid advertisement, it is revealed that the said

advertisement is for other vacancies and not for the post of Assistant Manager, Public Relation (E1), which the petitioner herein was holding on

contractual basis.

12. To this, learned counsel for the petitioner interjected, at this stage, and submitted that the post of the petitioner i.e. Assistant Manager was with the

department of HRM and the posts to be filled vide advertisement dated 18.04.2018 were also with the department of HRM.

13. I do not find any substance in the argument of learned counsel for the petitioner, that in the department of HRM, there were so many posts and

they cannot be restrained from filling of other posts whereas, the question before this court is regarding the post of Assistant Manager, Public

Relation.

14. Learned Sr. Counsel further argued that the appointment of the petitioner was for two years and to be renewed depending upon the performance and requirement of the company. Since, the respondent No. 1 did not require the post of Assistant Manager, Public Relation, therefore, the petitioner was allowed to complete his two years of service on contract basis. Notice of one month or one month's salary in lieu thereof was only required, in the case, the service of the employee was to be terminated before the expiry of contract term/period. Therefore, no notice was given to the petitioner for terminating her services.

15. He further argued that admittedly, the contract period of the petitioner was two years, which had expired in the month of October, 2017.

Thereafter, on expiry of original contract period, on a verbal request of the petitioner to cover the visit of Mauritius delegation which was visiting India

from 01.11.2017 to 06.11.2017 as this would give her a chance to have good exposure for future job prospects, her working period was extended. As

a special case, upon the request of petitioner, she was permitted to cover the visit of the Mauritius's delegation, and was permitted to work for

another one month i.e. till November, 2017. During that period, she was also asked to obtain the 'No Dues' certificate from the company so

that proper relieving order could be made. However, the petitioner has failed to obtain the 'No Dues' certificate by the end of November, 2017

i.e. the extended contract of service. It is further submitted that for all intent and purposes, the extended contract of service was over on 30.11.2017.

But the petitioner had not settled the dues of the company with an intention to claim continuity of service and for want of 'No Dues' certificate,

the relieving certificate for the service rendered by the petitioner from 23.10.2015 till 30.11.2017 has not been issued.

16. It is further submitted that as per the Employee Manual which is at Annexure P5, the employees engaged in the company on contract basis on

regular pay scales are eligible to be considered for regularization as per the policy of the company, depending upon the employee's performance

and requirement in the company. As per Annexure-5, which is at page 192 of the paper book, in 49th Board Meeting held on 28.02.1994, it was

decided that the induction in the company for the post of Assistant Manager and above for core cadre employees will be made on contract basis from

the Campus interview. The officers appointed on contract may be considered for regularisation in the company based on their three years of ACRs

for those employees who have completed three years of service. The appointing authority would be assisted by P&A in carrying out this review in

each case. As per policy, since the petitioner has not acquired ACRs of three years, therefore, he is not entitled for regularisation.

17. Learned counsel appearing for respondent No. 1 submits that vide letter dated 02.06.2018, while rejecting the representation made by the

petitioner, it was stated that the petitioner was not eligible for absorption on regular basis. It is further stated in that letter that there was no vacancy in

PR functions. It is further denied therein that the performance of the petitioner was outstanding throughout. In this context it was also stated that it

was not out of place to mention that during the service, the petitioner was issued memos on account of unauthorized absence from the duty, not

discharging her duties diligently and also for negligence of duties. That letter also notes that the petitioner was not considered for absorption on a

regular basis as she did not fulfil the mandatory criteria of the policy of the company which mentions that the officers appointed on contract may be

considered for regularization in the company based on their three years ACRs. It is also stated in that letter that the Management did not give any

assurance to the petitioner for continuation on regular basis.

18. This court has noted, the petitioner has not challenged the Policy dated 11.03.1997 of the respondent No. 1 regarding ACRs of three years, which

is at Annexure-5 at page 192 of the paper book of the writ petition. The petitioner has no right to be continued as a contractual employee as there is

no statutory obligation on the part of the respondents to regularize the services of the petitioner, who was appointed for a period of two years on

contract. Moreover, there was no requirement for notice of termination to be served upon the petitioner because one month's notice or one

month's salary in lieu thereof is required only when the termination is within the period of two years, i.e. before the expiry of contract period. In

the present case, admittedly, the petitioner had completed two years of service, and thereafter i.e. after the expiry of period of her contractual

appointment, her services were terminated.

19. The fact remained that the case of the petitioner is that the petitioner was

appointed on contract basis for a period of two years to be renewed based upon the performance and requirement in the company. The services of the petitioner has been terminated on completion of two years and she was allowed to continue for one more month upon her request to attend the Mauritius's delegation which came to India. After the termination of the petitioner, in advertisement dated 18.04.2018, nowhere, it is mention about the post of Assistant Manager, Public Relation (E1), which was being held by the petitioner, whereas, the other posts were mentioned.

20. Thus, I find no substance in the submissions made by learned counsel appearing on behalf of the petitioner that the post of Assistant Manager (Public Relation) was to be filled up vide the advertisement dated 18.04.2018. The petitioner has taken the shelter of the judgment of this court in

Abhinav Chaudhary & Ors. (supra) on the ground that a contract employee cannot be replaced by another contract employee. I find no substance in

this argument too on the ground that in the case of Abhinav Chaudhary & Ors. (supra), the employee was terminated and in his place some other

contractual employees were to be selected whereas, in the present case, the petitioner was on the post of Assistant Manager, Public Relation and the

said post has not been replaced by advertisement dated 18.04.2018. Moreover, the petitioner's tenure for contract was for a period of two years

to be renewed based upon the performance and requirement of the company.

21. In my considered view, since, the respondent No. 1 does not have any requirement of Assistant Manager, Public Relation, they have every right to

terminate the services of the petitioner either on completion of contractual period of two years or even before that period after giving one month's

notice or one month's salary in lieu thereof.

22. In the present case, the petitioner has completed the contract period of two years, thus there was no need to give one month's notice or salary

in lieu thereof.

23. In view of the submissions made by learned counsels appearing for the parties, the facts of the case discussed above, I find, no merit in the

present writ petition, and the same is, accordingly, dismissed with no orders as to costs.

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24. In view of the order passed in the present writ petition, these applications have been rendered infructuous and are accordingly, disposed of such.