

(2021) 06 UK CK 0156

In the Uttarakhand High Court

Case No : Writ Petition No. 709 Of 2021 (S/S)

Suresh Chand Ramola

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 30-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 06 UK CK 0156

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Anil Anthwal, Rakesh Thapliyal

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The brief facts, which are apparent from the records of the writ petition are that the respondents had resorted to the process of selection on the

post of Driver, on contractual basis and issued an advertisement and the result thereto after resorting to the process of selection, it has been stated by

the counsel for the petitioner that he was granted an initial appointment on contractual basis by an order of 17.10.1990, which was initially for a limited

period as prescribed in the terms of agreement, which was executed by way of a notarized affidavit, but however later on the terms of appointment of

the petitioner on contractual basis as a Driver was extended for a further period of 12 months by an order of 26.10.2020.

2. These facts to this stage were the nature of appointment and the extension of the contract is not a subject matter in controversy. In that eventuality

under the settled preposition of law, it would be deemed that the petitioner's right to continue to occupy the post of a Driver on which he was

appointed since was on a contractual basis, would be specifically governed by the terms of contract only. Meaning thereby he will not have any lien as

such, to continue to occupy a contractual post of Driver based on a concept of perpetuity of an appointment under the terms of contract. Even

otherwise also there is no substantial right created with the contractual employee to continue on a post, but the counsel for the petitioner in support of

his contention has tried to draw a distinction based on the various policies which has been issued by the respondents dated 07.06.2006, 02.12.2017,

04.01.2018 and these policies have been interpreted by the counsel for the petitioner as if, since the policies itself provided that the contractual

appointment was supposed to continue till the attainment of age of superannuation by the employee, who had been appointed on a contractual basis,

hence he has got a right to continue to occupy the post of a Driver, on contractual basis ever after the expiry of period of his extended period of

contract, is not accepted by this Court for the reason being that:-

i. The petitioner's appointment would be specifically governed, not by any Statute; but by the terms of the appointment, which was settled inter-se

between the contractual employee and the employer.

ii. The petitioner cannot be permitted to take an advantage to override the effect of the terms of contract, the benefit of which he has already derived

by continuing to work as a Driver on contractual basis under the terms of the contract even for the extended period to contend to continue his services

for all times to come without resorting to the further or future process of selection.

iii. Thirdly this concept of extracting a right based on the policy, I am of the view that these policies since is not having any legislative magnate and an

authority and it has not been framed under a Statue, it will not take a shape of legislature or the rules to be enforced by filing a writ petition under

Article 226 of the Constitution of India.

3. Even otherwise also if the impugned advertisement, which has been published on 12.06.2020, is taken into consideration, in fact, it was yet again the

applications were notified to be invited for the post, on contractual basis and it was not an appointment, which was to be made on regular basis.

4. The learned counsel for the petitioner in support of his contention that he has got a right to continue on the post occupied by him as a Driver, on

contractual basis was based upon the orders passed in Writ Petition No.344 of 2018 (S/S) Km. Rekha Koranga vs. Union of India and others and Writ

Petition No.607 of 2018 (S/S) Furkan Ahmad vs. Board of Revenue, Uttarakhand, Dehradun; contending thereof that since the Coordinate Bench has

provided continuous into the job, the same principle has to be adopted while considering his interim application in the present writ petition. Principally,

this argument of the learned counsel for the petitioner is not acceptable by this Court for the reason being that:-

i. The interim orders, which had been passed by the Coordinate Bench, engaging an identical issue either directly or indirectly, may not have an a

binding precedent on another Coordinate Bench until and unless, it is a final adjudication, which has been made on merits.

ii. Secondly the another logic, why this Court is not in agreement with the interim orders passed by the Coordinate Bench of this Court, is that there is

a vast distinction with regards to the nature of post on which the petitioner claims his continuance, because the writ petitions which were filed before

this Court pertained to the post of Staff Nurses and those of Radiologists, which are Paramedical Services and the parameters of their continuance

will obviously be treated to be differentiated with the parameters which are required to be followed for the post of Drivers, which may not be so

emergent in nature, and in requirement to meet the public necessity.

5. Hence, a common pedestal based on an interim order, cannot be a yardstick, which could be adopted by the petitioner for the grant of the relief.

Hence, because the petitioner's appointment is governed by the terms of contract and admittedly it is a contractual appointment, which has been

extended to be continued for a further period of 12 months with effect from 26.10.2020, that in itself cannot preclude the respondents from issuing an

advertisement for making a further contractual appointment on the same post, which is allegedly already held by the petitioner on contractual basis.

6. The petitioner has attempted to argue the writ petition from the perspective that adhocism cannot be permitted by the employer. This Court is of the

view, that there is a vast distinction between the concept of contractual appointment and the concept of an ad-hoc appointment. Ad-hoc appointment

as per the service jurisprudence is always an appointment, which is made against an available vacant cadre strength of an organization, in relation to a

particular class of post. Whereas the contractual appointment depends upon the circumstances work exigency and the requirement of the department,

which is not governed by the Statutes and hence the concept that one contractual appointment, cannot be changed with the other contractual

employee, cannot be drawn in the circumstances of the present case. Particularly when the contractual employee, has got no indefeasible rights, to

claim for continuance in the job, the terms of which are governed by terms of contract executed.

7. For the reasons aforesaid, I am of the view that no material right as such, is being hampered or is being infringed, so far it relates to the petitioner

by the issuance of the advertisement, where respondents are contemplating to fill in the post of Driver, which he presently holds on a contractual basis

to be filled with on a contract basis afresh. In the light of the aforesaid, I am not inclined to interfere in the writ petition. Hence, the writ petition is

dismissed but having said so, it will not preclude the petitioner to participate in the process of selection, as it has been conducted by the respondents in

pursuance to the advertisement dated 12.06.2021.

8. Subject to the above, the writ petition lacks merits and the same is accordingly, dismissed.