

(2001) 01 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : (S) 365 Of 1998

Tirath Ram and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) KashLJ 509

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Baldev Singh, Advocates appearing for the Parties

Judgement

1. Petitioners came to be appointed as Special Police Officers under Section 18 of the Police Act. They were initially appointed for a period of one year. This tenure was then further extended. Now this tenure has come to an end. This was purely a contractual assignment. Petitioners submit that their tenure be not brought to an end.

2. As indicated above, this is a contractual assignment and would be governed by the terms of contract. See AIR 1953 SC 250, Satish Chandra Anand v. Union of India.

3. It was held that neither Article 311, nor Article 16 would be attracted. What is said in paragraph "10" and "11" of the judgment is being reproduced below :

There was no compulsion on the petitioner to enter into the contract he did. He was free under the law as any other person to accept or to reject

the offer which was made to him. Having accepted he still has open to him all the rights and remedies available to other persons similarly situated to

enforce any right under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary Courts of the land such

remedies for a Brach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and

he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived.

Article 16(i) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five years one) came to an end, he

was not a permanent government servant, and government was not bound either to reemploy him or to continue him in service. On the other hand,

it was open to government to make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the

employment was continued, it was in point of fact, and in the eyes of the law, under a new and fresh contract which was quite separate and distinct

from the old even though many of its terms were the same. Article 16(i) deals with equality of opportunity in all matters relating to employment or

appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been

treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is

not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of

course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with

the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the

employment is permanent there are certain statutory guarantees but in the absence of any such limitations Government is, subject to the qualification

mentioned above, as free to make special contracts of service with temporary employees, engaged in works of a temporary nature, as any other

employer.

4. Therefore, when the petitioners' contract came to an end, the Government was not bound either to reemploy them or to continue them in service

as the petitioners were not permanent Government servants. In view of the above, no mandamus can be issued. Respondents are, however,

directed to consider the claims of the petitioners and if it is possible to make use of the experience gained by them during the period they were

employed, then, they may be given such assignment as deemed appropriate. Otherwise as indicated above, no positive direction can be given in

favour of the petitioners.

5. Disposed of as such.