

(2023) 04 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No.25 Of 2015?

Umesh V. Pawar

APPELLANT

Vs

M/s. Haffkine Bio-Pharmaceutical

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 04 BOM CK 0055

Hon'ble Judges : S. V. Gangapurwala, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : S. C. Naidu, Divya Yajurvedi, Sudeshkumar Naidu, Pradeep Kumar, Sachin B. Thorat, Vishwajeet P. Sawant, N. R. Patankar, Abhay L. Patki, Jyoti Chavan

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. This petition poses a unique conundrum about entitlement of an officer - holder of a substantive lower post - to continue to hold higher post on which he is appointed on contract basis for a fixed tenure. The issue becomes unique as his movement from lower to higher post is not by 'promotion', but by way of 'contractual appointment' and upon joining the higher post, his lower substantive post is treated as vacant by the employer and filled by making regular appointment. Contrary to the specific term that the contractual appointment is only for a maximum period of 5 years, there is a suggestion in one of the orders that he would get regular payscale after expiration of period of 5 years. What would be his fate upon expiration of period of contract appointment on higher post - whether he will be ousted from service or reassigned to his substantive post? Whether mere making of regular appointment on his substantive lower

post would create a right in his favour to continue to occupy the higher post even upon expiration of period of contract? Whether the principle of impermissibility of replacement of an ad hoc employee by another ad hoc employee be invoked in these circumstances? These are the questions that we are called upon to answer in the present petition.

3. The issue arises in the light of petitioner being appointed on contract basis on higher post of Plant Engineer in the same organization where he already held substantive lower post of Shift Engineer. The contract tenure has expired and he is brought back to his substantive post of Shift Engineer. The post of Plant Engineer is however not filled up on regular basis and another officer is appointed to that post again on contract basis and/or charge of the post was handed over to other officers. In these circumstances, petitioner demands continuation on the post of Plant Engineer till the post is filled up on regular basis invoking principle of 'ad-hoc employee cannot be replaced by another ad-hoc employee'. Also demanded is the regular pay scale of the post of Plant Engineer upon completion of 5 years of service on that post.

4. A brief factual narration as a prologue to our judgment would be necessary. Pursuant to participation in selection process, petitioner was selected and appointed on the post of Shift Engineer in Haffkine Bio-Pharmaceutical Corporation Ltd. (Haffkine), a Government of Maharashtra Undertaking. He joined the said post on 11th September 2001. Petitioner acquired a degree of Bachelor of Technology (Mechanical Engineering) in August 2008. Additional charge of the post of Plant Engineer was handed over to him w.e.f. 5th August 2008 vide order dated 11th August 2008. He was awarded an additional monthly pay of Rs.500/- for handling the additional charge of the post of Plant Engineer. Respondent-Haffkine issued an advertisement on 4th December 2008 for filling up the posts inter alia of Plant Engineer on contract basis for a period of 5 years on consolidated salary of Rs.32080/- with additional perks. Petitioner was fulfilling the eligibility criteria prescribed in the advertisement and applied in pursuance thereof. After participating in the selection process, he was issued with an offer of appointment dated 20th July 2009, which envisaged appointment initially for a period of 2 years on consolidated salary of Rs.32520/-. At the end of 2 years, his work and ability was to be examined by a committee and if the same was found satisfactory, the appointment was to be continued for a further period of 3 years. It was further directed that the petitioner would have to execute an agreement in the prescribed format with Respondent-Haffkine. Petitioner accepted offer and, by appointment order dated 24th July 2009 issued by the Managing Director of Haffkine, he was appointed as a Plant Engineer w.e.f. 24th July 2009 subject to terms and conditions specified therein. On 28th July 2009 the Manager (Administration) issued officer order No.128 of 2009 recording that petitioner had been appointed as a Plant Engineer w.e.f. 27th August 2009 and terms and conditions of the appointment were mentioned in the said order. Condition No.5 provided that petitioner would be granted regular pay scale of the post of Plant Engineer on completion of 5 years of service.

5. On expiry of period of one year, appraisal of Petitioner's work and ability was conducted and order dated 15th December 2010 was issued at the end of one year stating that his performance was found excellent and his appointment was further continued. Petitioner was issued letters of appreciation on 22nd July 2010 and 14th December 2010. By order dated 24th January 2013 petitioner was handed over additional charge of the post of Manager (Administration). Petitioner avers that he implemented and enforced strict disciplinary measures, which resulted in curbing malpractices and irregularities which were adversely affecting the organization. That he curbed excessive and undue overtime which resulted in huge savings in overtime costs, took action against those illegally occupying accommodations, detected false and excessive bills by photocopier operator, placed on record the production loss of Rs.10 to 12 Crore caused by the acts of omission / commission of the Incharge Manager-Quality Control, etc. He claims that he reported gross negligence of some of the officers in production department, who started creating hurdles in his effective working. Petitioner therefore addressed letter dated 14th March 2014 to the Managing Director highlighting vindictive approach of two General Managers. He apprehended planning of conspiracy to oust him and therefore demanded an independent inquiry vide letter dated 14th March 2014.

6. Petitioner completed 5 years of service on 24th July 2014. He requested for grant of regular pay scale of the post of Plant Engineer by his letter dated 1st July 2014. That said request was processed and was about to be granted. However, he was shocked to know about issuance of order dated 11th August 2014 by which he was reassigned to the original post of Shift Engineer w.e.f. 25th August 2014 on the ground that the tenure of his contract had expired on 24th July 2014. The two charges of the post of Manager (Administration) and Plant Engineer were handed over to other officers. Petitioner has challenged the order dated 11th August 2014 in the present petition. During pendency of the petition, an advertisement was issued on 11th February 2015 for filling up post of Plant Engineer on contract basis. Petitioner objected to the advertisement but participated in the selection process without prejudice to his rights and contentions in the writ petition. He was however not selected. Respondent No.6 came to be selected and appointed as Plant Engineer on contract basis for a period of one year from 8th March 2016 to 7th March 2017. Petitioner has accordingly challenged the appointment of Respondent No.6 by amending the petition. During pendency of the petition, petitioner has also been issued with a memorandum of charge sheet dated 18th January 2016, however the same is not a subject matter of challenge in the preset petition.

7. Few more developments occurred during pendency of the present petition. Though respondent No.6 had been appointed for a tenure of one year, he continued to work for 5 years and resigned from service on 4th September 2021. On 16th March 2021, Haffkine issued an advertisement for filling up post of Plant Engineer on contract basis for 11 months. Though petitioner applied, he was disqualified as he was overaged. Though two internal candidates were selected

for interview, they withdrew their candidature. On 25th November 2021, Haffkine issued advertisement for filling up the post of Plant Engineer on regular basis. Petitioner and one more departmental candidate claim to have been qualified for interview. However, the selection process has apparently not proceeded further.

8. In the above factual background, Petitioner has filed the present Petition seeking following prayers:

(a) This Hon'ble Court be pleased to issue Writ of Mandamus and or any other Writ, order or direction in the nature of Writ of Mandamus under Article 226 of the Constitution of India and calling for the records of the Petitioner's appointment and related orders and after examining the legality and propriety of the impugned orders dated 11th August 2014 be pleased to quash and set aside the same.

(a1) This Hon'ble Court be pleased to issue a Writ of Mandamus and or any other Writ, order and or direction in the nature of Writ of Mandamus under Article 226 of the Constitution of India and after calling for the records of the appointment of Respondent No.6 to the post of Plant Engineer be pleased to declare the appointment of Respondent No.6 to the post of Plant Engineer as illegal, null and void and further be pleased quash and set aside the Office Order No.55/2016 dated 7th March 2016 appointing Respondent No.6 as the Plant Engineer."

(b) Pending the hearing and final disposal of the Writ Petition, the impugned order dated 11th August 2014 (Exhibit-A) be stayed and the Petitioner be allowed to continue as a Plant Engineer and Manager-Administration.

(c) Pending the hearing and final disposal of the Writ Petition, the Respondents be restrained not fill up the post of Plant Engineer and Manager-Administration in place and stead of the Petitioner.

(d) Interim and Ad-interim reliefs in terms of prayer clause (b) and (c) herein above;

(e) For such further and other orders as this Hon'ble Court deems fit in the facts and circumstances of the case.

(f) Cost of petition be provided for;

9. Appearing for petitioner Mr. Naidu the learned counsel would submit that the terms and conditions of the appointment order would indicate that petitioner's appointment as Plant Engineer was not restricted to the tenure of 5 years. Since petitioner was promised grant of regular pay scale of Plant Engineer after completion of 5 years of service, he was entitled to continue as Plant Engineer even after 5 years. That the petitioner was erroneously reverted to the post of Shift Engineer though no regular Plant Engineer was available to occupy the post. That respondents erroneously replaced petitioner with another contract officer, which is not permissible in law. That the petitioner would be replaced only by a regularly selected and appointed candidate. That the petitioner ought to have

been given regular pay scale of the post of Plant Engineer on completion of service of 5 years as provided in the appointment order. That the officials of respondents have erroneously reverted petitioner out of vindictive attitude as he took strict action against various officials. In support of his contentions Mr. Naidu would rely on following judgments.

i) State of H. P. Vs. Suresh Kumar Verma & Anr., (1996) 7 Supreme Court Cases 562.

ii) Balaji & Ors. Vs. State of Maharashtra & Ors., 2022 SCC OnLine Bom 3058.

iii) Union of India Vs. N. Murugesan & Ors., (2022) 2 SCC 25.

10. Petition is opposed by Mr. Sawant, the learned senior Advocate appearing for respondent-Haffkine. He would submit that petitioner was granted merely a contractual engagement as Plant Engineer, which was not a promotion. That the post of Plant Engineer is to be filled in by way of direct recruitment and that therefore the petitioner had no vested right to seek appointment on that post. That the offer of appointment as well as the appointment order issued to him did not contain any stipulation for grant of regular pay scale of the post of Plant Engineer on completion of 5 years of service. That the Manager (Administration) had no authority to incorporate such a condition in the order dated 28th July 2009. Since the appointment was made on a consolidate salary, there was no question of grant of regular payscale to petitioner. That he had no right to continue to hold the post of Plant Engineer on expiry of tenure of his contract. That petitioner acquiesced in termination of his contractual appointment as a Plant Engineer by participating in further selection processes initiated for filling up the post on contractual basis. That there were several complaints/ grievances about the performance of petitioner while discharging his duties as Manager (Administration). That the Disciplinary Proceedings have been initiated against him. In support of his contentions, Mr. Sawant would rely upon following judgment:

i) Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors., (2006) 4 SCC 1.

ii) Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (SMT), (1992) 4 SCC 33.

iii) Vivek Kumar Khandelwal & Ors. Vs. Government of NCT of Delhi & Ors., (2007) SCC OnLine Del 28.

11. Rival contentions of the parties now fall for our consideration.

12. Petitioner's substantive appointment is on the post of Shift Engineer (R & Air Conditioning). As per the 'Recruitment and Promotion Rules – Officers of Haffkine', the post of Plant Engineer is to be filled by way of direct recruitment. Thus, the post of Plant Engineer is not to be filled in by promotion, much less the post of Shift Engineer is a feeder cadre. It is to be filled in 100% by direct recruitment alone. Thus while working on the post of Shift Engineer, petitioner

did not have any semblance of right to seek either promotion or appointment on the post of Plant Engineer. The Recruitment Rule further contains provision in Rule 4.3(b) under which employees of the company are eligible for posts which are to be filled in by direct recruitment, if they meet the requisite eligibility criteria.

13. It appears that while petitioner was occupying post of Shift Engineer, Shri. Barun Ghosh, who was holding the post of Plant Engineer, was relieved from service on 4th August 2008. As the post of Plant Engineer became vacant, petitioner was handed over additional charge of that post w.e.f. 4th August 2008 vide order dated 11th August 2008. Petitioner was also paid additional monthly pay of Rs.500/- for handling additional charge of post of Plant Engineer. It is incomprehensible as to why respondent-Haffkine did not make any attempt to fill up the vacant post of Plant Engineer on regular basis. Instead, it decided to fill up the same on contract basis and accordingly issued an advertisement on 4th December 2008. Not just the post of Plant Engineer, several other posts such as General Manager, Manager (Casting), Manager (Accounts) were also proposed to be filled up on contract basis for a period of 5 years. Petitioner was fulfilling the eligibility criteria for the post of Plant Engineer as he had acquired the qualification of Bachelor of Technology (Mechanical Engineer) in August 2008. He accordingly applied in pursuance of the advertisement. Here again we fail to understand as to how an officer substantively holding a post of Shift Engineer could have been permitted to compete for contractual appointment on another post in the same organization? How substantive appointment of an officer on one post can be converted into contractual appointment on another post? Upon taking up the post meant to be filled up by direct recruitment, whether lien of the officer on substantive post would stand terminated? There are no answers to these questions. Be that as it may, respondent Haffkine permitted petitioner to participate in the selection process for contractual appointment on the post of Plant Engineer. He was selected and issued an offer of appointment vide letter dated 20th July 2009 which reads thus:

With reference to your interview on 8.6.2009 for the post of Plant Engineer, we are pleased to inform you that the company is offering the opportunity to appoint you in the position of Plant Engineer. Your appointment is subject to following condition.

- 1) Initially he is appointed for 2 years at the consolidated salary of Rs.35,520/-
- 2) After the end of 1st year the review of your overall work and competency will taken and then appointment will continued for 2nd year.
- 3) At the end of 2nd year the committee will review the full-fledged assessment of work and competency of first 2 years and if it is found satisfactory then your appointment will continue for further period of 3 years.
- 4) You have to make agreement with company before appointment and draft of the same will be shown to you.

If above terms are acceptable to you then written consent to be informed to General Administration Dept to enable us to take further action. This will enable you to take the charge of Plant Engineer without further delay.

14. Petitioner accepted the offer and accordingly, the Managing Director of

Respondent-Haffkine issued appointment order dated 24th July 2009, which reads thus:

"You have been appointed as a Plant Engineer subject to following terms and condition from 24.7.2009 as per your interview dated 08.6.2009.

Your appointment is subject to following terms and conditions.

- 1) Initially your appointed will be for 2 years at the consolidated salary of Rs.35,520/-.
- 2) At the end of the said period the management of the company will take the final decision to extend the period.
- 3) After the end of 1st year (the review of your work and competency will be taken and then period will continued for 2nd year).
- 4) After the end of 2nd year the committee will review the full-fledged assessment of work and competency of first 2 years and if it is found satisfactory then his appointment will continue for further years.
- 5) You have to make agreement with the company for your appointment and draft of the same will be shown to you.
- 6) You will be entitled for weekly holiday Saturday ad Sunday. Similarly you will be entitled for all leave (casual, sick) as per rules of the corporation.
- 7) The both parties are free to terminate the contract whether by giving the one month notice or equal amount as damage. The Company's existing service rules and regulation, rules for discipline will be applicable to you and your service will be regulated accordingly.
- 8) The company reserve its rights to transfer on similar post to the places wherever the company has offices.
- 9) All the perks and benefit applicable in the cadre of Manager (e.g. Peon allowance, telephone allowance and reimbursement of newspaper bill) will be paid from 24.7.2009."

15. Thus, as per the offer of appointment as well as the appointment order, petitioner was granted appointment as Plant Engineer on contract basis w.e.f.

24 th July 2009. The appointment was initially for a period of 2 years on consolidated salary of Rs.35,520/-. Even during 2 years, continuation during second year was subject to performance appraisal. At the end of period of 2 years, performance appraisal was to be conducted by a committee and only upon

satisfactory performance, appointment was to be continued for further period of 3 years. Petitioner was required to execute an agreement in a format, which according to the petitioner was never executed.

16. A twist was created by issuance of Office Order No.128 of 2009 dated 28 th July 2009 by Manager (Administration). The order reads thus:

"Mr. Umesh Pawar has been appointed as a Plant Engineer subject to the following terms and conditions from 24.7.2009 with reference to his interview dated 8.6.2009. His appointment is subjects to following terms and condition.

- 1) Initially he is appointed for 2 years at the consolidated salary of Rs 35,520/-
- 2) At the end of said the period the management of the company will take the final decision to extend the period.(it is explained in the point no 3 and 4)
- 3) After the end of the 1st year(the review of his work and competency will taken and then period will be extended for 2nd year.).
- 4) At the end of 2nd year the committee will review the work and competency of first 2 years and if it is satisfactory then his appointment will continue for further 3 years.
- 5) After completing the 5 years the regular scale of Plant Engineer will be given. to Mr.Pawar.
- 6) He has to make agreement with company for his appointment and draft of the same will be shown to him.
- 7) The weekly holiday will be Saturday and Sunday. Similarly he will be entitled for all leave (sick) as per rules of the corporation.
- 8) The both parties are free to terminate the contract wither by giving the one month notice or equal - amount as damage. The company's existing service rules and regulation, rulcs for discipline will be applicable to him and his service will be regulated accordingly. Similarly wherever service rules of the company are silent then govt rules will be made applicable there.
- 9) The company reserve its rights to transfer on similar post to the places wherever the company has offices.
- 10) All the perks and benefit applicable in the cadre of Manager (eg. Peon allowance , telephone allowance and reimbursement of newspaper bill) will be paid from 24.7.2009 to Plant Engineer.

The additional charge of Plant Engineer was given to Mr. S.G. Shinde, Dy. Engineer(Electrical) vide O.O. No 174/2008 dated 22-10-2008. However now the charge of Plant Engineer to be given to Mr. Umesh Vasant Pawar hence Mr. S.G.Shinde is relived from the additional charge of Plant Engineer. Similarly Rs 500/-as additional salary payable to Mr. Shinde as per O.O. NO 174/2008 to be discontinue with immediate effect. Similarly Mr. Shinde has handed over the

charge of Plant Engineer to Mr. Pawar on 27.7.2009.”

(emphasis supplied)

17. The condition No.5 in the office order dated 28th July 2009 is the hotbed of controversy between the parties. Condition No.5 is absent both in the offer of appointment as well as in the appointment order. It is the case of Respondent-Haffkine that the Managing Director is the appointing authority and that Manager (Administration) has no authority to incorporate condition No.5 in the Order dated 28th July 2009. On the contrary, it is Petitioner’s case that condition No.5 was incorporated as per approval of the Managing Director.

In this regard, reliance is placed by petitioner on file noting dated 8th July 2009 which is in Marathi and reads thus:

18. Thus, it was specifically proposed in the file note that after completion of 5 years, petitioner can be granted regular pay scale of the post of Plant Engineer. Not only this, it was also proposed that petitioner can be granted seniority on the post of Plant Engineer from the date of his initial appointment. Proposal was approved by the various hierarchical officers, including the Managing Director. Furthermore, an entry was made in the service book of petitioner with regard to order dated 28th July 2009 stating that on expiry of period of 5 years, petitioner would be granted regular pay scale for the post of Plant Engineer. It is therefore difficult to accept the contention of respondent-Haffkine that the Manager (Administration) had no authority to incorporate condition No.5 in the order dated 28th July 2009. The condition was incorporated as per the approval granted by the Managing Director, who admittedly is the appointing authority for the post of Plant Engineer.

19. Having held that condition No.5 for grant of regular pay scale on completion of 5 years was validly incorporated by the Manager (Administration) in the office order dated 28th July 2009, we now proceed to examine the effect of such condition. The advertisement issued was for contractual appointment for the tenure of 5 years. Under the Recruitment Rules, the post of Plant Engineer can be filled only by direct recruitment. The advertisement was not issued for filling up the post on regular basis. On the contrary the proposal in the file note and condition No.5 in the office order dated 28th July 2009 creates an impression as if the appointee could continue on the post of Plant Engineer beyond 5 years. When the advertisement was for contractual appointment for a maximum period of 5 years, what prompted Respondent-Haffkin to make a provision with regard to pay of appointee after 5 years is difficult to fathom.

20. The file note further contained a proposal for grant of seniority to Petitioner on the post of Plant Engineer from the date of his initial appointment. It is difficult to comprehend as to how the contractual employee can be granted seniority. To further complicate things, after Petitioner vacated the post of Shift Engineer and took up contractual appointment as Plant Engineer, Respondent-Haffkine filled up the post of Shift Engineer on regular basis and appointed

another incumbent on that post.

21. In the manner aforesaid, Respondent-Haffkine committed series of errors while filling up the post of Plant Engineer, which can be summarized as under:

i) Despite of relieving of earlier incumbent, the post was not filled up on regular basis through direct recruitment.

ii) Petitioner holding substantive post of Shift Engineer was permitted to participate in selection process initiated for appointment on contractual basis.

iii) Petitioner's substantive appointment was converted into contractual one.

iv) Though advertisement as well as appointment order was only for a period of 5 years, the office order incorporated a condition for grant of regular payscale after expiry of period of 5 years.

v) Approved file noting provided for grant of seniority to Petitioner as Plant Engineer from the date of his initial appointment.

vi) Substantive post of Shift Engineer, earlier held by Petitioner, was filled up on regular basis, thereby leaving no post for Petitioner after expiry of his contractual appointment.

22. The above series of errors committed by Respondent-Haffkine has given rise to the peculiar conundrum, which have set out at the beginning of the judgment.

23. The offer made to Petitioner did not contain condition No. 5. He accepted the offer with full understating that the appointment was only on consolidated salary and only for 5 years. Though incorporation of condition No. 5 in the Office Order dated 28th July 2009 cannot be termed as unauthorised, the same would create no right in favour of Petitioner to claim regular payscale of the post of Plant Engineer at the end of 5 year period. The advertisement was issued for filling up the post on contract basis for 5 years and therefore there was no occasion for the Respondent-Haffkine to provide for an eventuality (of grant of pay scale) after end of period of 5 years. Therefore, the promise extended to Petitioner about grant of regular pay scale on completion of 5 years of services as Plant Engineer was de horse the advertisement and offer of appointment. Petitioner had no right to continue beyond period of 5 years as his appointment was not only on contract basis but was restricted to tenure of 5 years. We therefore find condition No.5 in the order dated 28th July 2009 to be inconsistent with the advertisement as well as other terms and conditions of the appointment. Petitioner therefore cannot be permitted to claim any benefit flowing out of condition No.5 in the office order dated 28th July 2009.

24. Condition No. 5 is relied upon by Petitioner for claiming twin benefits of (i) continuation beyond 5 years and (ii) grant of regular pay scale of Plant Engineer. We have already held that no rights flow in favour of petitioner through condition No.5. Therefore, mere reliance on condition No.5 would not entail the benefit of continuation as Plant Engineer after completion of tenure of 5 years. Though

Petitioner relies upon pleadings in Respondents' reply to suggest that the proposal for grant of regular payscale of the post of Plant Engineer was processed by Respondent-Haffkine, there is nothing on record to show that the same was sanctioned. Since continuation of Petitioner as Plant Engineer beyond 5 years was impermissible, there is no question of granting him regular pay scale of that post after 5 years of service.

25. Another contention raised by Mr. Naidu is that petitioner was replaced by another contractual officer. He invokes well settled principle of 'one ad-hoc employee cannot be replaced by another ad-hoc employee'. We proceed to examine this contention.

26. It is well settled principle in service jurisprudence that normally an ad-hoc employee can be replaced only by regular employee, and that he/she cannot be replaced by another ad-hoc employee. This principle stands repeatedly expounded by the Apex Court. Reference in this regard can be made to the judgment of the Apex Court in *Md. Abdul Kadir vs. Director General of Police, Aasam*, (2009) 6 SCC 611, in which it is held as under:

"We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and reappointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, conterminous with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed."

27. Recently in *Manish Gupta Vs. President Jan Bhagidari Samiti*, Special Civil Appeal No.3084 to 3088 of 2022 decided on 21st April 2022 the Apex Court held as under:

"It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of *Rattan Lal v. State of Haryana*' and on the order of this Court in case of *Hargurpratap Singh vs. State of Punjab*."

28. However, there are numerous reasons why the principle of 'ad-hoc employee cannot be replaced by another ad-hoc employee' cannot be invoked in the present case. Firstly, this not a case of ad-hoc promotion/appointment for an indefinite period. Secondly, this is case of contractual appointment on a higher post of a substantive holder of lower post. Thirdly, the post of Shift Engineer is not a feeder cadre for promotion to the post of Plant Engineer. Fourthly, the post of Plant Engineer cannot be filled up by way of promotion, it can be filled only by direct recruitment. Fifthly, petitioner participated in subsequent advertisement for contractual appointment as Plant Engineer but was not selected. Lastly there

are disciplinary proceedings pending against petitioner.

29. Under the terms of appointment, petitioner was entitled to hold the post of Plant Engineer for a maximum period of 5 years. Condition No.5 in the office order dated 28th July 2009 did not confer any right on him to continue beyond the period of 5 years as the said condition is inconsistent with the other conditions of appointment. If an outsider was to be appointed as Plant Engineer on contract basis, his appointment would be terminated on expiry of period of contract and he would have to leave the organization. Merely because petitioner is a holder of substantive post in Haffkine, it would not confer upon him a better right than an outsider. In these circumstances we are of the view that petitioner did not have any right to continue to hold the post of Plant Engineer after tenure of his appointment came to an end on 24th July 2008.

30. After petitioner was relieved from the post of Plant Engineer, Respondent-Haffkine did advertise the post again on 11th February 2016 on contract basis. Petitioner applied in pursuance of that advertisement albeit without prejudice to present Writ Petition. He participated in the selection process, but was not selected. Respondent No.6 was selected and offered appointment for one year on contract basis. He further continued to work as Plant Engineer for a period of 5 years till 4th September 2021. The post was once again advertised on contract basis on 16th March 2021 and this time again, petitioner applied. He however was overage and was not allowed to participate in the selection process. The process was abandoned and this time, Respondent-Haffkine went in for regular appointment on the post of Plant Engineer and issued advertisement dated 25th November 2021. Petitioner has applied in pursuance of the advertisement dated 25th November 2021 and claims to have been qualified for being called for interview. In all this process a long gap of 9 years has occurred where the post of Plant Engineer is manned by other incumbents. Petitioner himself has taken chances of getting him appointed once again on contract basis by participating in subsequent processes of selection. The above chronology of events would indicate that no right is created in favour of any contract holder of post of Plant Engineer to continue indefinitely. Having participated in the selection process initiated vide advertisement dated 11th February 2016 and failed in that selection process, petitioner can no longer contend that status of his earlier appointment on 24th July 2009 should now be restored and continued indefinitely till the post is filled up on regular basis.

31. Respondent-Haffkine has issued memorandum of charge sheet dated 18 th February 2016 to petitioner. There are allegations about conduct of Petitioner while working on the post of Plant engineer and particularly while holding additional charge of the post of Manager (Administration). The same is already subject matter of enquiry and we do not wish to make any comment on this issue. However at the same time, unsatisfactory performance while holding a post is a well recognized exception to the principle 'ad-hoc employee cannot be replaced by another ad-hoc employee'.

32. Now we turn to the contention that the post of Shift Engineer was filled on regular basis after the post was vacated by the petitioner upon his appointment as Plant Engineer. Such an action on the part of the Respondent-Haffkine, in our view, is clearly erroneous. Petitioner was not given regular appointment on the post of Plant Engineer. It is unknown whether his lien was maintained on the post of Shift Engineer. It appears it was not, as post of Shift Engineer vacated by him was filled by making regular appointment. This would mean Petitioner's ouster from service after end of his contractual appointment as Plant Engineer. If on the other hand his lien was maintained on the post of Shift Engineer, it was impermissible for Respondent-Haffkine to fill-up the post of Shift Engineer on regular basis. This is yet another error committed by Respondent-Haffkine. However, this mistake on the part of Respondent-Haffkine would not inure to the benefit of petitioner. Luckily for Petitioner, the incumbent who was appointed on the post of Shift Engineer tendered resignation in March 2014 and made a place for Petitioner's accommodation. He was thereafter relieved from the post of Plant Engineer on

11 th August 2014. This saved possible unsavory situation of Petitioner's ouster from service. However as observed above, errors committed by Respondent-Haffkine would not create any right in favour of petitioner. Therefore, filling up of post of Shift Engineer on regular basis after petitioner's contractual appointment as Plant Engineer would not confer any right on him to continue to hold the post of Plant Engineer indefinitely.

33. Petitioner has relied upon on judgment of Division Bench of this court in Balaji (supra), to which one of the us (Sandeep V. Marne J.) was party. In our view, reliance of the petitioner on the judgment in Balaji (supra) far from assisting case of petitioner, actually militates against him. This court refused to apply that principle to Petitioners in that case. In that case, this court has held that the principle of 'ad-hoc employee cannot be replaced by another ad-hoc employee' cannot be invoked in a situation where engagements are made through a contractor. Even otherwise, the facts in the case of Balaji (supra) are entirely different and would have no application to facts and circumstances of the present case.

34. Petitioner has relied upon judgment in N. Murugesan (supra) in support of contention that once an offer is made and executed, it is not open for the employer to act contrary to the same and the Respondent-Haffkine cannot appropriate and inappropriate. There can be no dispute to this proposition. However, the offer made to Petitioner was only for contractual appointment for

5 years and condition No. 5 of order dated 28th July 2009 was not made known to him either through advertisement or offer of appointment. He accepted the offer sans condition of grant of pay scale after 5 years. After he was appointed and joined, a fresh condition No. 5 was generated in the Office Order dated 28th July 2009. Since the condition was absent in the offer, reliance on N. Murugesan is of no avail.

35. Petitioner has challenged appointment order of Respondent No. 6 by amending the petition. However as observed above, Respondent No. 6 resigned from service on 4th September 2021. Therefore, the prayer for challenge to appointment of Respondent No.6 does not survive. Even otherwise, we have held that Petitioner had no right to continue to hold the post of Plant Engineer after expiry of period of 5 years. Therefore, appointment of Respondent No.6 made by Respondent-Haffkine can otherwise not be found fault with.

36. Resultantly we do not find any error in the order dated 11th August 2014 reassigning petitioner to the post of Shift Engineer.

37. As observed above, Respondent-Haffkine ought to have filled up the vacant post of Plant Engineer on regular basis. However, it resorted to contractual appointments on the post of Plant Engineer during last 14 long years. Albeit belatedly, Respondent-Haffkine has finally initiated process for filling up the post of Plant Engineer on regular basis by issuing advertisement dated 25th November 2021. However, for unfathomable reasons, the selection process has not yet been finalized. It is high time that the vacant post of Plant Engineer is filled up on regular basis. We hope and trust that Respondent-Haffkine would take the pending selection process to its logical end, without any further delay. If petitioner is eligible to be considered for regular appointment as Plant Engineer, his candidature would be considered by Respondent-Haffkine on its own merits. Beyond this observation, we are unable to grant any relief to petitioner in the present petition.

38. Writ Petition is devoid of merits. It is dismissed with no order as to costs. Rule is discharged.