

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A No. 390 of 2024

Bhola Nath, aged about 43 years, son of late Nageshwar Thakur, r/o village-
Murim Kala, PO-Gosa, PS & District-Ramgarh **Appellant**

Versus

1. The State of Jharkhand
2. The Chief Secretary, Government of Jharkhand, Project Bhawan, PO & PS-Dhurwa, District-Ranchi
3. The Principal Secretary, Agriculture and Sugarcane Development Department (now called as Agriculture, Animal Husbandry and Cooperative Department), Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi
4. The Deputy Secretary, Agriculture and Sugarcane Development Department (now called as Agriculture, Animal Husbandry and Cooperative Department), Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi
5. The Director, Soil Conservation Department, Government of Jharkhand having office at Krishi Bhawan Compound, Kanke Road, PO & PS-Kanke, District-Ranchi
6. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, Project Bhawan, PO & PS-Dhurwa, District-Ranchi
7. The Secretary, Finance, Government of Jharkhand, Project Bhawan, PO & PS-Dhurwa, District-Ranchi **Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. A.K. Sahani, Advocate
For the Respondent-State : Mr. Ashok Kumar Yadav, Sr.SC-I
Mr. Aditya Kumar, AC to Sr. SC-I

Order No.4/Dated:17th September 2024

Per Sujit Narayan Prasad, A.C.J.

Prayer

The present appeal under clause 10 of the Letters Patent is directed against the judgment dated 14th May 2024 passed in W.P(S) No.2597 of 2023 whereby and whereunder the learned Single Judge has refused to interfere with the prayer sought for on behalf of the petitioner for getting the contractual period extended by dismissing the writ petition.

Factual Matrix

2. The brief facts of the case as per the pleadings made in the writ petition reads as under:

Initially the appellant-writ petitioner was working on the post of Junior Site Engineer at Jodhpur in Rail Vikash Nigam Ltd. for the period from 28.12.2006 to 16.01.2013.

By Office-order no: 1395 dated 06.09.2012, the Director, Soil Conservation, Government of Jharkhand issued a list of all permanent sanctioned posts of Junior Engineer of the Agriculture, Animal Husbandry and Cooperative Department, Government of Jharkhand and the same was determined in all the 22 districts of the State of Jharkhand.

In September, 2012, an advertisement was floated by the respondent no.5, i.e., Director, Soil Conservation Department, inviting applications for contractual appointment against aforesaid 22 sanctioned posts of Junior Engineers (Agriculture) from eligible candidates which are permanent in nature.

It is pleaded that all the posts, against which applications were invited, were found to be admissible at the pay scale of Rs.9300- Rs.34,800/- with grade pay of Rs.4200/- but with the aid of same nomenclature of contract/Adhoc appointment, a consolidated salary was mentioned as Rs. 17,750/-.

The appellant, being qualified, applied for the said post and after scrutiny, the respondents issued respective Admit Card calling the appellant to appear in the selection process by way of interview on 29.10.2012 by a duly constituted Selection Committee comprised of high-ranking officials.

Accordingly, the appellant-writ petitioner participated in the selection process and after due procedure, he was declared successful to be appointed on the post of Junior Engineer (Agriculture Engineering) vide office order no:1893 dated 27.12.2012.

Pursuant to that appointment, the appellant reported his joining before the respondent no.5. Vide office order issued under Memo No. 1913 dated 29.12.2013, and accordingly, the respondent no.5 posted the appellant in Chatra district with a direction to report his joining.

Accordingly, the appellant joined before the respondent no.5, who, after due formalities, relieved the appellant to join before concerned Soil Conservation Office. Accordingly, the appellant-writ petitioner joined

before the Controlling Authority in Chatra district and started his duties to the satisfaction of all concerned.

After looking to his performance and continuous contribution in implementation of one or other Government scheme, the ages of the appellant-writ petitioner and other similarly situated persons were transposed in the admissible scale relating to Junior Engineers vide letter No: 596 dated 09.05.2013. On satisfactory performance, the Controlling Authority always recommended for extension/ continuance of the service of the appellant.

It is further pleaded that the salary of the appellant and other similarly candidates were enhanced time to time and their services were subjected to transfer and posting like permanent employees through Establishment Committee. The service of the appellant and others were treated as regular and indispensable even after expiry of the contract period.

It is further pleaded that vide office order dated 13.12.2022 it was contemplated that no further extension would be granted to the persons concerned who are working on the said post and vide office order dated 28.02.2023 it was made clear to the appellant that no extension would be granted to him in future even after his satisfactory service of 10 years.

Being aggrieved, the petitioner approached this Court by filing W.P(S) No.2597 of 2023 which was dismissed by the learned Single Judge which is the subject matter in the present Letters Patent Appeal.

3. it is evident from factual aspects that admittedly the writ petitioner-appellant was appointed on the post of Junior Engineer (Agriculture Engineering) by virtue of the advertisement issued for fulfilling the appointment on contractual basis.

4. The appellant along with the others have participated in the selection process and he has been appointed vide office order no.1359 dated 6th September 2012 initially for one year and thereby the contract was extended time to time and the appellant was allowed to continue in service for about 12 years.

5. The period of contract since has not been extended and as such the petitioner has approached this Court by filing W.P(S) No.2597 of 2023. The learned Single Judge has declined to pass any positive direction in favour of

the petitioner-appellant considering the nature of engagement which was on contractual basis depending upon the terms and conditions of appointment which is the subject matter of present Letters Patent Appeal.

Argument by the learned counsel for the appellant:

6. Mr. A.K. Sahani, the learned counsel appearing for the appellant has raised the following grounds in assailing the impugned judgment:

I. It has been submitted that the writ petitioner has although has been appointed on contractual basis after following the all procedure as laid down under Articles 14 and 16 of the Constitution of India, since, one advertisement was issued and the appellant-writ petitioner has been subjected to the recruitment process based upon that and depending upon the performance of other candidates the appellant-writ petitioner has been appointed.

II. It has been contended that it is not that the appellant-petitioner has only been continuing in service for one year rather considering the satisfactory nature of service he has been allowed to continue for a period of 12 years, but subsequent thereto, the extension has not been granted without any rhyme and reason.

III. The post on which the petitioner was allowed to continue in service has already been sanctioned as would appear from the documents and more particularly the offer of appointment wherein it has been stipulated that the recruitment processes is to be initiated against 22 permanent posts meaning thereby the advertisement which has been issued for 22 posts have been sanctioned and against that the appellant has been appointed but it cannot be said that the post on which the appellant was appointed has not been sanctioned. The petitioner has been allowed to continue in service for 12 years and as such instead of regularizing the service, the extension of the contract has not been granted and, therefore, the respondents have committed gross illegality.

IV. The learned counsel appearing for the appellant based upon the aforesaid grounds has submitted that the impugned order therefore suffers from illegality and it is not sustainable in the eyes of law.

Argument of Learned counsel for the respondents:

7. Per contra, Mr. Ashok Kumar Yadav, the learned counsel appearing for the respondent-State while defending the impugned order has taken the following grounds:

I. The ground which has been taken that the post has been sanctioned as has been referred in the advertisement which has got no bearings of the issue of extension of his service is concerned reason being that the appellant has been appointed purely on contractual basis which is known to the appellant.

II. It has further been contended that when the appellant has accepted the terms and conditions of the offer of appointment and, as such, it is not available for him to assail the said terms and conditions by taking the ground for extending the contract. The ground has also been taken that once the terms and conditions of the contract has been accepted it is even not available for the Court of Law to change or rewrite the terms and conditions of the contract.

8. The learned State counsel states that since on the basis of the aforesaid premise the learned single judge has passed the order, therefore, the same cannot be said to suffer from any illegality.

Analysis

9. We have heard the learned counsels appearing for the parties, gone through the pleadings made in the writ petition as also the findings recorded by the learned Single Judge in the impugned order.

10. The foremost ground has been taken on behalf of the learned counsel appearing for the appellant that the appellant-writ petitioner was appointed on the contract basis but such appointment was based upon the post having been sanctioned as per the terms and conditions of the advertisement.

11. This Court, therefore is to consider as to whether the candidate if appointed on the contract basis even though on the sanctioned post based upon the terms and conditions of their regular performance is available for the such candidate to come before the Court to rewriting the terms and conditions of the contract which has been accepted by the said candidate.

12. The second question which is required consideration is that when such candidate is knowing about the fate of such contractual engagement is it

available for such candidate to get it continued for eternity, that too, contrary to the terms and conditions of that contract.

13. Since, both the issues are interlinked and as such the same are being taken together for analyzing the same.

14. But before analyzing the aforesaid issues, the underlying proposition of law in the case of regularization as has been laid down by the Hon'ble Apex Court needs to be refer herein.

15. The issue of regularization fell for consideration before Hon'ble Apex Court in the judgment rendered in *State of Karnataka v. Uma Devi (3)* [(2006) 4 SCC 1] and subsequent thereto in the *State of Karnataka v. M.L. Kesari* [(2010) 9 SCC 247].

16. The Constitution Bench of the Hon'ble Apex Court in the case of *State of Karnataka v. Uma Devi (3)* wherein the proposition has been laid down as would appear from paragraph no.53 that the issue of regularization is to be taken into consideration by the State by one time exercise if the candidate has been allowed to remain in service continuously for 10 years without any aid of ad-interim order passed by the Court and if the appointment has been made against the sanctioned post.

17. For ready reference the relevant paragraph no. 53 of the aforesaid judgment is being quoted as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that

context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the Constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

18. Subsequently, the Hon'ble Apex Court has delved upon the issue in *State of Karnataka v. M.L. Kesari* (supra) by dealing with the difference in between the regular employment and illegal employment. For ready reference the relevant paragraph of the judgment is quoted as under:

7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3) [(2006) 4 SCC 1], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or

continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

19. Applying the ratio of *Umadevi (3) case* (supra), the Hon'ble Apex Court in *Nihal Singh v. State of Punjab (2013) 14 SCC 65* directed the absorption of the Special Police Officers in the services of the State of Punjab. As per the factual aspect of the said case the petitioner was allowed to continue in service based upon the recommendation of creation of the post and he has been allowed to continue in service for a period of 10 years but which the post has not been sanctioned rather his service was terminated, then he has approached to the Court of Law and in that circumstances, the Hon'ble Apex Court has been pleased to pass an order that when there was recommendation of creation of post then there is no question to dispense with the service of Nihal Singh. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of

posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently, no such demand has ever been made by the State. The result is—the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.”

20. The judgment rendered by the Hon’ble Apex Court in the case of ***Amarkant Rai v. State of Bihar, (2015) 8 SCC 265***, it would be evident from the factual aspect that the person concerned, i.e., Amarkant Rai was appointed in the year 1983 in Class IV post of night guard. The University vide letter dated 4-7-1985 took a decision to regularise the persons who worked for more than 240 days, and thereafter, the Additional Commissioner-cum-Secretary, Bihar passed a settlement and forwarded a copy of the same to the Vice-Chancellors of the universities, wherein it was stated that the services of employees working in educational institutions as per the staff pattern, can be regularised. The Principal, Ramashray Baleshwar College requested the Registrar of the University to regularise the services of the appellant vide letter dated 7-10-1993; but the Registrar passed an order of termination dated 1-3-2001. Writ Petition No. 9809 of 1998 was preferred by few similarly placed daily-wagers in the High Court. As per the directions issued by the High Court, the Registrar of the University vide letter dated 22-12-2001 allowed all the daily-wagers to

resume their jobs from 3-1-2002 and the appellant also joined his duties but the day when he was appointed, there was no sanctioned post.

21. The Hon'ble Apex Court has taken into consideration that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities were directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar) the relevant factual aspect along with the consideration made by the Hon'ble Apex Court in the said case is being referred hereinbelow:

8. Insofar as contention of the respondent that the appointment of the appellant was made by the Principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as night guard was done out of necessity and concern for the College. As noticed earlier, the Principal of the College vide letters dated 11-3-1988, 7-10-1993, 8-1-2002 and 12-7-2004 recommended the case of the appellant for regularisation on the post of night guard and the University was thus well acquainted with the appointment of the appellant by the then Principal even though the Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year 2001 and the appellant was reinstated w.e.f. 3-1-2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, the University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of the BSU Act. Having regard to the various communications between the Principal and the

University and also the educational authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.

13. In our view, the exception carved out in para 53 of Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

22. It is further required to refer herein that since the State of Jharkhand has been made on 15.11.2000, therefore, the ratio which has been laid down by the Hon'ble Apex Court in *Secretary, State of Karnataka v. Uma Devi* (supra) will count the period of ten years which was up to the date of pronouncement of the judgment, i.e., 10.04.2006 which subsequently has been clarified by the Hon'ble Apex Court in *Narendra Kumar Tiwari v. State of Jharkhand*, (2018) 8 SCC 238 wherein it has been laid down that the period of ten years so far as the State of Jharkhand is concerned, would be counted from 15.11.2000.

23. It is, thus, evident that in the case of *Narendra Kumar Tiwari v. State of Jharkhand* (Supra), there is no new proposition, rather, only partial modification has been made so far as the period of 10 years which is to be counted from which date in view of the fact that the State of Jharkhand since

has been created on 15.11.2000. The relevant paragraphs of the aforesaid judgment are being referred hereunder as:—

“5. The decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1] was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of

Karnataka v. Umadevi (3), (2006) 4 SCC 1]
and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9
SCC 247] sought to avoid.

8. *If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1], is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.*

9. *The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise — the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.*

10. *Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.”*

24. The fact of ***Narendra Kumar Tiwari v. State of Jharkhand*** (Supra) is also of the daily rated employees and not the contractual engagee, therefore,

the State of Jharkhand has formulated a Rule in the year 2015 in terms of the direction passed by the Hon'ble Apex Court in the case of *Narendra Kumar Tiwari v. State of Jharkhand (Supra)*.

25. So far as the regularization or absorption of the contractual employees is concerned, the law is well settled that the employees appointed on contractual basis are to be governed through the terms and conditions of the contract by virtue of the fact that it is a bilateral contract in between the employees and the concerned employer.

26. The law is also settled that the engagee on contractual basis is exclusively to be governed with the terms and conditions of the contract and in that view of the matter, the condition as stipulated in the service code is not applicable, meaning thereby, the service of the appointees appointed on contractual ground, is to continue in service depending upon the terms and conditions of the contract which cannot be altered or any condition be added by virtue of issuance of direction by the court on the settled position of law that the terms of contract cannot be re-written, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of **Union Territory of Pondicherry v. P.V. Suresh, (1994) 2 SCC 70**. At paragraph 11 of the aforesaid decision, it has been held that the Court has no jurisdiction to alter the terms or rewrite the contract between the parties, for ready reference paragraph 11 is being referred as under:—

*“11. In the circumstances of this case,
Otherwise, the Court has no jurisdiction to alter the terms
or rewrite the contract between the parties.”*

27. Here, the factual aspect of the present case as has been admitted by virtue of page-31, i.e., office order dated 6.9.2012 whereby and whereunder the post has been shown to be sanctioned so far as the nature of the post of appellant is concerned. The advertisement has been appended as Annexure-2 wherein also the post has been shown to be sanctioned.

28. The process of selection has been followed by making application from one or the other eligible candidates. The petitioner has been found to be one of the successful candidates and he has been appointed by virtue of the offer of appointment vide Annexure-3 dated 27.12.2012. It would be evident from

the offer of appointment where also the reference of post has been sanctioned, 22 in numbers, found mentioned. But the writ petitioner along with the others has been appointed on contract basis depending upon the certain terms and conditions as has been referred in paragraph no.3, for ready reference the said terms and conditions are extracted below:

विज्ञापन में प्रकाशित शर्तों, चयन समिति की अनुशंसा एवं विभागीय अनुमोदन के आलोक में नियोजन की शर्त निम्न प्रकार से होगी।

i) चयनित अभ्यर्थी निर्गत आदेश की तिथि के 15 दिनों के अन्दर निदेशक, भूमि संरक्षण, झारखण्ड, राँची को अपना योगदान देंगे, 15 दिनों के अंदर योगदान नहीं करने पर उनके स्थान पर प्रतीक्षा सूची से नियोजन कर लिया जायेगा।

ii) निदेशक, भूमि संरक्षण, झारखण्ड, राँची को सभी शैक्षणिक योग्यता, अनुभय प्रमाण पत्र की मूल प्रति के साथ उसकी एक छाया प्रति (स्वयं अभिप्रमाणित) एवं असैनिक शल्य चिकित्सक के स्तर से निर्गत चिकित्सा प्रमाण पत्र (मूल रूप में) के साथ समर्पित कर योगदान करेंगे।

iii) अनुशंसित कर्मों को 50.00 रु० (पचास रु०) के Non Judicial Stamp paper पर निदेशक भूमि संरक्षण, झारखण्ड, राँची के साथ एक एकरारनामा (प्रारूप संलग्न) हस्ताक्षरित करना होगा जिसने किसी भी प्रकार की संविदा विस्तार / स्थायी नियमित नियोजन का दावा नहीं करने सहित सभी बिन्दुओं का उल्लेख किया जाएगा तथा एकरारनामा के हस्ताक्षरोपरान्त निदेशालय के योगदान की तिथि से संविदा आधारित अवधि आरंभ मानी जाएगी एवं तत्पश्चात संबंधित कार्यालय में योगदान करने हेतु विरमित किया जायेगा।

iv) प्रसंगाधीन सेवाएँ संविदा आधारित होगी तथा प्राथमिक तौर पर एक वर्ष या एकरारनामा एवं विज्ञान की शर्तों के अनुरूप होगी।

v) किसी भी अभ्यर्थी की संविदा आधारित सेवा संतोषजनक नहीं होने पर या नियमित नियुक्ति होने की स्थिति में एक माह की सूचना / मानदेय देकर कभी भी सेवा समाप्त की जा सकती है एवं उनके द्वारा किसी भी प्रकार की संविदा विस्तार / स्थायी / नियमित नियुक्ति का दावा अनुमान्य नहीं होगा। इसके विपरीत कोई कर्मों नियोजन के स्वतः मुक्त होना चाहेंगे तो नियंत्री पदाधिकारी के माध्यम से निदेशक, भूमि संरक्षण, झारखण्ड, राँची से अनुमोदन प्राप्त करना होगा।

vi) सेवा संतोषजनक होने पर एकरारनामा की अवधि अगले आदेश के द्वारा विस्तारित की जा सकती है जिसमें नियमानुसार मानदेय में वृद्धि अनुमान्य होगी।

vii) योगदान करने हेतु किसी प्रकार का यात्रा भत्ता देय नहीं होगा।

viii) कार्य के दौरान भ्रमण के लिए के राज्य कर्मियों को देय वेतनमान् रु० 9300-34800 ग्रेड पे रु० 4200 के अनुसार यात्रा भत्ता अनुमान्य होगा। स्थानीय परिवहन हेतु सक्षम स्तर से पूर्वानुमति प्राप्त करना आवश्यक होगा।

ix) प्रतिमाह मानदेय / भत्ता का भुगतान नियंत्री पदाधिकारी को उपलब्ध आवंटन / राशि से भुगतान किया जायेगा।

x) कार्मिक एवं प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड, राँची एवं वित्त विभाग, झारखण्ड, राँची के द्वारा समय-समय पर निर्गत नियम, अधिनियम के अनुरूप सेवा शर्तों को लागू किया जा सकेगा।

xi) चयनित अभ्यर्थी को देय छुट्टी एवं अनुमान्य अन्य सुविधा वही होगी जो कार्मिक एवं प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड, रांची के परिपत्र के द्वारा निर्गत है, या समय-समय पर संसोधित आदेश लागू किया जायेगा।

xii) निदेशक, भूमि संरक्षण, झारखण्ड, रांची को उपर्युक्त शर्तों के शिथिल या अतिरिक्त शर्तें निर्धारित करने का अधिकार सुरक्षित रहेगा।

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निदेशक, भूमि संरक्षण, झारखण्ड, रांची

29. Thus, it is evident that the petitioner has accepted the terms and conditions of the aforesaid appointment and as such, he has been discharging his duty. His services have been renewed also for substantive period but subsequently his service has not been extended which compelled the writ petitioner to approach this Court by filing writ petition being W.P.(S) No.2597 of 2023 seeking a direction for extension of the period of his contract but the learned Single Judge has declined to pass any positive direction in favour of the petitioner.

30. It would be evident from the terms and conditions of the contract wherein the petitioner has accepted the same and one of the terms and conditions is that the services of the petitioner is purely on contract and initially it will be valid for a period of one year and depending upon the satisfactory service, the period of contract can be extended. The said terms and conditions have been accepted by the appellant and now he wants to get extension in the contract.

31. Further law is well settled that once the terms and conditions have been entered into between the parties, it is not available for the parties to take “U” turn by questioning the terms and conditions and in such circumstances, it is not available for the Court of Law in exercise of power of judicial review to go by to the terms and conditions of the contract otherwise the same is to be re-writing the terms and conditions of the contract, reference in this regard is made to the judgment rendered by the Hon’ble Apex Court in the case of ***State of Bihar v. Industrial Corporation (P) Ltd.*** [(2003) 11 SCC 465] wherein at paragraph 29, it has been held as under:

“29. As is evident, the appellants have sought to exercise their statutory power and not a contractual obligation. Reliance placed in this behalf by Mr. Ray on State of Orissa v. Narain Prasad [(1996) 5 SCC 740] is not apposite

in the fact situation obtaining herein. The respondents therein were the highest bidders in respect of the various liquor shops in Orissa. Their bids were accepted. They executed agreements in the prescribed form and were issued licences. Each of them had undertaken under the agreement/contract to lift a particular specified quantity of liquor every month. They carried on their business in terms of the licences but failed to lift the agreed minimum guaranteed quantity and further failed to remit the excise duty as provided under Rule 6-A. It was, in that situation, this Court observed : (SCC p. 752, para 21)

“A person who enters into certain contractual obligations with his eyes open and works the entire contract, cannot be allowed to turn around, according to this decision, and question the validity of those obligations or the validity of the Rules which constitute the terms of the contract. The extraordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interests of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour.”

32. Further, the Hon'ble Apex Court in the judgment rendered in ***Vice-Chairman and Managing Director, A.P. Sidc Ltd. v. R. Varaprasad [(2003) 11 SCC 572]*** at paragraph 12 been held as under:

“12. This being the position both the learned Single Judge and the Division Bench of the High Court were not right in taking a contrary view that the benefits available under the Scheme and terminal benefits should be reckoned and calculated as on the date of actual relieving of the employees notwithstanding the cut-off date mentioned by the Corporation and accepted by the employees. An employee even after accepting his application could not be relieved

unless the entire amount to which he was entitled under the Scheme was paid. Such payment depended on making funds available by the State Government. All employees who accepted VRS could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available early or late. If the argument of the respondents that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is a matter of contract between the Corporation and the employees. It is not for the courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Schemes floated.”

(Emphasis Supplied)

33. It need to refer herein that question fell for consideration before the Hon'ble Apex Court in the case of ***Official Liquidator v. Dayanand [(2008) 10 SCC 1]*** as under paragraph 65 as to whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularise the services of temporary/ad hoc/daily wager/casual/contract employees.

34. The Hon'ble Apex Court while answering the issue has considered the various judgments of its own Court and has to come to conclusive finding that the High Court sitting under Article 226 of the Constitution of India cannot compel the state machinery by issuing command to regularize the services of temporary/ad hoc/daily wager/casual/contract employees.

35. The Hon'ble Apex Court further in the judgment rendered in *Union of India v. All India Trade Union Congress [(2019) 5 SCC 773]* has been pleased to hold that about essential condition for entitlement for regularization in service that only long years of service cannot by itself be a ground for regularization. The High Court in exercise of its extraordinary power under Article 226 of the Constitution can do is to direct the Government to consider for framing an appropriate scheme having regard to the facts and circumstances of any case but not beyond it. It is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise.

36. Reference in this regard be made to paragraph 15 of the judgment, which reads as under:

“15. The High Court failed to see that it is not the function of the courts to frame any scheme but it is the sole prerogative of the Government to do it. All that the High Court, in exercise of its extraordinary power under Article 226 of the Constitution, can do is to direct the Government to consider for framing an appropriate scheme having regard to the facts and circumstances of any case which this Court did in Vartak Labour Union (2) [Union of India v. Vartak Labour Union (2), (2011) 4 SCC 200 : (2011) 1 SCC (L&S) 659] but not beyond it. It is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise.”

37. Since herein the writ petitioner has accepted the offer of appointment, which has been made on contract and is being governed with their own rules therefore, once having accepted the terms of the contract and rendered his services, he cannot turn around since, the writ petitioner is the engagee on contract basis depending upon the contract and as such on that count also there cannot be direction under Article 226 of the Constitution of India otherwise the same will amount to re-writing the contract, which is not permission in law.

38. The admitted facts since herein is that the appellant has been appointed on the contractual basis and one of the conditions is that the terms and conditions can be rescinded at any time and the extension is one of the conditions depending upon the satisfactory service of the candidate. The further condition is that the appointment will be purely on the basis of the contract. Since the petitioner is a party to the said contract and if the period of contract has not been extended it cannot be said that the authority while doing so has flouted the terms and conditions of the appointment.

39. This Court, in view of the aforesaid discussion, both on law and fact, is of the view that both the issues are to be answered against the appellant, accordingly, answered.

40. This Court after having answered the issues and advertent to the findings recorded by the learned Single Judge in the impugned order, particularly, at paragraph no. 44 from where it is evident that since the appellant was appointed on contract basis and, as such, his service has not been extended it cannot be said that there is any infringement of the legal vested right of the petitioner. Since the learned Single Judge has taken the aforesaid view which according to our considered view, based upon the aforesaid discussions made hereinabove, cannot be said to suffer from any error.

41. This Court, in the entirety of the facts and circumstances of the case, is of the view that the instant appeal has no merit which is, accordingly, dismissed.

42. Pending I.A, if any, stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

(Sanjay Kumar Dwivedi, J.)

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