Before R.S. Mongia and K.C. Gupta, JJ.

ANIL KUMAR AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 6771 of 2000

13th June, 2000

Constitution of India, 1950—Arts. 14, 16 and 226—Termination of the contractual employees in terms of the appointment order—Advertisement issued inviting fresh applications for appointment on contractual basis—Whether the contractual employees, already selected and appointed after due selection, entitled to continue to work till regular appointments are made—Held, no—Services of a contractual appointee can be terminated in accordance with the terms of appointment and there is no bar on the employer to replace one contractual employee by another contractual employee.

Held, that the services of an *ad hoc* employee like a temporary employee can be terminated in accordance with the terms of appointment and there is no ban or bar on the employer to replace one *ad hoc*/ temporary employee by another temporary employee.

(Para 10)

Further held, that in *State of Haryana and others* v. *Piara Singh and others, JT 1992(5) S.C. 179,* which was a case where temporary/ *ad hoc* appointments had continued in States of Punjab and Haryana for a number of years, the apex Court had asked the State of Haryana and State of Punjab to come out with certain policies for regularising such *ad hoc*/temporary employee who had worked as such for sufficiently long period. It was in that context when policies were produced before the apex Court that an observation was made that an *ad hoc* or temporary employee should not be replaced by another *ad hoc* or temporary employee. He must be replaced by a regularly selected employee. This was an observation made under the circumstances of that case. Supreme Court could not have intended that once an *ad hoc* employee is appointed for a particular period he is entitled to continue till regular appointments are made.

(Para 16)

Further held, that the Apex Court in *State of Himachal Pradesh* v. *Suresh Kumar Verma and another, AIR 1996 SC 1565* had observed that temporary employee cannot be replaced by another temporary

employee under the circumstances of that case. Thus, it was not being laid down as a matter of law that once a person is temporarily employed to a post, he can continue till a regular appointment is made and he cannot be replaced by another temporary employee.

(Para 17)

G.K. Chatrath, Senior Advocate with Anu Chatrath, Advocate, *for the petitioners.*

JUDGMENT

R.S. Mongia, J.

(1) The Government of Haryana framed a scheme called 'Reproductive Child Health Scheme' in short 'RCH' and initially the scheme was introduced in districts Faridabad, Panchkula and Bhiwani. The scheme is run by a society known as Reproductive Child Health Society. As per the averments made in the writ petition, the petitioners possess the qualification for appointment as Accountant/Clerk/Steno typist/Staff Nurses/Lab. Technician/Multi Purpose Health Worker (female)/A.N.M./Driver. In response to advertisement issued from time to time, petitioners were appointed on different posts mentioned above on purely contractual basis. The appointment letters issued by the Chairman of the Reproductive Child Health Society, Bhiwani, to petitioner Anil Sharma as Lab. Technician dated April 27, 1999, has been appended as annexure P-5 to the writ petition. Its terms of appointment (relevant extract) may be noticed :—

> "Subject :—Appointed for the post of L.T. Lab. Technician on contract basis.
>
> On the recommendation of R.C.H. Selection Committee you are hereby offered contract appointment for the post of Lab. Technician C.H.C. Band Kala under R.C.H. Scheme in the fixed pay Rs. 5085 p.m. only sanctioned by Distt. R.C.H. Society on contract basis.
>
> Your appointment is purely on contract basis up to 31st March, 2000. Your services will be terminated without assigning any reason except in the case of removal for the misconduct for character and incident being reported to be unsatisfactory in which case your services will be terminated without any notice and similarly if you wish to resign the post you may do so by submitting 24 hours notice."

(2) Similar appointment letters were issued to the other petitioners. A termination letter issued to one of the petitioners, Santosh Kumari,

dated May 4, 2000, copy annexure P-10, when translated into English reads as under :—

> "Subject : Regarding relieving from duties. On the above cited subject you were appointed as Staff Nurse in R.C.H. up to 31st March, 2000 and afterwards approval has not been received for your continuation in service. Therefore you deem yourself to be relieved w.e.f. 31st March, 2000 and you handover your charge to the A.N.M./any employee."

(3) This writ petition has been filed primarily with a prayer that service of the petitioners, though on contract basis, cannot be terminated till regular appointments are made and further one contractual appointee cannot be replaced by another contractual appointee. In this regard, an advertisement dated 21st May, 2000, issued by the Reproductive Child Health Society, Bhiwani, has been appended an Annexure P11, which invites applications for various posts for appointment on contractual basis on fixed salaries up to 31st March, 2000.

(4) Learned counsel for the petitioners argued that the petitioners have been selected and appointed on contractual basis after due selection and, therefore, their services cannot be terminated till regular appointments are made and in any case the contractual appointment should be extended and the petitioners cannot be replaced by other contractual appointees. In support of the contention, learned counsel for the petitioners has cited Division Bench judgments of this Court reported as *Polu Ram and another* v. *State of Haryana and another* (1); *Shamsher Singh and others* v. *State of Haryana and others* (2) and two judgments of the apex court reported as *State of Haryana and others* v. *Piara Singh and others* (3) and *State of Himachal Pradesh* v. *Suresh Kumar Verma and another* (4). Before dealing with the authorities cited by the learned counsel for the petitioners, we may observe here that the question as posed in the present writ petition, while culling out the prayers of the petitioners above, has been squarely answered by a Full Bench of this Court in *S.K. Verma and others* v. *State of Punjab and others* (5) and a Division Bench judgment of this Court reported as *Harjot Kamal Singh* v. *State of Punjab* (6). In *S.K. Verma's case* (supra), the questions that arose for consideration were

(1) 1998(4) Recent Services Judgments 152
(2) 1998(4) Recent Services Judgments 708
(3) Judgments Today 1992(5) SC 179
(4) AIR 1996 SC 1565
(5) 1979(2) SLR 164
(6) 1997(1) Recent Services Judgments 95

whether the services of an *ad hoc* employee could be terminated in accordance with the terms of appointment and whether the *ad hoc* appointees could be replaced by other *ad hoc* appointees ? The term of appointment of the petitioners in *S.K. Verma's case* (supra) was as follows :

> "The appointment is against a temporary post, the sanction of which is granted from time to time. If the post is abolished then your appointment is liable to be terminated as you are being appointed on temporary basis. It is, therefore, made clear that your services can be terminated at any time without giving any notice."

(5) The points raised before the Full Bench can be better appreciated by reproducing para 3 of the said judgment :

> "3. It is the petitioner's case that though the temporary post against which they were appointed are yet continuing, nevertheless their services are sought to be terminated and the respondents have sent requisitions to the Employment Exchanges for appointment of fresh candidates in place of the petitioners on *ad hoc* basis. It is not in dispute that the respondent-State has issued an order (Annexure P-2) *inter alia* providing for the regularisation of certain categories of its *ad hoc* employees, who had completed at least a minimum period of one year's continuous service on 31st March, 1977 and further satisfied the requisite conditions specified in the said order. Admittedly none of the petitioners satisfied the basic conditions spelled out in Annexure P-2, in order to attract its application. nevertheless, a challenge is laid to the apprehended termination of the petitioner's services primarily on the ground that their employment cannot be dispensed with as long as the posts against which they were appointed continue and in order to make room for other *ad hoc* employees."

(6) The Full Bench first held that there is not much distinction between an *ad hoc* employee and a temporary employee. Reference in that regard may be made to observations made in para 10 of the judgment :

> "10. Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as *ad hoc* and employed on similar terms. Indeed, it apears to us that in the gamut of service law an *ad hoc* employee virtually stands

at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the *ad hoc* one appears at the lowest level implying that he had been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes."

(7) A Division Bench judgment in C.W.P.. No. 2268 of 1977 *(Krishna Devi* v. *Punjab State)* rendered on 9th December, 1977, was cited on behalf of the petitioners before the Full Bench. The Division Bench in *Krishna Devi's case* (supra) had observed as under :

"The order Annexure P.2 dated 19th February, 1977, passed by the Headmaster Government High School, Ghumiara, shows that the services of the petitioner are being terminated on the appointment of another employee by the District Education Officer, Faridkot. The order does not say that the other employee has been recruited as a regular teachers. We are highly doubtful whether it would be open to the District Education Officer to termiante the services of an *ad hoc* employee who is better qualified for making the appoint of another employee with lesser qualifications on *ad hoc* basis. In the circumstances, we hold that the petitioner on the basis of her qualifications is entitled to hold the post of a Hindi teacher and she will not be removed from service merely because anothr employee is available for appointment on ad hoc basis. It shall, however, be open to the department to terminate her services if a regularly selected Hindi teacher is available for appointment. With these observations, this petition stands disposed of with no order as to costs."

(8) Answering the questions as to whether the services of an *ad hoc* employee could be terminated in accordance with the terms of appointment and whether a fresh *ad hoc* appointment could be made, the Full Bench observed in paras No. 12 to 16 as under :

"12. As we look at the matter, the issue of the termination of the services of *ad hoc* employee is strictly confined betwixt him and the State. The primary and indeed what appears to us as the sole consideration here is whether the employer State has a legal right to terminate the services of an ad hoc employee or not. Viewed from the opposite angle, it is whether the latter has a legal right to continue in his post. The lis, if one may say so, is hence confined to these two parties. The consideration whether consequent upon such a termination the respondent State would choose to employ any one at all in the same post,

and if so, whether such an employment would be of regular or transitory nature, appears to us as wholly extraneous for the determination of the rights and liabilities of the employer and employee. Similarly the question of academic qualifications and suitability etc., of the proposed incumbent of the post, who may later come to occupy the same appears to us on an identical footing.

13. Now if the employer has the power to terminate the services of his employee in accordance with the terms of contract or otherwise, we are unable to see how the academic qualifications of the existing employee or of the one, who on an off-chance, is likely to succeed him, would become relevant to the question. Similarly the nature of the tenure whether permanent or temporary that might later on be offered to the new incumbent cannot in our view in any way enlarge or constrict the power of termination of services if otherwise vested in the employer. With great respect it appears to us that these matters are not only extraneous to the issue, but are an unnecessary extension into a filed which must necessarily remain conjectural.

14. Undoubtedly academic qualifications of an employee are relevant and even important, but by themselves they do not and should not necessarily ensure either permanency of tenure or invariably implying a superiority to hold a particular post. To take a homely example, for a menial or ministerial job higher academic qualifications might well prove to be a handicap. Experience has shown that in such like situations, persons of superior academic qualifications may remain wholly dissatisfied and disgruntled in a post of this nature, while others of lesser and lowly academic standing may value and cherish such a job.

15. We are firmly of the view that neither the academic qualifications of a proposed incumbent to fill the vacancy nor the nature of the tenure offered to him should have any legal consequences on the power or otherwise of the employer State to dispense or not with the services of an *ad hoc* employee.

16. Once the aforesaid considerations are out of the way, it appears to us that the right of the respondent State, and for that matter of any employer to terminate the services of an employee in accordance with the terms of his appointment is inherent and well recognised by law. Of course such a right may be cut into or constricted by statutory provisions. In the

present context, the only provisions brought to our notice and on which some semblance of reliance was placed by the petitioners are Arts. 16 and 311 of the Constitution or in the given circumstances the statutory law or service rules governing the parties. Indeed it deserves recalling that so far as the State is concerned, the pleasure doctrine has been expressly noticed and incorporated in the Constitution by Art. 310 itself. ....."

(9) Observations made in para 19 may also be noticed :—

"19. Assuming entirely for the sake of argument that the proposed incumbents were specified and determined even then we are unable to see that Art. 16 would be attracted. An *ad hoc* employee with an existing service record cannot be deemed in the eye of law as identically equivalent to an aspirant for the post which he is likely to vacate. The two do not from the same class or one of them being employed with his service record, whilst the other is as yet unemployed and his work and conduct is yet to be assessed in future. The two, therefore, stand on entirely different footing, far from being is an identical class. There is thus a clear differentia existing betwixt them. Consequently Art. 16 can have no application even on this assumption either."

(10) From the above judgment, two things become very clear: (i) that the services of *ad hoc* employee like a temporary employee can be terminated in accordance with the terms of appointment and (ii) there is no ban or bar on the employer to replace one *ad hoc* employee/ temporary employee by another temporary employee. The Full Bench in *S.K. Verma's case* (supra) over ruled the judgement of the Division Bench in *Krishna Devi's case* (supra).

(11) In *Harjot Kamal Singh's case* (supra), in which one of us (R.S. Mongia, J.) was a member, took similar view as taken by the Full Bench. For coming to the similar conclusion, two judgments of the apex Court reported as *State of Punjab and others* v. *Surinder Kumar and others* (7) and *State of Uttar Pradesh* v. *Kaushal Kishore Shukla* (8), were relied upon. The appointment letter of petitioner Harjot Kamal Singh in that case contained the following terms :

"(a) His services can be terminated at any time without notice and without assigning any reason.

(7) Judgments Today 1991(6) SC 540

(8) 1991(1) Recent Services Judgments 659

(b) His service shall be deemed to have been dispensed with on the expiry of 89 days or on the appointment of a candidate regularly selected by the Subordinate Services Selection Board whichever is earlier.

(c) He shall be deemed to have been relieved on the expiry of term of 89 days."

(12) The argument of Harjot Kamal Singh in the said case was that the term in the appointment that he was being appointed on 89 days basis was wholly arbitrary and should be treated as non-existent and he should be allowed to continue till regular appointment against the post was made. To repel this argument reliance was placed on two judgments of the apex Court. In *Surinder Kumar's case* (supra), the facts were that Surinder Kumar and others had filed a writ petition in this Court apprehending termination of their services as they had been appointed for a fixed term. A Division Bench of this Court disposed of the writ petition on 4th April, 1991, by passing the following order :

"On the facts and circumstances of the case, we are of the opinion that the just and fair order should be that the petitioners who have been appointed on part time basis should be continued until the Government makes regular appointments on the recommendations of the Public Service Commission. Meanwhile the petitioners will get their salarly for the period of the vacation."

(13) The State of Punjab took the matter in appeal before the apex Court. In the appointment letters to Surinder Kumar and another it was specifically mentioned that they could be relieved any time without notice and the payment would be made at the rate indicated therein on hourly basis. Surinder Kumar and others had accepted that offer of appointment. However, they filed the writ petition in this Court that in fact they were entitled to be regularised in the post and also get regular pay scale and their services could not be terminated in terms of appointment. The apex Court in appeal by the State of Punjab observed that it was not being suggested that the employees had accepted the terms set out in their appointment orders under any mistake. It was further observed *"We, therefore, do not find any reason as to why the specific term on which the appointments were made could not be enforced."* (emphasis supplied). Learned counsel for Surinder Kumar and other had submitted before the apex Court that since the apex Court had earlier issued directions for absorption or *ad hoc* Government service on permanent basis in several cases, therefore, it was suggested that if apex Court could pass such an order without assigning any

reason, it was open to the High Court to allow the writ petition in similar terms. The Hon'ble Judges of the Supreme Court observed that they were not in a position to agree with such a contention.

(14) In *Kaushal Kishore Shukla's case* (supra), the employee had been appointed purely on temporary basis and could be terminated by giving one month's notice without assigning any reason. A departmental enquiry was started against him but the same was dropped and services were terminated in accordance with the terms of appointment. The Hon'ble Supreme Court held that a temporary Government servant had no right to hold the post and his services could be terminated by giving him one month's notice without assigning any reason either under the terms of contract providing for such termination or under the statutory rules regulating the terms and conditions of temporary Government servant. If a temporary employee has no right to continue on a post and his services can be terminated in accordance with the terms of appointment, we do not find as to why the services of a contractual employee cannot be terminated as per the terms of appointment. Earlier to the judgment of *Harjot Kamal Singh's case* (supra), a Division Bench in C.W.P. No. 7361 of 1996 *(Kiran Bala and others* v. *State of Punjab),* rendered on 22nd May, 1996, had held that services can be terminated in terms of the letter of appointment. In *Harjot Kamal Singh's case* (supra), to the question as to whether an *ad hoc* employee can be replaced by another *ad hoc* employee, answer was given as under :

> "9. The matter can be viewed from another angle. Supposing a person is appointed on *ad hoc* basis for a particular period and his work is just average and the employer is finding a much better person than him; is the employer barred from giving employment to the subsequent person who may be better than the earlier one or he is bound to continue the earlier *ad hoc* employee till a regular appointment is made ? We are of the view that no fetters can be put on the powers of the employer to have the best person for the job. However, if in a particular case, it is alleged that this power has been exercised arbitrarily or malafidely, the Courts would certainly go into that."

(15) The judgment in *Harjot Kamal Singh's case* (supra) was followed by another Division Bench in C.W.P. no. 9917 of 1996 *(Savita and another* v. *State of Haryana and others),* rendered on 24th September, 1996, where also the petitioners had been appointed for a fixed term. It may be observed here that while deciding *Harjot Kamal Singh's case* (supra) some other Division Bench judgments were

considered and it was observed that if those judgments meant as was being suggested by the petitioners in *Harjot Kamal Singh's case* (supra) that the services could not be terminated in terms of appointment and they should be allowed to continue till regular appointments were made, then in view of the apex Court judgments the Bench had reservations about those judgments. Later on *Harjot Kamal Singh's case (supra) was cited before the Division Bench which had earlier rendered the judgments cited in Harjot Kamal Singh's case* (supra). The judgment is reported as *Gurcharan Singh* v. *State of Punjab and another* (9). The Division Bench observed that there was no conflict between two sets of decisions. Para 7 of *Gurcharan Singh's case* (supra) is reproduced below :

> "It appears to us that attention of the Division Bench while decided Harjit Kamal Singh's case was not drawn to the clear difference in the nature of appointment of the petitioners in Rajni Bala's case and Gordhan Singh Gulia's case. Apparently due to this the Division Bench expressed its reservation regarding the observations made in Gordhan Singh Gulia's case and Rajni Bala's case. However, we have no doubt in our mind that their no conflict between the two sets of decisions and a careful reading of them lead to the following conclusions. ....."

(16) So far as the judgments of the apex Court cited by the learned counsel for the petitioners are concerned, it may be observed that in *Piara Singh's case* (supra), which was a case where temporary/*ad hoc* appointments had continued in States of Punjab and Haryana for a number of years, the apex Court had asked the State of Haryana and State of Punjab to come out with certain policies for regularising such *ad hoc*/temporary employees who had worked as such for sufficiently long period. It was in that context when policies were produced before the apex Court that an observation was made that an *ad hoc* or temporary employee should not be replaced by another *ad hoc* or temporary employee. He must be replaced by a regularly selected employee. According to us this was an observation made under the circumstances of that case. Supreme Court could not have intended that once an *ad hoc* employee is appointed for a particular period he is entitled to continue till regular appointments are made. Reliance by the petitions on observations made in the lines of the judgment by the apex Court in *Suresh Kumar Verma's case* (supra) to the effect that one temporary employee cannot be replaced by another temporary employee are being read out of context. That case was a State appeal.

(9) 1997(1) Recent Services Judgments 649

In paras 3 and 4 of the judgment of the apex Court, it was observed as under :

> "3. It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot given any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules.
>
> 4. Mr. Mahabir Singh, learned counsel for the respondents contended that there was an admission in the counter-affidavit filed in the High Court that there were vacancies and that, therefore, the respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

(17) It is apparent that under the circumstances mentioned in paragraphs 3 and 4 (supra), the apex Court in last line of para 4 had observed that temporary employee cannot be replaced by another temporary employee. Thus, according to us, it was not being laid down as a matter of law that once a person is temporarily employed to a post, he can continue till a regular appointment is made and he cannot be replaced by another temporary employee. In *Kaushal Kishore Shukla's case* (supra) of the apex Court, as noticed above, it has been held that services of a temporary employee can be dispensed with in terms of appointment.

(18) In the present case, there is another peculiar fact. The services of the petitioners were terminated on the ground that the

budget had not been sanctioned. We are of the view that if later on with effect from a particular date, budget is sanctioned, it does not mean that those *ad hoc*/tempoary employee, who were earlier employed and their services stood terminated, should be recalled. An advertisement has been issued in this case, in which all eligible persons, including the petitioners, can apply.

(19) For the foregoing reasons, we find no merit in this writ petition, which is hereby dismissed.

S.C.K.

Before Jawahar Lal Gupta and K.S. Garewal, JJ.

SUKHMANDAR SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 2369 of 2000

6th July, 2000

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—RI. 13.21—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—A Sub Inspector seeking exemption from qualifying the Upper School Course on the ground of physical handicap suffered while performing his official duties—RI. 13.21 of the 1934 Rules empowers the DGP to relax the provision—Though petitioner's case was duly recommended by the SSP yet the DGP rejecting his claim without recording any reason—Petitioner had a better claim than those persons who have been granted exemption only on account of their family circumstances—Action of the respondent in declining the request of the petitioner for exemption not fair—Impugned order quashed with a direction to respondent to consider his request afresh.

Held, that the petitioner has qualified the lower School Course and the Intermediate School Course. He had made a prayer for exemption from passing the Upper School Course on account of the physical handicap suffered by him while performing his duty. This claim for the grant of exemption from passing the promotional course had to be considered fairly and objectively. Relevant considerations had to be kept in view. The authority cannot act arbitrarily or whimsically.

(Para 5)