

AFR

Neutral Citation No. - 2025:AHC-LKO:37471

Reserved

Court No. - 11

Case :- WRIT - A No. - 6678 of 2023

Petitioner :- Sanjay Kumar Chaurasiya And 36 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare Lko. And 10 Others

Counsel for Petitioner :- Vikas Yadav,Shivam Srivastava,Utkarsh Misra

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Nishant Shukla,Satya Prakash,Shikhar Srivastava

CONNECTED WITH

2. Case :- WRIT - A No. - 7401 of 2023

Petitioner :- Aman Kumar And 16 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare Lko And 9 Others

Counsel for Petitioner :- Vikas Yadav,Anubhav Awasthi,Pankaj Kumar,Shivam Srivastava

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya Prakash,Shikhar Srivastava

AND

3. Case :- WRIT - A No. - 7951 of 2023

Petitioner :- Ajai Kumar Mishra And 12 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Medical Health And Family Welfare, Lko. And 5 Others

Counsel for Petitioner :- Vikas Yadav,Shivam Srivastava

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya Prakash,Shikhar Srivastava

AND

4. Case :- WRIT - A No. - 8203 of 2023

Petitioner :- Hariom Kumar And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare And 3 Others

Counsel for Petitioner :- Vikas Yadav,Shivam Srivastava

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya

Prakash,Shikhar Srivastava

AND

5. Case :- WRIT - A No. - 8528 of 2023

Petitioner :- Ajeet Kumar Verma And Others

Respondent :- State Of U.P. Thru. Prin. Secy., Deptt. Of Medical Health And Family Welfare Lko. And 3 Others

Counsel for Petitioner :- Vikas Yadav,Shivam Srivastava,Utkarsh Misra

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya Prakash,Shikhar Srivastava

AND

6. Case :- WRIT - A No. - 297 of 2024

Petitioner :- Shri Prakash And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health/Family Welfare, U.P. Lko. And 3 Others

Counsel for Petitioner :- Rahul Kumar Shukla,Prabhat Kumar Mishra,Shivam Srivastava,Sushant Kumar Mishra

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Nishant Shukla,Satya Prakash,Shikhar Srivastava

AND

7. Case :- WRIT - A No. - 593 of 2024

Petitioner :- Farhat Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare Lko. And 4 Others

Counsel for Petitioner :- Rashmi Pandey

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Nishant Shukla

AND

8. Case :- WRIT - A No. - 2612 of 2024

Petitioner :- Ajeet Kumar Verma And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare Lko. And 3 Others

Counsel for Petitioner :- Shashank Singh,Abhijeet P. Singh Chauhan,Amitesh Pratap Singh,Ashutosh Goswami,Manoj Kumar,Ruby Choudhary

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya
Prakash,Shikhar Srivastava

AND

9. Case :- WRIT - A No. - 2823 of 2024

Petitioner :- Birendra Kumar And 4 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical
Health/Family Welfare Lko. And 5 Others

Counsel for Petitioner :- Vikas Yadav,Shivam Srivastava

Counsel for Respondent :- C.S.C.,Madhukar Ojha,Satya
Prakash,Shikhar Srivastava

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Vikas Singh, learned counsel for the petitioners, Sri Ran Vijay Singh, learned Additional Chief Standing Counsel for the State-opposite parties, Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Madhukar Ojha, learned counsel for the Chief Executive Officer, State Health Agency, Ayushman Bharat, Pradhan Mantri Jan Arogya Yojna, Hazratganj, Lucknow and Sri Satya Prakash Srivastava, learned counsel, assisted by Sri Shikhar Srivastava, learned counsel for the Beneficiary Facilitation Agency.

2. Since grievance of all the petitioners in the bunch of connected writ petitions is similar and question of facts and law is also similar, therefore, with the consent of learned counsel for the parties, all the aforesaid writ petitions have been connected and are being decided by a common order.

3. Notably, first interim order has been granted by this Court on 03.10.2023 in Writ-A No.7401 of 2023, Aman Kumar and 16 Others Vs. State of U.P. and Others. Thereafter, interim order has been granted on 04.10.2023 in leading Writ-A No.6678 of 2023, Sanjay Kumar Chaurasiya and 36 Others Vs. State of U.P. and Others, which has been followed in some of the writ petitions connect with this bunch of writ petitions. The order dated 03.10.2023 passed in re;

Aman Kumar (supra) reads as under:-

“1. Heard learned counsel for petitioners and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 22.08.2023 whereby petitioners who have been employed as contractual workers on the post of Arogya Mitra have been required to be employed through an outsourcing agency.

3. It has been submitted that petitioners were initially appointed on contract basis for one year but their services were renewed in pursuance of terms of contract which is still subsisting since petitioners are being paid their honourarium till date in terms of the contractual employment although they have not been provided the latest order renewing their contract services.

4. Learned State Counsel however on the basis of written instructions dated 30.09.2023 submitted by Chief Medical Officer, Raebareli submits that petitioners have been employed on contract basis on the post of Arogya Mitra. Impugned order/letter dated 22.08.2023 in fact pertains to engaging persons through outsourcing on the post of Ayushman Mitra, which is completely a different programme and therefore petitioners would not be affected by the impugned order.

5. In regard to aforesaid, learned State Counsel is granted four weeks' time to file counter affidavit.

6. In view of submissions advanced by learned State Counsel on the basis of instructions, it is directed that until further orders of this Court, petitioners shall not be replaced by outsourcing nor shall they be compelled to provide their services through outsourcing in pursuance of impugned order/letter dated 22.08.2023 till they continue on contract basis.

7. List on 07.11.2023.”

4. The order dated 04.10.2023 passed in re; Sanjay Kumar Chaurasiya (supra) reads as under:-

“1. Heard learned counsel for petitioners, learned State Counsel for opposite parties no. 2 and 4 to 11 as well as opposite party no. 3.

2. On 15.09.2023, the following orders were passed:-

"1. Heard learned counsel for petitioners and learned State Counsel for the opposite parties.

2. Present petition has been filed seeking quashing of the

order dated 22.08.2023 whereby directions have been issued for engaging 'Pradhan Mantri Arogya Mitra (PMAM)' under the scheme of "Pradhan Mantri Rashtriya Swasthya Mission".

3. Learned counsel for the petitioners submitted that petitioners were initially appointed as 'Arogya Mitra' in the year 2017-2018 after following due process by the District Health Society established under the State Government and petitioners are still working on the post in pursuance of their initial contractual appointment. It is submitted that by means of impugned order, the directions have been issued for engagement of 'Arogya Mitra' by out sourcing which will adversely affect the continuance of petitioners on the said post although there is no illegality or irregularity in their appointments.

4. Learned State Counsel on the basis of instructions, however, submits that at present the implementation of impugned order would not adversely affect the petitioners' continuance as a contractual employee in case the contracts are subsisting.

5. In view of aforesaid, learned State Counsel is granted two weeks' time to seek instructions either to seek the instructions or to file short affidavit with regard to submissions advanced by learned counsel for the petitioners.

6. List this case on 04.10.2023 as fresh."

3. In pursuance of said directions, learned State Counsel has been provided instructions dated 29.09.2023, which are taken on record. As per instructions, it is admitted that the petitioners are currently working on contract basis with the department. The written instructions issued by the Chief Medical Officer, Sultanpur indicate that services of petitioners are not being dispensed with nor is any other person being appointed on their place by outsourcing.

4. In view of the aforesaid, the opposite parties are granted four weeks' time to file their counter affidavits.

5. Until further orders of this Court, it is provided that the petitioners' services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract.

6. List this case on 7.11.2023."

5. This Court vide para-3 in re; Aman Kumar (supra) has noted a fact that the petitioners were initially appointed on contract basis for one year and their services could have been renewed as the petitioners

have not been provided the latest order renewing their contract services, meaning thereby the petitioners could not demonstrate any order renewing the contract of the petitioners. This Court granted interim order on the submission so made by the learned State Counsel to the effect that by means of impugned order, the petitioners would not be affected. Though the aforesaid contention of learned State Counsel was not correct as has been considered herein below. Further, learned State Counsel has again submitted before this Court in leading writ petition i.e. Sanjay Kumar Chaurasiya (supra) that the petitioners are currently working on contract basis with the department and their services would not be dispensed with nor any other person would be appointed on their place by outsourcing. Again, the aforesaid submission of learned State Counsel was not correct inasmuch as in absence of any order renewing their contract services, the petitioners could have not continued in appointment but considering the contention of learned State Counsel and written instructions, interim order has been granted in favour of the petitioners.

6. Learned counsel for the petitioners have been asked to show petitioners' right or claim to be retained as contractual employee without having the renewal of their contractual services, no document has been shown by the learned counsel for the petitioners strengthening their right or claim to that effect. However, they have submitted that petitioners were initially appointed as 'Arogya Mitra' in the year 2017-2018 after following due process by the District Health Society established under the State Government and the petitioners are working on the post in pursuance of their initial contractual appointment. They have also submitted that by means of impugned orders, the directions have been issued for engagement of 'Arogya Mitra' by outsourcing which will adversely affect the continuance of petitioners on the said post although there is no illegality or irregularity in their appointments. Though Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Madhukar Ojha, learned counsel for the Chief Executive Officer, State Health Agency,

Ayushman Bharat, Pradhan Mantri Jan Arogya Yojna, Hazratganj, Lucknow (hereinafter referred to as “SACHIS”) has clarified the controversy apprising all relevant facts and circumstances of the issue from the very beginning.

7. Sri Mishra has submitted that the instant bunch of writ petitions have been filed by the petitioners/contractual employees of a Central Project primarily against an order dated 22.08.2023 issued by the answering opposite party no.3 i.e. CEO, SACHIS whereby all the District Magistrates of State of U.P. were directed to ensure that in compliance of the office memorandum dated 13.10.2021 of Government of India, the engagement of Prime Minister-Arogya Mitra (PMAM) in the empanelled hospitals under a Central project, namely, Ayushman Bharat-Prime Minister Jan Arogya Yojna (hereinafter referred to as “AB-PMJAY”) shall henceforth be ensured through the Beneficiary Facilitation Agency (hereinafter referred to as “BFA”) empanelled by National Health Agency (NHA), Government of India and PMAMs currently working on contract basis shall be engaged through the BFA by giving preference to them, if they are otherwise eligible but BFA shall henceforth, have complete authority to engage and deploy the PMAMs in nine empanelled Government Hospitals. Out of the nine writ petitions connected with this bunch, seven petitions bearing Writ-A No. 6678 of 2023; 7401 of 2023, 8528 of 2023, 8203 of 2023, 7951 of 2023, 297 of 2024 and 593 of 2024 have been filed against the aforesaid order dated 22.08.2023 of CEO, SACHIS.

8. The 8th and 9th petitions bearing Writ-A No.2612 of 2024, Ajeet Kumar Verma and Others Vs. State U.P. and 3 Others, and Writ-A No.2823 of 2024, Birendra Kumar and 4 Others Vs. State U.P. and 5 Others, have been filed against the order dated 29.02.2024 issued by CEO, SACHIS, whereby it was directed that in view of the change introduced in the method of engagement of PMAMs by the NHA of Government of India in the Central project, i.e. AB-PMJAY, i.e.

engagement through an outsourcing agency/BFA, which in the instant case is "Writers Business Services Pvt. Ltd.", all the District Magistrates of the State were directed to ensure that the written contracts of the PMAMs currently engaged and deployed in the empanelled Government Hospitals shall not be renewed/extended beyond the end of March, 2024 in any manner whatsoever, because under the change guidelines of Government of India and the Government Order dated 21.02.2024, there is no arrangement for directly paying any honorarium to the currently engaged Arogya Mitra from the funds of the PMJAY project payable to the hospitals, as all the PMAMs are henceforth to be engaged through an outsourcing agencies/BFAs.

9. As per Sri Mishra, the writ petitioners, by resorting to misrepresentation of facts i.e. stating incorrect facts on affidavit regarding alleged subsistence and continued renewal of their contractual employment under the Central project (PMJAY), till the date of filing of their writ petition, obtained an interim order dated 04.10.2023 in the writ petition bearing Writ-A No.6678 of 2023 (followed in other connected writ petitions), which was to the effect that *"petitioners services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract"*. Since this interim order was obtained on the basis misrepresentation and concealment of correct fact and by playing fraud upon the Court by the petitioners, therefore, application for dismissal of the writ petition, which was initially filed alongwith the detailed counter affidavit dated 07.11.2023 (to which RA was filed on 12.12.2023), has again been filed alongwith a short counter affidavit dated 17.04.2025 and that application has not been decided.

10. Brief facts of the case are that Government of India introduced a very ambitious Health Mission for providing free health care facility upto Rs.5.0 lakh per family in the entire country called "Ayushman Bharat-National Health Protection Mission (hereinafter referred to as

“AB-NHPM”) on 23.07.2018. The initial unamended project i.e. AB-NHPM conceptualized engagement of support workers called "Ayushman Mitra" at each public hospitals/Empanelled Health Care Provider/EHCP for facilitation of the patients/beneficiaries, claim submissions and their pre-authorizations under the scheme. The object of the scheme was to provide health care services upto Rs.5.00 lakh to the beneficiaries identified by Socio Economic Caste Census (SECC). The State Health Agency, (which in the instant case was "SACHIS") had to ensure deployment of Ayushman Mitras and their payment through third party agencies. The State Health Agency (hereinafter referred to as “SHA”) was also authorized to directly hired Ayushman Mitras at State/District Hospitals.

11. Government Order dated 27.07.2018 of the State provided that the Ayushman Mitras to be engaged under the aforesaid Central scheme/project and deployed at Government Hospitals shall be selected by the District Health Committee headed by either DM or CMO and these Ayushman Mitras shall be paid honorarium of Rs.5000/- per month from the fund under the project called Rogi Kalyan Nidhi. The Government Order dated 16.08.2018 of the State clarified the earlier Government Order dated 27.07.2018, whereby it was provided that Ayushman Mitras can be engaged through outsourcing as well as by District Committee.

12. On 13.09.2018, with the Cabinet approval, the aforesaid Central scheme/AB-NHPM was implemented in the State for providing health care facility upto Rs.5 lakh per family as pre-medical aid for curing extremely serious disease of the identified beneficiaries. For implementation of the said Central scheme, a society known as U.P. Swathya Bima Kalyan Samiti (for short “UPSBKS”), which later on adopted a brand name called SACHIS (State Agency for Comprehensive Health and Integrated Services) was appointed as its Nodal Agency.

13. In compliance of the directions of Central Government dated 20.12.2018, the name of the aforesaid Central project was changed from AB-NHPM to AB-PMJAY (Ayushman Bharat-Prime Minister Jan Arogya Yojna). The name of Ayushman Mitra was changed to Prime Minister Arogya Mitra.

14. Advertisement was issued for engagement of Ayushman Mitra on contract basis under AB-NHPM in the year 2018-19. Selection on the post of Ayushman Mitra under the project was to be made only on contract basis. Thereafter, the petitioners were engaged on contract basis for a fixed period. Letter of the concerned CMO dated 20.03.2020 has been enclosed with the supplementary counter affidavit regarding payment of fixed honorarium to the Ayushman Mitra engaged on contract basis only from the Rogi Kalyan Nidhi of the hospital created under the project. Vide Government Order dated 16.10.2020, the State Government enhanced the monthly honorariums payable to PMAMs under AB-PMJAY from Rs.5,000/-to Rs.10,000/-. In the year 2019-21, the Ayushman Mitras engaged under the then existing/unamended AB-PMJAY continued to work as contract employee under the Central project.

15. Government of India after reviewing the aforesaid Central Scheme i.e. AB-PMJAY, found that one of the main reason behind the low uptech of patients under the project was poor deployment of PMAMs resulting in Poor Beneficiary Facilitation, pre-authorisation and claim submission. Therefore, it was decided that henceforth States should hire a centralized outsourcing agency/BFAs from amongst these seven BFAs empanelled by Government of India through RFQs. These BFAs (Beneficiary Facilitation Agency) which are outsourcing agency shall be solely responsible for engagement and deployment of PMAMs at public hospitals. These BFAs shall be paid from a deduction of a fixed amount made from each patient claim, which is being paid to the hospitals.

16. On 14.07.2023, SACHIS i.e. the Nodal Agency ensured appointment of Writer Business Services Pvt. Ltd. as BFA for the State of U.P. for providing PMAMs and their deployment in all public hospitals under PMJAY. A service agreement was executed between the State Health Agency and the BFA on 14.08.2023 for providing PMAMs to the State hospitals under AB-PMJAY. BFA started engaging eligible persons as PMAMs while giving preference to the earlier contract employees, if they were found eligible. On 22.08.2023, State Health Agency/SACHIS, being the Nodal Agency, issued the compliance order under the amended provisions of AB-PMJAY and directed all the District Magistrates to ensure that since outsourcing agency/BFA has been appointed for the State of U.P., as per the directions of the Government of India vide notification dated 13.10.2021, all PMAMs shall henceforth be engaged and deployed in Government Hospitals of the State, only through BFA. It was also observed that though the BFA has the exclusive authority to engage PMAMs under the Central project but the BFA has been requested to give preference to the already engaged/working PMAMs while engaging them through the outsourcing agency/BFA, if they are otherwise found suitable. Payment to the BFA shall be made only from the deductions of a fixed amount made from each medical claim of the patient, which is payable to the hospital. Thus, there is no separate financial source existing for making any payment to the PMAMs under the amended AB-PMJAY and they will get their honorarium only from the outsourcing agency.

17. In the month of October, 2023, several writ petitions were filed by the existing PMAMs for challenging the validity of the order dated 22.08.2023 passed by CEO, SACHIS with a prayer that they may be allowed to continue and may not be replaced by the new PMAMs engaged by the BFA and they may be continued under the unamended/non-existing project called National Health Mission.

18. Sri Mishra, learned Senior Advocate, has submitted that since

the petitioners had made a false statement that their contract was renewed and is still subsisting, this Court directed that "*the petitioners' services on the basis of their existing contract shall not be interfered with in any manner till the subsistence of their contract.*"

19. Further submission of Sri Mishra is that on 07.11.2023, a detailed counter affidavit of opposite party no.No.3/SACHIS was filed in the leading petition bearing Writ-A No. 6678 of 2023 and in paras 20 and 38, it was explained that Ayushman Mitra and Arogya Mitra are not two different posts but the same post has the changed nomenclature. The petitioners, who are contract employees, have no right to work under their previous contract, which is not subsisting. Only the outsourcing agency/BFA is competent to engaged PMAMs on the post of Arogya Mitra under the amended directions of the project. So the petitioners should approach the BFA for being engaged as PMAMs.

20. Further submission is that rejoinder affidavit was filed on 12.12.2023 and misleading statements were made in paras-17, 19, 20, 23, 26 and 43 that the petitioners' engagement as PMAMs in the year 2018 to 2020 was prior to the issuance of the Office Memorandum dated 13.10.2021 of the Government of India, hence it has no effect on the contractual services of the petitioners. During the subsistence of their contract, petitioners cannot be forced to join the private agency/BFA under the amended project guidelines of the Government of India dated 13.10.2021, as if their earlier contract is still subsisting. BFA/outourcing agency has no power to change the appointing authority of the petitioners i.e. the concerned Chief Medical Officer.

21. Further, the Nodal Agency/SACHIS issued an order dated 29.02.2024 directing all the District Magistrates to ensure that the contracts of the earlier PMAMs under the unamended AB-PMJAY may not be extended beyond a period of March, 2024 as there are no financial sources available for payment of honorarium directly to

PMAMs under the amended project i.e. AB-PMJAY. This order was also challenged in Writ-A 2612 of 2024, Ajeet Kumar Verma and others Vs. State of U.P. and others.

22. Further submission is that during pendency of the bunch of writ petitions, the petitioner no.1 of the connected writ petition bearing Writ-A No.7401 of 2023, Sri Aman Kumar obtained his engagement on 30.04.2024 as PMAM under the BFA as the salary prospects under the BFA were improved. Gross salary of PMAMs got increased under the BFA from the earlier honorarium of Rs.10,000/- to Rs.13,760/- per month.

23. Sri Mishra has further submitted that supplementary counter affidavit alongwith application for dismissal of the writ petition was filed by the opposite party no.3/SACHIS on 17.04.2025 in the leading writ petition, raising preliminary objections regarding misrepresentation of facts about subsistence of their contract, concealment of fact by not annexing either copies of their contract or extensions/renewal of their contract and non-maintainability of the writ petition for seeking continuance of their contractual employment under a project, that too by an order of this Court as they don't have any constitutional or statutory right to maintain such writ petition. Since the petitioners do not have any constitutional or statutory right to maintain the instant bunch of petitions, hence the same being not tenable in law, deserves to be dismissed.

24. When learned counsels for the petitioners have again been confronted on the aforesaid facts, it has been informed that the petitioners have not received any order of renewal of their contract but they have been discharging their duties since their initial engagement and have been paid their honorarium, though most of the petitioners have been paid honorarium after filing contempt petitions and after the direction having been issued by the Hon'ble Contempt Court.

25. On the aforesaid submissions of learned counsel for the

petitioners, learned counsels for the opposite parties have stated that in view of the given facts and circumstances, the petitioners do not have any constitutional or statutory right to maintain the instant bunch of writ petitions, hence the same being not tenable in the eyes of law, deserve to be dismissed.

26. Heard learned counsel for the parties and perused the material available on record.

27. The question before this Court is as to whether the contractual employees have a right to get their contract necessarily renewed and also as to whether their rights would be governed by the terms of the project/contract or otherwise.

28. The next question is as to whether the policy of outsourcing is outside the scope of judicial review.

29. The Apex Court in re; **Yogesh Mahajan v. Professor R.C. Deka, Director, All India Institute of Medical Sciences, (2018) 3 SCC 218, GRIDCO Ltd. and Another v. Sadananda Doloi and Others, (2011) 15 SCC 16 and Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt), (1992) 4 SCC 33**, and this Court in re; **Uttar Pradesh Power Corporation Contract Employees Sangh v. State of U.P. and 5 Others, 2023: AHC: 145507 and Famina Singh Vs. State of U.P. and 2 Others, 2022 SCC OnLine All 1203**, have held that the contractual employees do not have a right to get their contract necessarily renewed and their rights are governed by the terms of the project/contract only.

30. Para-6 in re; **Yogesh Mahajan** (supra) reads as under:-

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30-6-2010. At best, the petitioner could claim that the authorities concerned should consider extending his contract. We find that in

fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the authorities concerned and therefore reject this contention of the petitioner.”

31. Para-31 in re; **GRIDCO Ltd.** (supra) reads as under:-

“31. Taking note of the decision of this Court in Shrilekha Vidyarthi case [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] this Court held that (Issac Peter case [Excise Commr. v. Issac Peter, (1994) 4 SCC 104] , SCC p. 125, para 26) there was

“no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State”.

The Court said: (Issac Peter case [Excise Commr. v. Issac Peter, (1994) 4 SCC 104] , SCC p. 125, para 26)

“26. ... It was a case of termination from a post involving public element. It was a case of non-government servant holding a public office [Ed.: The word “public office” is emphasised in original.] , on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned counsel [that being of incorporating the doctrine of fairness in contracts where State is a party]. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides.”

(emphasis supplied)

32. Paragraphs no.20 & 23 in re; **Pushpa Srivastava** (supra) read as under:-

“20. Because the six months' period was coming to an end on February 28, 1991, she preferred the writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative. However, reliance is placed by learned counsel on behalf of the respondent on the case in Jacob v. Kerala Water Authority [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697 : 1990 Supp (1) SCR 562] .”

23. In the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end.”

33. In view of what has been considered above, when the contractual employees have got no right to get their contract necessarily renewed as such contracts have not been renewed, therefore, the writ court cannot issue direction to renew their contract. This is also settled law that the policy of outsourcing is outside the judicial review inasmuch as the Apex Court in re; **State of Uttar Pradesh and Others v. Principal, Abhay Nandan Inter College and Others**, (2021) 15 SCC 600, in paragraphs no.42 and 46 has held as under:-

“42. The Division Bench in considering the view has entered into an arena which was not required to be done. Much labouring was done in interpreting the word “outsourcing”, however, such an exercise ought to have been avoided as it stands outside the scope of judicial review. We have already noted the fact that “outsourcing” as a matter of policy is being introduced throughout the State. It is one thing to say that it has to be given effect to with caution as recommended by the

Seventh Central Pay Commission, and another to strike it down as unconstitutional. "Outsourcing" per se is not prohibited in law. It is clear that a recruitment by way of "outsourcing" may have its own deficiencies and pitfalls, however, a decision to take "Outsourcing" cannot be declared as ultra vires the Constitution on the basis of mere presumption and assumption. Obviously, we do not know the nature of the scheme and safeguards attached to it.

46. The entire issue has to be looked at from different perspective as well. By the policy decision made, the appellants have abolished the post though in an indirect way by providing for "outsourcing". Now, a court cannot create or sustain the aforesaid post. There is nothing on record to hold that the decision made is extraneous as it is obviously made applicable not only to the aided institutions but also to all Government Departments as well."

34. Besides, the petitioners did not disclose the complete and correct facts before this Court and apprising wrong facts got interim order, therefore, this fact alone may be the reason to dismiss these writ petitions.

35. It has been consistent view of the Apex Court that non-disclosure of material facts and non-disclosure of relevant and material documents with a view to obtain undue advantage and favourable orders from the Court amounts to deception and playing fraud on the Court and such orders would be nullity in the eyes of law.

36. Further, it is the duty of the petitioners to disclose all the complete and correct facts and annex all the relevant documents before the Court and it is not open for the petitioners to selectively disclose facts and deliberately conceal and suppress inconvenient facts from the Court.

37. In view of the facts and circumstances as well as the case laws so cited by the parties, these writ petitions seeking continuance of contractual employment of the petitioners, granting extension/renewal of contractual engagement under a Government project, in violation of provisions of the amended project, is not sustainable in

the eyes of law, therefore, these bunch of writ petitions having no merits deserve to be dismissed and the interim orders granted by this Court deserve to be vacated.

38. It is made clear that whatever honorarium has been paid to the petitioners of the bunch of writ petitions would not be recovered from them for the reason that pursuant to the interim orders, they have discharged their duties and received honorarium.

39. Accordingly, these writ petitions are **dismissed**.

40. Interim orders granted in the aforesaid writ petitions shall stand vacated.

41. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 03.07.2025
RBS/-