

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on:- 10.02.2025

Pronounced on:- 10.03.2025

Case:- WP(C) No. 1151/2023
CM No. 2683/2023
c/w
CCP(S) No. 169/2023

1. Damni Rajrah, age 26 years, D/o Sh. Dilip Kumar
R/o Chak Desa Singh, Kathua
 2. Anju Devi, age 37 years, D/o Sh. Balwant Singh,
R/o Vill. Ramkote, Billawar, District Jammu
 3. Gohar Nazir, Age 24 years, D/o Sh. Nazir Ahmed,
R/o Raj Nagar, Budal, District Rajouri
 4. Tayib Ali Khan, Age 25 years, S/o Mohd Khakan,
R/o Sakhi Maidan, Mendhar, Poonch
 5. Priya Sharma, Age 28 years, D/o Sh. Chaman Lal,
R/o Lamien, Sunderbani,
 6. Archana Bandral, Age 24 years, D/o Sh. Rakesh Kumar,
R/o Manyal Brahmana, Tehsil Marh, Jammu.
 7. Sabia Naz, Age 25 years, D/o Mohd. Latief,
R/o Bhata Dhurian, Poonch
 8. Neha Sharma, age 25 years, D/o Sh. Raj Kumar,
R/o W.No. 3, Khamba Jahanger, Nowshera
 9. Anil Kumar, age 29 years, S/o Sh. Devi Chand,
R/o Kathil Ganju, Ramnagar
 10. Tahira Begu, age 26 years, D/o Sh. Maqbool Hussain,
R/o Dayala, Kakakote, Rajouri
- (Plus 140 others)**Petitioner(s)

Through: Mr. S S Ahmed, Advocate
Mr. Sheikh Najeeb, Advocate

Vs

1. Union Territory of Jammu & Kashmir
Through its Secretary to the Government of J&K, Health
and Medical Education Department, Civil Secretariat,
Jammu.
2. The Principal, Government Medical College, Jammu, Respondent(s)

Through: Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER

01. Through the medium of the instant petition preferred under Article 226 of the Constitution of India, the petitioners seek the following reliefs:

- (a) *“Writ of Certiorari quashing endorsement No. GMC/23/DRDO/1237 DATED 19.04.2023 made by respondent no.2 on the communication No. ME-Gztd/198/2022 dated 13.04.2023 issued by the respondent no.1 whereby the petitioners who are working on the contractual basis have been disengaged.*
- (b) *Writ of Mandamus commanding the respondents to allow the petitioner to continue their services on contractual basis till may 2024, as per Government order no.398-JK (HME) of 2021 dated 18.05.2021 owing to their commendable performance during Covid-19 Pandemic and their requirement by respondent no.2 as recommended to the respondent no.1 by her on various occasions and commanding the respondent to release the salary of the petitioners w.e.f January to April 2023 as the petitioners have uninterruptedly performed their duties during the said Covid-19 period”.*

02. Before proceeding further in the matter and to clinch the controversy in question, it is apposite to give brief resume of the facts, which, in nutshell, are summarized as under:-

FACTUAL MATRIX OF THE CASE:

03. The case of the petitioners is that in terms of Government Order No. 398-JK (HME) of 2021 dated 18.05.2021, sanction was accorded to the establishment of a 500 bedded temporary Covid Hospitals one each at Jammu and Srinagar, in collaboration with Defence Research and Development Organization (DRDO), Ministry of Defence, Government of India and accordingly 1366 posts across various categories were created to facilitate the operation of these hospitals. The said order also stipulated that the administrative control of these hospitals would lie with the Principals of the Government Medical Colleges of Jammu and Srinagar. Furthermore, the posts were established for a period of three years, and initially for a period of one year which included posts of physicians anesthetists, pediatricians and medical officers, technical staff and paramedical staff.

04. Further case of the petitioners is that the respondent No. 2 vide

Government Order No. 398-JK(HME) of 2021 dated 18-05-2021 issued advertisement notices for filling up of posts of Medical Officers, Pharmacist, Lab Technician, X-Ray Technician, Junior Staff Nurse etc. in the newly created 500 bedded Covid Hospitals, the same were to be filled up for a period of one year extendable upto maximum of three years (one year at a time and further extension subject to good performance and conduct).

- 05.** It is the specific case of the petitioners that they responded to the aforementioned advertisement notices and eventually came to be selected as Junior Staff Nurses, Pharmacists, Nursing Supervisors, Lab Technicians, X-Ray Technicians and Medical Officers and pursuant to their selection, the petitioners were engaged and started performing their duties against the posts on which they were engaged.
- 06.** The learned counsel for the petitioners further submits that the respondent No. 1 issued Government Order No. 107-JK(HME) of 2022 dated 02-03-2022, whereby it was ordered that all the doctors deployed in the temporary Covid Hospitals in Jammu/Kashmir were repatriated to their original place of posting as the said order was issued keeping in view the decline of Covid-19 cases in UT of J&K and in the same order, it was further mentioned that the Principals of the Government Medical Colleges Srinagar/Jammu shall review the requirement of continuance or otherwise of all the contractual staff so that further course of action is taken, accordingly.
- 07.** According to the petitioners, respondent No. 2 issued a Communication No. GMC/2022/470 dated 29.08.2022 to respondent No. 1 requesting for

the extension of the contractual doctors, paramedics by another one year as the extension was already being granted in favour of the staff engaged in Covid Hospital Srinagar. In response to which, respondent No. 1 vide Communication No. ME/Gztd/198/2022 dated 03-10-2022 granted extension to the staff till 31.12.2022 i.e. for a period of six months only which was not in consonance with Govt. Order No. 398 dated 18.05.2021 as the said Government order clearly provided that the tenure shall be extended for a period of one year at a time and for a period of three years in total.

ARGUMENTS ON BEHALF O THE PETITIONERS:

- 08.** The learned counsel for the petitioners has argued that services of the petitioners were not only confined to Covid Hospitals but were deployed across all associated hospitals wherever there was a staff shortage. This deployment was necessitated by the scarcity of personnel and the lack of trained or skilled staff in these hospitals. It is further submitted that the respondent No. 2, recognizing the pressing shortage of staff at the GMC and its associated hospitals, took a decision to extend the tenure of the petitioners. This decision was made following a comprehensive review of the petitioners' exemplary service during the COVID-19 Pandemic, where they demonstrated remarkable skill and dedication in managing COVID-19 cases
- 09.** Additionally, the petitioners possessed specialized training and expertise essential for the effective management of COVID-19 patients, further justifying the need for their continued presence. It is also pertinent to note that this decision was taken after a meeting of the Superintendents of all

associated hospitals, where the extension of the petitioners' tenure for a period of one and a half years was deemed necessary in light of the critical staff shortages. Therefore, the petitioners assert that the decision to grant an extension of their tenure was both reasonable and justified, considering the exceptional circumstances.

10. It has been further argued that on 22.12.2022 respondent no.2, sent a detailed communication to respondent No.1, wherein the requirement of the petitioners was highlighted. It was pointed out that the existing staff at the Government Medical College and its associated hospitals does not meet the Indian Public Health Standards norms, resulting in a shortage of staff. Additionally, it was informed that services from the petitioners in the Maternity Hospital in Gandhi Nagar, Jammu and in New Emergency GMCH, Jammu were being utilized. Thus, a request was made by respondent no.2 for extension of the tenure for the current staff by one and a half years, until May 2021, to ensure continued patient care. The communication issued by respondent No. 2 remained unanswered, however, on 13.04.2023, respondent No. 1 sent a Communication No. ME/Gztd/198/2022 to respondent No. 2, asserting that due to the closure of DRDO Hospitals in Jammu and Srinagar, there was no justification for extending the tenure of staff engaged in these hospitals beyond 31.12.2022. Consequently, respondent No. 2 conveyed this decision to all Heads of Departments, Administrators, and Medical Superintendents, instructing that the staff engaged on a contractual basis for DRDO be deemed disengaged.

GROUND'S PLEADED BY PETITIONERS:-

11. The petitioners feeling aggrieved of the impugned endorsement dated

19.04.2023 issued by respondents 1 and 2, whereby the services of the petitioners have been disengaged, they have challenged the validity of the aforesaid impugned endorsement *inter alia* on the following grounds:

- “i) That at the very outset the petitioners submit that they were engaged on contractual basis in terms of Government Order dated 18.05.2021 and as per the said Government Order the posts created were to be filled up for a period of one year which may be extended for another two years (one year at a time) by a Committee of which the respondent No.2 was nominated as Chairperson. It was also laid down in the said Government Order dated 18.05.2021 that the Administrative Control of these Hospitals shall lie respectively with the Principals of GMC, Jammu and GMC, Srinagar.

Further, the respondent No.1 while issuing Government Order No. 107-JK(HME) of 2022 dated 02.03.2022 has authorized the respondent No.2 to review the requirement of continuance or otherwise of the contractual staff and the respondent No.2 on number of occasions brought to the knowledge of respondent No.1 regarding the dire need of requirement of staff in GMC and Associated Hospitals but the respondent No.1 did not even consider the request the respondent No.2 that too without citing any reason and with the disengagement of the petitioners, the functioning of Maternity Hospital, Gandhi Nagar, Jammu has come to a grinding half and the said hospital is literally at the verge of closure due to inadequate staff.

- ii) That the Hon'ble Court may kindly appreciate that after the closing of the Covid Hospital, Jammu, the respondent No.2 is utilizing the services of the petitioners at 40% scarcity of staff and the petitioners have worked with Zealand honesty to provide better patient care in the time of turmoil but with one stroke of pen, their services were disengaged by the respondent No.2 that too without citing any reason or providing them opportunity of being heard. The Hon'ble Court may kindly appreciate that as per Government Order dated 18.05.2021, the petitioners were engaged initially for one year but their services were extendable upto 03 years as per requirement and the domain of requirement was to be looked into by respondent No.2 being the Head of the Hospitals and the dire need of petitioners was reported by the respondent No.2 to the respondent No.1 but despite that no heed was paid to such requests and instead the respondent No.1 kind of reprimanded the respondent No.2 for availing the services of the petitioners. Furthermore, the respondent No.1 misplaced himself at the time of granting extension to the petitioners for a period of six months only when the Government Order dated 18.05.2021 clearly contemplated that the extension shall be for a period of one year at a time meaning thereby for a period of one year at least. Not only this, the petitioners have worked till 19.04.2023 and the salary w.e.f January 2023 to 19.04.2023 has not been paid to the petitioners till date by respondent No.2.
- iii) That the Hon'ble Court may also appreciate that it was provided in the Government Order dated 18.05.2021 that the contractual appointees shall have to furnish an affidavit to the extent that they will not claim regular appointment at any future date on the strength of contractual appointment and the same was furnished by the petitioners and as a matter of fact the petitioners are not claiming any regularization of their services. It was also provided in the Government Order dated 18.05.2021 that the contractual appointment shall be terminable on one month's notice from either side or on payment of one month's salary in

lieu of notice by appointing authority and the appointment shall be terminable without notice by the appointing authority only when the posts are filled up on regular basis by it and no where it was provided in the Government Order that the contractual appointees shall be disengaged on the closure of Covid Hospital and if such was intention of the Government that the contractual appointees have to be disengaged on the closure of Covid Hospital then the cause of terminating the contractual appointee on filling up of post by regular candidate would have not been incorporated in the Government Order. The Hon'ble Court may kindly appreciate that even the advertisement notices issued by the respondent No.2 provided that the tenure of the petitioners was extendable upto three years subject to good performance and conduct of the petitioners have remained exemplary and the respondent No.2 have certified the exemplary services of the petitioners in number of communications addressed to the respondent No.1.

It is submitted that the petitioners have worked till 24.04.2023 in GMC and Associated Hospitals and on 24.04.2023 the respondent No.2 informed the petitioners that they have been disengaged on 19.04.2023 and the said statement of the respondent No.2 came as big jolt to the petitioners who were legitimately expecting to complete the tenure of 03 years and not only this nothing was said by the respondent No.2 regarding the unpaid salary of the petitioners w.e.f 01.01.2023 to 24.04.2023. The action of respondents is illegal/arbitrary and in violation of Principles of Natural Justice more particularly the terms and conditions of Government Order dated 18.05.2021, as such, the same is required to be quashed and directions may kindly be issued to the respondents 1 and 2 to allow the petitioners to work till May 2021 and also pay to the petitioners salary w.e.f 01.01.2023.”

ARGUMENTS ON BEHALF OF RESPONDENTS:-

12. **Per Contra**, reply has been filed by the respondents, wherein it is pleaded that the petitioners were initially engaged for a fixed term of one year which was subsequently extended till 31.12.2022. The petitioners' tenure expired on 31.12.2022 and thereafter, no further extension of their services was granted. Therefore, the impugned communication does not provide any new cause of action for the petitioners. The petitioners cannot unilaterally impose their services upon the answering respondents, as such, the action would not only constitute a breach of the terms of the contract but also contravene the very purpose for which they were engaged. Furthermore, the petitioners had given an undertaking wherein they have expressly agreed not to claim regular appointment in the future based on their contractual engagement.

13. Learned counsel for the respondents Mr. Raman Sharma, learned AAG has further argued that the extension was contingent upon certain requirements, however, due to decline in Covid-19 cases, these requirements were no longer applicable. Moreover, it was emphasized that the one-year extension is the maximum allowed and cannot be interpreted as a mandatory duration, especially when no such requirement exists. Additionally, the petitioners have accepted the six-month extension without objection and cannot now, after the expiration of that period, claim that an extension for a full year should be granted.
14. It has been further argued that since the petitioners were engaged on temporary basis for COVID hospitals only, even if at all any part of their services were used in any other associated hospital, same has been done unauthorizedly without any permission from the Administrative Department. Thus, unauthorized utilization cannot confer any right upon them. Also, it has been argued that the regular posts have already been filled up from the candidates recommended by the JKPSC/SSB, therefore the respondents have sufficient staff to manage the existing hospitals.
15. The learned counsel for the respondents argued that, based on the facts and circumstances presented, no legal right or entitlement has accrued to the petitioners that would warrant judicial intervention. Consequently, the petitioners are not entitled to the relief sought, as no valid grounds exist upon which the relief can be granted.
16. Mr. Raman Sharma, learned AAG, in support of his arguments, has also relied upon a judgment dated 12.12.2023 passed by a Coordinate Bench of this Court in **WP(C) No. 1015/2023**, involving similar issue and prays that

since the instant petition is squarely covered by the aforesaid judgment, the same also deserves dismissal.

LEGAL ANALYSIS:-

17. Heard learned counsel for the parties at length and perused the record.
18. The principle that “Contractual employment does not give rise to a vested right to continue”, is grounded in the understanding that once a contract of employment has been mutually agreed upon by both the parties, without any objection and reservation, it is not within the jurisdiction of the Court to compel the employer to maintain the contract or alter the terms or status of the employment in any manner. It is important to distinguish between the legality of termination and the automatic continuation of contractual employment. While a worker may have the right to challenge the termination if it is in violation of statutory protections, but there is no automatic right to employment continuation simply because the individual was employed under a contract. Thus, the Court’s role is limited to ensuring that the termination of the contract is done in accordance with the law and the terms of the contract, but it cannot compel the employer to extend the contractual relationship, once it has come to an end provided that the termination/ disengagement is lawful and does not violate any legal provision. The Hon’ble Supreme Court has consistently held that unless the contract specifically provides for continuity or renewal of the employment, the termination of the contract or the non-renewal of a fixed term contract does not automatically entitle the employee to continue in employment.
19. In case of contractual employment, the employee’s right to continue in employment is based solely on the terms and conditions of the contract.

Contractual employment does not create a "right to permanent employment" unless explicitly stated in the contract or by law. This means that the appointee does not acquire any inherent or automatic right to remain employed beyond the agreed term of the contract. The absence of vested rights is particularly relevant when dealing with fixed-term contracts, where the nature of employment is temporary. The employee's right to continue working beyond the contract period is contingent on the employer's willingness to extend or renew the contract, and such a decision lies within the discretion of the employer.

20. The Hon'ble Supreme Court has consistently held in catena of judgments that unless the contract specifically provides for continuity or renewal of the employment, the termination of the contract or the non-renewal of a fixed term contract does not automatically entitle the employee to continue in employment.
21. The Hon'ble Supreme Court has made several observations in key cases, affirming that contractual employees do not acquire vested rights to permanency, similar proposition was discussed in case titled ***State Of Maharashtra And Others v. Anita And Another*** 2016 SCC 8 (293) wherein the Apex Court has observed as follows;

“15. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the Government. The appointments of the respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. The conditions of the respondents' engagement are governed by the terms of agreement. After having accepted the contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, the respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.”

“16. The High Court did not keep in view the various clauses in the Government Resolutions dated 21-8-2006 and 15-9-2006 and also the terms of the agreement entered into by the respondents with the Government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the Government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”

22. The Hon’ble Apex Court in case titled ***Yogesh Mahajan v. Professor R.C.***

Deka reported as (2018) 3SCC 218, the status of the contractual appointment and employment has been discussed as in Paras 6,7 and 8 of the judgment 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.”

“7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Umadevi (3) (2006) 4 SCC 1. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Umadevi (3) (2006) 4 SCC 1 does not advance the case of the petitioner.”

“8. Insofar as the final submission of the petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.

23. In view of the aforesaid enunciation of the law, this Court is of the view that the appointment of the petitioners was solely on contractual basis, specifically made in response to the urgent needs arising from the COVID-19 Pandemic. This temporary engagement was part of the establishment of a temporary COVID hospital, which was set up to address the immediate health crisis caused by the pandemic. Given the exceptional nature of the emergency, the petitioners' services were deemed essential, and their employment was extended for a fixed term to support the hospital's operations. Initially, the petitioners were hired on contractual basis for a specified period, with an extension of an additional six months granted to ensure continuity of service during the critical phase of the pandemic. However, as the situation with COVID-19 improved and the immediate health crisis subsided, the temporary COVID hospitals, which were originally set up by the Government, were closed. As part of this process, the permanent staff members were reinstated to their regular positions, while the services of the contractual staff, including the petitioners, were discontinued as their initial engagement was for a period of one year which was extended for further six months and the same was concluded on 31.12.2022.

CONCLUSION

24. This Court is of the considered opinion that once the Government has decided to close down the temporary hospitals, established in view of emergency related to Covid-19 pandemic, where the petitioners were contractually engaged, the respondents cannot be asked to continue their services as contractual employees without any work or their need.

25. For the foregoing reasons, the instant petition is **dismissed** to the extent of the relief prayed for continuation of the petitioners for a period of three years is concerned, as the petitioners have no unfettered right of continuance being contractual employees engaged for a specific purpose/period to address the health crises caused by Covid-19 Pandemic. As a necessary corollary, challenge thrown by the petitioners to impugned endorsement dated 19.04.2023 made by respondent No.2 to the communication dated 13.04.2023 issued by respondent No.1, whereby the petitioners were disengaged, also fails, being devoid of any merit. Accordingly, the writ petition which is devoid of any merit deserves dismissal and the same is **dismissed** along with all connected applications.
26. Interim direction, if any, shall stand vacated.
27. Insofar as the relief pertaining to release of the wages of the petitioners for the period they have worked is concerned, the respondents, as such, are directed to release the same in favour of the petitioners provided they have worked and if there is no other legal impediment.

CCP(S) No. 169/2023

28. Since the detailed order has been passed in the main petition, whereby the writ petition stands dismissed, nothing survives in the present contempt petition for further adjudication. Accordingly, the proceedings in the instant contempt petition stand **closed**. Rule, if any, shall also stand **discharged**.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
10.03.2025
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No