
(2005) 02 DEL CK 0145

In the Delhi High Court

Case No : Writ Petition (C) No. 2682 of 2002

Dr. Rachna Kapila

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 117 DLT 460 : (2005) 80 DRJ 300 : (2006) 1 SLJ 184

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Jyoti Singh, for the Appellant; S.K. Luthra, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—Rule.

2. With the consent of learned counsel for the parties, the Petition is now taken up for final hearing.

3. The facts of the case are as follows:- On 10.10.1994, the Petitioner was appointed as ad-hoc Lecturer in the Department of Microbiology with effect from 17.10.1994 to 23.12.1994. The letter mentions that the appointment is terminable at any time and that it was subject to the approval of the Governing Body. By letter dated 09.01.1995, this ad-hoc appointment continued on the same terms & conditions with effect from 09.01.1995 to 24.03.1995. Thereafter, Respondent No. 2, Institute of Home Economics, University of Delhi, issued an Advertisement dated 15.01.1995 inviting applications on the prescribed Form for the post of Zoology-1 (part-time, permanent, Rs.1500/- fixed). Memorandum dated 21.03.1995 was issued prior to the expiry of the second year of contractual service informing the Petitioner regarding her Offer of Appointment as Lecturer in Zoology on ad-hoc basis. Reliance has next been placed by the Petitioner on the letter dated 25.05.1995 which reads as follows:-

""INSTITUTE OF HOME ECONOMICS

(University of Delhi)

25.5.95 Dr. (Mrs.) Rachana Kapila,

B-156, East of Kailash,

New Delhi

Dear Madam,

With reference to your application dated 25.1.95 and subsequent interview, I am to inform you that on the recommendation of a duly constituted Selection Committee, it has been decided to offer you an appointment as part-time lecturer in Zoology, in this college on the following terms and conditions subject to the approval of the Governing Body of the College and subject to the University of Delhi recognizing you as a Teacher of the University. Your appointment is for a period of one year from the date of joining the duty.

1. You will receive an initial pay of Rs.1500/- per month fixed.
2. You will be expected to do teaching, research work and other duties as may be assigned to you from time to time.
3. In all matter relating to leave and conditions of service, you will be governed by the Ordinances and the rules in force from time to time.
4. Your appointment is subject to your being found medically fit for which you are required to produce a Fitness certificate from any one of the following within a week of the date of your joining the duty;

i) The Medical Officer-in-charge, W.U.S. Health Centre, Chattra Marg, Delhi-7.

ii) Professors/Assistant Directors or Associate Professor or Readers/Senior Research Officers/Assistant Professors of any one of the Medical College/Institutions in Delhi or outside Delhi.

iv) Senior Staff Physician/Surgeons of the CGHS/ESI.

v) Civil surgeon or District Medical Officer in India.

5. The appointment is further subject to verification of your qualification etc. as mentioned in your appointment. If the offer of appointment, under the above terms and conditions, is acceptable to you, you are requested to intimate your acceptance latest by 5.6.95 and report for duty on 17.7.95, failing which the offer of appointment will stand cancelled.

DR. (MRS.) K. KHANNA

DIRECTOR"

4. The case of the Petitioner is that the duly constituted Selection Committee met consequent upon the Advertisement for the post of "part-time, permanent Lecturer in Zoology". This fact is not denied. The Memorandum dated 01.08.1995

reads as follows:-

"Institute of Home Economics

(University of Delhi)

J-BLOCK, SOUTH EXTENSION, PART-I,

RING ROAD, NEW DELHI-110049

Telephone : 4622064

Ref. No. 1167 1.8.95 MEMORANDUM

This is with reference to this office letter no. IHE/541 dated 25.5.95 Dr. Rachna Kapila part-time lecturer in Zoology is hereby informed that she has been appointed as lecturer in Zoology w.e.f. 1.8.95 for a period of one year on a basic pay of Rs.2200/- p.m. plus usual allowances in the scale of Rs. 2200-4000. The terms and conditions of her appointment will be same as contained in the office letter no. IHE/541 dated 25.5.95.

Dr. (Mrs.) K. Khanna

Director

Dr. Rachna Kapila,

Lecturer,

I.H.E.

CC: S.O.(A/cs) p.file, O/O.Reg."

5. It is of significance and Therefore necessary to highlight that this Memorandum firstly describes the Petitioner as part-time Lecturer and thereafter, mentions that she has been appointed as Lecturer for a period of one year. Secondly, it places the Petitioner in a pay-scale. Both are departures from the earlier status in which the Petitioner was an ad-hoc/contractual teacher.

6. The letter dated 04.08.1997 has been authored by the Director of Respondent No. 2 to the University of Delhi, South Campus, Benito Juarez Marg, New Delhi. The second & last paragraph of this letter reads as follows:-

"The photocopy of the Minutes of Selection Committee meeting dated 27th April, 1995, the appointment letter dated 25.05.1995 offering her part-time appointment w.e.f. 17.07.1995, the office order dated 01.08.1995 changing the part-time appointment to full time lectureship w.e.f. 01.08.1995 changing the part-time appointment to full time lectureship w.e.f. 01.08.1995, and photocopy of Ph.D degree is enclosed for your kind information and necessary action."

7. Despite these events by Memorandum, the so-called contractual employment has continued, from year to year up to 30.04.2002 after which date it appears not to have been extended even though the Petitioner has put in almost eight

years of unblemished service.

8. Learned counsel for the Petitioner places reliance on Ordinance XII of the calendar Volume I of the University of Delhi and states that it has been violated. It reads thus-

"1. In this Ordinance, unless the context otherwise requires, a teacher includes a Principal of a College.

1.(A) Every whole-time teacher shall be engaged by a College as a member of its staff on salaries in the scales prescribed by the University for the various categories of its teachers.

2. No whole-time teacher shall be engaged by any College as a member of its staff except on an Agreement of Service in the form annexed hereto or an agreement substantially to like effect and every teacher shall sign the Agreement before he enters upon his duties.

2-A. Promotion of College Appointed teachers (including Directors of Physical Education) under the Merit Promotion Scheme of 1983 as accepted by the Executive Council, shall be made in accordance with the eligibility conditions and in the manner prescribed in this scheme in this behalf.

2-B. Promotion of College Appointed Lecturers as Lecturers in Senior Scale/ Readers Grade/as Readers shall be made under the Merit Promotion Scheme of 1987, as accepted by the Executive Council, in accordance with the eligibility conditions and in the manner prescribed in this scheme in this behalf.

3.(1) All vacancies of teachers shall be filled after advertisement and by open recruitment, save in the cases of vacancies, appointment to which may be required to be made urgently in the interest of organisation of teaching in the college concerned for a period not exceeding four months or beyond the term in which it is made whichever is earlier.

(2) A temporary appointment of a teacher may be made against a post sanctioned for a specified period or in the leave vacancy of another teacher; the said appointment may be terminated after the expiry of that period or on such teacher resuming duty after the expiry of his leave, as the case may be. Each temporary appointment shall be reported to the University as soon as it is made.

(3) (a) The temporary appointment of a teacher shall not be made to terminate before the end of the term in which it is made or continued; and

(b) If a teacher has been in service in a College or Department of the University on or before the first day of its re-opening in the second term and has continued to be in service without any break till the end of the third term in any College or Department of the University he shall be entitled to an ex-gratia payment equivalent to the amount of emoluments he would have received had his appointment continued till the end of the long vacation, if he is not holding any salaried post elsewhere during the period. Such ex-gratia payment shall be made

by the College or the University, as the case may be, in which the teacher was in service immediately preceding the end of the third term.

(4) A teacher who has been in service up to the last day of the preceding session shall be entitled to vacation salary provided he has been reappointed and is in position on the reopening day after the vacation. In such cases the vacations will not constitute a break in service.

3-A.(1) Subject to the provisions of clauses 6, 7 and 8 of the Agreement of Service, a person appointed permanently as a Principal of a College or Institution or as a teacher therein shall be entitled to be in the service of that College or Institution until he completes the age of sixty.

Provided that a Principal or a teacher, as the case may be, who has completed the age of sixty years and is still in the service of the College or Institution by virtue of the provisions which were in force prior to 1-4-1975, shall continue to be in such service for the unexpired period of the extension already given to him.

(2) The Governing Body of a College or an Institution may, with the approval of Vice-Chancellor, re-employ any distinguished teacher after he has attained the age of 60 years for a period not exceeding 5 years on the whole but not beyond his completing the age of 65 years, if the Governing Body is satisfied that such re-employment is in the interest of the College or Institution.

(3) Subject to the provisions of sub-clause (2), the terms and conditions of service of a re-employed teacher including his salary, leave and other benefits admissible to him will be in accordance with the rules prescribed by the Government of India from time to time.

Explanation:- A Principal who has been a distinguished teacher may also be re-employed under the provisions of this clause.

4. No deduction of any kind shall be made from the salary of a teacher except that-

(a) where a teacher contributes to a duly established Provident Fund, the rules whereof have been approved by the University, his contributions to that Fund at the prescribed rate may be deducted from his salary each month.

(b) where a teacher occupies a house or other dwelling accommodation provided by a College, the amount of the rent of that house or other dwelling accommodation may be deducted from his salary each month, but where the teacher is required to occupy the house or other dwelling accommodation as part of the term of his engagement the amount of rent payable shall not exceed one-tenth of his monthly salary.

(c) where a teacher agrees for certain deductions like refund of advances taken from Provident Fund, electricity and water charges in respect of a house occupied by him and provided by a College or where any deductions are required to be made under any law or by an order of the Court, such deductions might also be

made.

5. No teacher shall be required to contribute directly or indirectly to the funds of his College except that a teacher may, if he so desires, contribute voluntarily to any sports fund or literary society of the College, or to any fund in aid of poor students of the College.

Provided that all voluntary contributions by teachers to any sports fund, literary society or fund in aid of poor students as aforesaid shall be reported by the College to the University.

6. Notwithstanding anything contained in any other Ordinance, where a Principal or a teacher is placed under suspension, with the prior approval of the Vice-Chancellor or under Ordinance XIII-A, he shall during the period of his suspension be disabled from exercising any rights, duties or privileges attached to the membership of the Governing Body or any Committee of the College of which he may be a member.

7. Notwithstanding anything contained in this Ordinance, a teacher who is placed under suspension shall, during the period of his suspension, be entitled to only subsistence allowance in accordance with the rules applicable to Government employees.

9. In the Counter Affidavit, it has been pleaded that:-

"The question of such an assurance having been given does not arise as the deponent is fully aware of the fact that the regular appointment has to be made on the basis of the recommendation of the duly constituted Selection Committee in accordance with the rules and regulations contained in Ordinance XII and xviii of the University of Delhi."

10. Learned counsel for the Petitioner states that if by means of this nature appointments are made contrary to the Ordinance, it will cause havoc in the Administration of the University.

11. Learned counsel for the Petitioner submits that the very least which can be inferred is that the Petitioner's appointment has progressed to a permanent basis instead of part-time. Ordinance XII ought to have been automatically enforced by the Administration, and in the event of any non-adherence and individual such as Petitioner cannot be detrimentally treated.

12. I have repeatedly asked from Mr. Luthra, learned counsel for the respondent whether any action has been taken or is in contemplation against the Principal, who must be deemed to know the Ordinance and is duty bound to implement it. The answer is in the negative. These observations should not be construed as any recommendation that action should be taken against the Principal. The fact remains that so far as the College is concerned, the Petitioner's so called contractual appointment had transformed into a permanent one consequent on her application against the Advertisement, and the meeting of a duly constituted

Selection Committee. At the highest, Respondents can insist that this appointment was "part-time" since that is what was envisaged and held out in the Advertisement. As soon as the Petitioner was appointed after her application against the Advertisement and her appearance before the Selection Committee, as per Ordinance XII itself, the appointment could no longer have been made on a part-time basis since that would tantamount to the violation of the said provision. This, to my mind, is the difference in perspective between the Respondents and the Petitioner, which has compelled her to file the present petition.

13. The question which now arises is that she has been receiving emoluments against a regular pay-scale and not Rs.1,500/- which was the fixed salary as envisaged in the Advertisement. It is not in dispute that the Petitioner has been putting her 18 hours of duty every week. It is also not in dispute that the Memorandum itself places her in the particular pay-scale. This fact alone should leave no manner of doubt that everyone concerned had treated the Petitioner as a regular Lecturer on a full-time basis. Even if this is not so, on the principle of "equal pay for equal work" even if the Petitioner were part-time, she would be entitled to claim the regular scale since she has been fulfilling the duties which are applicable to all permanent appointees.

14. My attention has been drawn by Mr. Luthra, learned counsel appearing for the respondent to the decision of learned Single Judge of this Court in Civil Writ Nos. 5296/2001 & 3993/2001. Both my learned Brothers had relied on the decision of Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, , which case concerned the re-engagement of persons appointed on contract basis. This is not the factual matrix obtaining before me. In State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, 1996 (1) SLR 595, it was held by the Hon"ble Supreme Court that when the appointment is for a fixed period, unless there is a finding that power under a particular clause has been misused or vitiated it cannot be held that the termination is illegal. That decision also enunciated that an employer could terminate the services in terms of the letter of appointment. In C.W. 5296/2001, the Petitioner were seeking to re-join the services. That is not the case before me.

15. In C.W. 3993/2001, the appointment was stated to be purely temporary and ad-hoc, and did not progress forward to a permanent employment as must be held to be happened in the present case. The Petitioner cannot be equated to an ad-hoc employee. Hon"ble Supreme Court has repeatedly observed that where a person continues uninterruptedly to perform the duties against a permanent vacancy, at the very least, preferential rights would ensure to person's favor.

16. Learned counsel for the Petitioner states that she is now entitled to promotion, that is not the subject matter of this writ petition.

17. In view of these circumstances and the analysis of the law contained above, I hold that the Petitioner has become a permanent employee. Her services could

not be viewed as contractual despite the Memorandums which were issued from time to time since these would violate Ordinance XII itself. The result is that she must be treated as a permanent employee of the Respondent and would be entitled to payment on the pay-scale which has been applied to her for several years.

18. The writ petition is allowed in these terms.

19. Parties shall pay their respective costs.