

(2021) 03 DEL CK 0141

In the Delhi High Court

Case No : Civil Writ Petition No. 8650 Of 2020, Civil Miscellaneous No. 27844 Of 2020

Dr. Ritu Singh

APPELLANT

Vs

University Of Delhi Through Acting Vice Chancellor & Ors

RESPONDENT

Date of Decision : 12-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0141

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Pankaj Kumar, Shubhendu Saxena, Ankur Chhibber, Anshuman Mehrotra, Nirvikar Verma

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. This petition has been filed with the following prayers:-

"A. Issue Writ of Certiorari or any other appropriate writ, order or direction in nature thereof, thereby quashing and setting aside advertisement dated 27-10-2020;

B. Issue Writ of Mandamus or any other appropriate writ, order or direction in nature thereof, thereby directing the Respondent No.1 & 2 to reinstate the petitioner from 10-08-2020 and award all full consequential benefits;

C. Issue Writ of Prohibition or any other appropriate writ, order or direction in nature thereof, thereby restraining the Respondents from replacing the Petitioner with another Adhoc assistant professor until permanent faculty is appointed;

D. Award appropriate costs in the facts and circumstances of the case;

E. Any other or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be passed / issued in

favour of the Petitioner."

2. The respondent No.1 is University of Delhi, a Central University regulated under the Delhi University Act, 1922 and rules and regulations thereto. Respondent No. 2 is an aided recognized College of respondent No.1. At the outset, I may note that vide Order dated November 4, 2020, respondent No.3 / Union of India was considered as a proforma party. It is also noted, vide order dated November 26, 2020, respondent No.1 adopted the counter-affidavit filed by respondent No.2 / College.

3. It is the case of the petitioner that an advertisement was issued by the respondent No.2 / College for making appointment to the two posts of Assistant Professor in Psychology / Commerce on ad-hoc basis. The appointment in the Psychology discipline was reserved for a SC candidate. The petitioner applied against the same, i.e., Psychology discipline under the reserved category. The petitioner, being found successful in the selection process, was appointed as Assistant Professor (Psychology) on ad-hoc basis with effect from August 05, 2019. The said appointment was for a period of four months till December 04, 2019. On her appointment, the petitioner was assigned duty roster and time table for delivering lectures on the prescribed syllabus of the subject.

4. In December 2019, after the winter break, 17 other ad-hoc Assistant Professors including the petitioner were not given joining but were only directed to join on January 01, 2020. It is her case that she was not paid salary for the month of December, 2019. She joined her duties as Assistant Professor (Psychology) on January 01, 2020 and was teaching in the respondent No.2 / College till April 28, 2020. However, due to the COVID-19 pandemic, the semester continued till June 12, 2020.

5. It is the case of the petitioner and as contended by her counsel that as per the Notification dated June 30, 2020 issued by the Govt. of India, no employee was to be removed during the COVID-19 Pandemic. He submitted that on July 17, 2020, the petitioner received an e-mail from the Teacher In-charge mentioning the excess workload. On July 21, 2020, the petitioner received time table of 18 classes per week and on July 27, 2021, the respondent No.2 / College provided work to petitioner for college website.

6. On August 08, 2020, she was also assigned OBE duties. The next session resumed on August 10, 2020 and the Teacher In-charge signed the application of the petitioner for rejoining the respondent No.2 / College but unfortunately the Principal of respondent No.2 / College denied the joining of the petitioner. It is contended that on the intervention of the Delhi University Teachers' Association ('DUTA', for short), the petitioner was orally informed that the joining of the petitioner shall be accepted. Despite such assurance, on August 11, 2020, Teacher In-charge communicated to the petitioner that the Principal has refused to assign classes to the petitioner even after orally accepting the joining letter. Several meetings took place between officials of the DUTA and the Principal

regarding the rejoining of the petitioner but the same was not approved by the Principal. Rather, the respondent No.2 / College advertised the same post without terminating the services of the petitioner. The petitioner was neither assigned any work by the respondent No.2 / College nor paid salary and other benefits. It is this advertisement issued by the respondent No.2 / College, which has been challenged by the petitioner and her alleged termination with an intent to replace with a fresh ad-hoc appointment. This, according to the counsel is illegal and contrary to the law laid down by the Supreme Court.

7. On the other hand, learned counsel for the respondent No.2 / College would submit, the petitioner was appointed as Assistant Professor (Psychology) on ad-hoc basis for a period of four months till December 04, 2019 and was assigned duties as per roster and time table for delivering lecture to the students based on the prescribed syllabus of the subject. But within a period of approximately two months from her appointment, the students of the classes she taught started having problems with the teaching skills and methodology of the petitioner. He referred to the representation dated October 15, 2019 made by the students, placed on record as Annexure R-3. Students started approaching the Office of the senior professors and respondent No.2 / College inter-alia requesting them to have a redressal to the genuine grievance of the students pertaining to their loss of academic performance due to lack of academic interest on behalf of the petitioner. The concern of the students and their feedback was conveyed to the petitioner, but there was no improvement in her approach towards her teaching according to the syllabus.

8. On account of the unsatisfactory services of the petitioner, the respondent No.2 / College took a decision to not to continue with the services of the petitioner beyond the period of her engagement, which was to end on December 04, 2019. He submitted that due to repeated assurances by the petitioner and representatives of DUTA, that the petitioner would improve her teaching skills and would focus on the academic well being of the students the respondent No.2/ College gave another chance to the petitioner. But the respondent No.2 / College started receiving complaints against the petitioner for lack of interest in teaching, which adversely affected the academic performance of the students. In support of his submission, the counsel has drawn my attention to the plummeted scores of the students in her subject. He stated that the reason for not continuing the contractual services of the petitioner is justified, which is purely based on her unsatisfactory performance. In this regard, he relied upon the judgment of this Court in the case of Ms. Shalini Sethi vs. Union of India & Ors. W.P.(C) 3094/2010, decided on September 02, 2013, wherein this Court acknowledging the position of law that a contractual employee cannot be substituted by another contractual employee held that on account of unsatisfactory service, services can be terminated.

9. Similarly, he relied on the judgment of this Court in the case of Smita Paul vs. Principal, ST. Anthony's Senior Secondary School 2005 SCC OnLine Del 1253, to

contend that whenever the continuance of a probationer / temporary teacher need to be decided, surely the performance of such an employee / teacher is required to be looked into. In the case at hand, the unsatisfactory performance of the petitioner has led the Authority concerned to discontinue her services (though on ad-hoc basis).

10. A rejoinder affidavit has been filed wherein the petitioner has challenged the authenticity of the letter dated October 15, 2019 written by the students. Rather, the counsel for the petitioner stated that she was widely liked by her students and to her knowledge, no student has made any complaint against the petitioner. Several bright students expressed their appreciation towards the teaching method adopted by the petitioner. In this regard, he has relied upon the whatsapp communications sent by the students to the petitioner. In fact, in the rejoinder, the petitioner has alleged that the respondent No.2 / College is acting under extraneous consideration to dispense with the services of the petitioner with mala fide intent. On the plea of unsatisfactory performance of the petitioner, it is stated by the counsel that the same is only an afterthought. He relied upon the judgment in the case of *Indu Munshi and Ors. vs. Union of India and Ors.*, (2018) 171 DRJ 195, wherein this Court has already recognized teacher's tenure and the role they play in the development of the Society.

11. That apart, the counsel for the petitioner makes a plea that the termination is in violation of the principles of natural justice and as such, is arbitrary. In this regard, he relied upon the Apex Court judgments in the case of *A.K. Kraipak and others vs. Union of India and others*, 1969 (2) SCC 262 and *Mrs. Maneka Gandhi vs. Union of India and another*, (1978) 1 SCC 248, to contend that the administrative authority is also required to comply with the principles of natural justice before taking any action to the prejudice of the petitioner. He seeks grant of reliefs as prayed for, in the petition.

12. Having heard the learned counsels for the parties, the issue that arises for consideration is whether the respondent No.2 / College is justified in not allowing the petitioner to continue to work as Assistant Professor, Psychology on ad-hoc basis in the respondent No.2 / College. The case of the respondent No.2 / College is primarily that complaints have been received from the students with regard to petitioner's manner of teaching. The respondent No.2 / College has also relied upon the results achieved by the students in Psychology examinations, which was the subject taught by the petitioner. It is their case also, that the attendance in the class of the petitioner has also been reduced as no student was interested in attending her class. In substance, the respondent No.2 / College highlighted the unsatisfactory performance of the petitioner as a teacher. The petitioner has controverted the stand of the respondent No.2 / College saying that the same is on the basis of false and fabricated complaint alleged to have been made by the students. Rather, the counsel for the petitioner has by relying upon the whatsapp messages, contended that the students were happy with the manner in which the petitioner was teaching the students. On a

legal issue, it was contended by the counsel for the petitioner that the impugned advertisement, which was issued by the respondent No.2 with a purpose to replace the petitioner was clearly untenable, as an ad-hoc employee could not have been replaced by another ad-hoc employee. There is no dispute on the proposition of law but surely in view of the judgment of this Court in the case of Ms. Shalini Sethi (supra), the said proposition of law would not be applicable, if the termination sought to be affected is on the basis of unsatisfactory service.

13. Having said that, insofar as the plea of unsatisfactory service is concerned, the respondent No.2 / College has relied upon the letter written by the students highlighting the unsatisfactory performance of the petitioner. That apart, they have relied upon the results in the Psychology examinations and also the fact that the attendance of the students in her class has reduced. Though, the petitioner has disputed the letter written by the students by stating that the same is fabricated but there is no denial to the fact that the attendance in the Psychology subject has reduced as well as the results of the students in the subject. These two aspects are co-related to the teacher, who is teaching the Psychology, i.e., the petitioner herein. The plea of the counsel for the petitioner that the decision of respondent No.2 / College, not to continue the services of petitioner is in violation of principles of natural justice as no notice was given eliciting the reply of the petitioner by relying on the Judgments of the Supreme Court in A.K. Kripak (supra) and Maneka Gandhi (supra) is also not appealing. This I say so in view of the stand of the respondent No.2 / College to continue with the services of the petitioner beyond the period of her engagement which was to end on December 4, 2019, on repeated assurances by the petitioner and representative of DUTA that petitioner will improve her teaching skills and will focus on the academic well-being of the students, which she could not improve as within few months of her engagement, the respondent No.2 / College started receiving complaints against the petitioner's lack of interest. This stand of the respondent No.2 / College has not been denied by the petitioner in the Rejoinder affidavit. So, it must be held, that there is sufficient compliance of principles of natural justice as, the appointment of the petitioner was on ad-hoc basis and as such has no right on the post. The judgments relied upon by the counsel for the petitioner on the aspect of natural justice are thus distinguishable in the facts of this case.

14. That apart, the final decision, not to allow the petitioner to continue as an ad-hoc lecturer is based on the subjective satisfaction arrived at by the Competent Authority in the respondent No.2 / College. Except for making bald allegations of mala fide, the petitioner has not even cared to implead the principal of the respondent No.2 / College in her personal capacity to substantiate her plea that the action of the Principal of respondent No.2 / College was mala fide, so that this Court may seek an affidavit with regard to the allegations so made by the petitioner. Suffice to state, that the action, which has been taken by the respondent No.2 / College by issuing a fresh advertisement cannot be faulted and the other prayers as made for, by the petitioner seeking her re-instatement

as Assistant Professor, Psychology in the respondent No.2 / College cannot be acceded to. The petition along with connected application(s) is dismissed. No costs.

CM 27844/2020

Dismissed as infructuous.