
(2018) 03 UK CK 0069

In the Uttarakhand High Court

Case No : Writ Petition No. 85 of 2018 (S/B)

DR. SATISH CHANDRA PANT AND OTHERS

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Constitution of India, — Article 226

Citation : (2018) 03 UK CK 0069

Hon'ble Judges : V.K. BIST, J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : V.B.S. Negi, A.K. Joshi, S.S. Chauhan, Sonia Chawla, Paresh Tripathi

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. In the present Writ Petition, the nine petitioners admittedly have been engaged on contractual basis, against their respective post by the respondents.

After being engaged on a contractual basis they are working as Teaching Research Personnel (TRP) in various disciplines, as reflected in their

respective letter of engagement/employment, they claim that they are regularly working in the said capacity.

2. When the offer of engagement was made to the petitioners, by issuance of the advertisement, against which the petitioners applied and were

selected through the process of walk-in-interview and thereafter on being engaged after selection, the petitioners were given the task of teaching as

Teaching Research Personnel (TRP), against the respective session for which the engagement was made. The offer which was made and

accepted by the petitioners was on a consolidated salary, on contractual basis and for 11 months period, as specified in the advertisement. Meaning

thereby, in terms of offer which was accepted by the petitioners their engagement was not creating any lien for them against the vacant posts or for regularization, which they cannot claim as of right looking to their terms of engagement, and interse relationship between the petitioners and respondents would be exclusively depend upon the terms of their contract of engagement.

3. It is not in dispute that their engagement as an Teaching Research Personnel (TRP), in respective discipline, as would be revealed from their

respective letter of appointment, it was co-terminus to the period as given in their respective letter of appointment.

4. The contention of the petitioners in the Writ Petition are that though there happens to be no rules as such for regularizing the services of a

contractual employee, but their contention is that, in pursuance to the decision as taken by the Board, which according to the petitioners, it happens to

be the Apex Body of the respondent institutions, their names have already been considered and recommended for giving them a regular status to their

appointment. The same is yet pending consideration and no finality has been given to the said recommendation, as made by the Board in their favour in

its third meeting as held on 14.9.2016.

5. On a close scrutiny of resolution no. 3 dated 14.9.2016 on which reliance has been placed by the petitioners for the purpose of the relief sought in

the Writ Petition, its absolutely based on a distorted interpretation, because we feel that the resolution itself though its heading reflects to consider

regularization of contractual Teaching Research Personnel, but body of the resolution provides, that for considering the issue of regularization which

was placed before the Board, and it was resolved that for regularizing proposal is to be send to the State and simultaneously by same resolution it was

also provided for issuing advertisement, inviting applications for interview and for constitution of selection committee of experts for filling vacant posts.

Thus the petitioners will have to read the resolution as a whole, which in itself provides for issuing advertisement.

6. On scrutiny of minutes of the meeting dated 14.9.2016 (as annexed as Annexure-7 to the Writ Petition) it doth revealed the fact that the Board has

recommended their claim to be considered for regularization, but from the said decision of 14.9.2016 what is reflected is that the Associate Director,

has observed that according to the circular no. UUHF/DP/358 dated 13.7.2015 and the recommendations of the selection committee, the offer of

appointment is said to have been made as TRPs (Teaching Research Personnels). The said recommendation was referred to be purely contractual

and as an interim arrangement and on consolidated salary. The resolution No. 3 of Boards meeting dated 14.9.2016 is quoted hereunder:

आइलरको ला 2016-03-07 को फैसलाको; एसा लाफनक इज दक; जिर व्हफपेक्स, एम फिलिपिज इलजुयल (TRPs) दस फु; एफर फेड; स तसुस ध ला लरकुरा

फैसलाको; एसा लाफनक इज दक; जिर लक; द इजक; कड आ 1/4 व्हफपेक्स, एम फिलिपिज

इलजुयल (TRPs) दस आ ककुल } कक लोहद र फिडर इन्सा दस लकिस { क फोफु; एफर फेड; स तसुस दक इलरको इजका/क इफा कन दस ले { क इलरकुरा फेड; क ख; क इजकु/क इफा कन एसा

लक; द इजक; कड व्हफपेक्स, एम फिलिपिज इलजुयल (TRPs) ध हकुरहज इजफा; क दस रगर फोकुर इजकफा? कुर फेड; स तसुस] लक { कक रदकज फेड; स तसुस रफक प; उ लफेर एसा ककग;

फैसलाको? ककसा दस लफेफेर फेड; स तसुस वकफन दस न फैसला? वखर मडर इलरको इज लगेफर इजनुस धा बलदस लकफ ग इफा कन } कक; ग फुन्सजफा? कुर फेड; क ख; क फेड मडर इन्

आ ककुल } कक लोहद र गस रफक मडर इन् गसुर ओसुर ककत; लकक } कक फन; क तकर गस] वर% दक; जिर लक; द इजक; कड व्हफपेक्स, एम फिलिपिज इलजुयल (TRPs) ध लवफ रस; कक दज

इलरको आ ककुल दस इजफा? कुर फेड; क त; आ?

7. According to the recommendation of the Board's meeting dated 14.9.2016, it reads that the list of the contractual Teaching Research

Personnels (TRPs) to be sent to the State Government for necessary directions of giving them a regular status. The petitioners, rather infact and also

as apparent from the Writ Petition they have questioned the veracity of the impugned advertisement dated 15.10.2016 made by VCSG Uttarakhand

University of Horticulture and Forestry, Bharsar, Pauri Garhwal, Uttarakhand i.e. respondent no. 2 being advertisement no. UUHF/DT/F.No. 01/01 of

2016.

8. The basic contention of the petitioners is that since they had been appointed on various dates and as against their respective engagement and have

worked substantially for a considerable long period with the respondent and has discharged their services on the post held by them to their utmost

satisfaction, they contend that in the light of the resolution of the Board dated 14.9.2016, once their case for regularization was under consideration,

the impugned publication dated 15.10.2016 inviting applications for fresh recruitment ought not to have been issued by the respondent no. 2 and should

have been avoided.

9. They submit that on account of the fact that their claim for regularization has already been recommended on 14.9.2016. In that eventuality, if the

advertisement dated 15.10.2016 is put to effect, it would create an impediment in consideration of their right for regularization, because, if the regular

appointment, in pursuance to the advertisement is made, it will create an embargo or a restriction in consideration of their claim for regularization, as

the vacant post available, would be filled by regular selection.

10. What is revealed from records is, and also admitted by the petitioners that they are contractual Teaching Research Personnel (TRPs), having

being appointed on a consolidated salary of Rs. 35,000/-. It is also admitted by them that their appointment made on contractual basis, as against their

respective advertisement and respective letter of appointment, the appointment itself was governed by the conditions to be fulfilled and to be adhere to

by the employees who were appointed or were opting for to be appointed under the advertisement. Applying on basis of advertisement, participating in

selection and accepting engagement, would amount to accepting conditions of the offer of engagement, these conditions will ever remain binding on

the petitioners.

11. Apparently, according to their advertisement it was a walk-in-interview for the post advertised. After being selected and having accepted the

terms of appointment, will amount to accepting their status as a contractual employee and hence, the petitioners would be bound by the conditions of

their appointment, which provided that they would be engaged for 11 months only, condition thus reads as below:

â??3. Selected candidate shall be engaged for 11 months only.â??

12. Apart from it, the petitioners had not specifically pleaded any logical ground in support of their contention while giving challenge to the

advertisement dated 15.10.2016. No employer could be asked for staying the selection process, or be refrained from filling in the vacant post, because

it is always to be determined by the employer and its his prerogative to consider the factor which the employer himself has to consider looking to the

quality of services required, looking to the quantity of work which the employee has to get discharged etc. Employment is in his exclusive domain.

And, if as a consequence of a conditional advertisement if a candidate applies

and procures a conditional contractual appointment which was co-terminus to the date provided in the appointment and as mentioned in the appointment order itself, no lien or vested right would accrue in favour of the contractual employee to claim as a matter of right that their services are mandatorily required to be regularized. Though, this observation may not be construed as if, it would be creating any impediment in the consideration of the regularization which is under process by the Board for regularizing the services in pursuance to the resolution dated 14.9.2016, subject to the conditions as permissible under law.

13. It is now almost settled by catena of judgments that a contractual employee has a limited right which is confined to the terms of appointment which he has voluntarily accepted. He may not be permitted to expand the terms of his appointment to such an extent to create an obstruction in the action of the employer from proceeding with the regular appointment which is always conclusive and effective appointment under the administrative law.

Because of the fact that temporary appointments or contractual appointments are aimed at only to meet a contingency due to either inability of the employer to proceed with the regular appointment or due to non-availability of suitable candidates, the selection of an employee on a contractual basis itself does not create any indefeasible right to be enforced under Article 226 of the Constitution of India.

14. At this stage, it could be observed that since the recommendation for regularization in pursuance to the Board's decision dated 14.9.2016 is pending, this court at this stage, is refraining itself to observe anything on the merits of the claim for regularization of the petitioners, which would fall to be within exclusive domain of respondent no. 2, and it is open for them to take their independent decision, without being influenced by the observations made herein above.

15. But, as far as the challenge given to the advertisement dated 15.10.2016, where the respondent no. 2 proposes to fill the vacant post in the institution by way of a regular selection by inviting applications, it cannot be put to challenge by a contractual employee, who has no locus to challenge the same and create an impediment in the administrative act of an employer in proceeding to make a regular selection, which is always welcoming feature in the service jurisprudence because on completion of regular process of

selection, number of administrative difficulties often remain curtailed.

16. Besides this, the petitioners tried to project and argue, though without pleadings or much less an effective pleading, because what they tried to

argue is that as if the advertisement dated 15.10.2017 is concerned, the appointment which is being sought to be made is against the post which

according to the petitioners is held by them on contractual basis. In the absence of any material brought on record and in the absence of any specific

pleading, this court is afraid to accept the argument of learned counsel for the petitioners, more particularly as to what is reflected from the language

of Resolution 3 dated 14.9.2016 on which the petitioner himself places reliance.

17. The Writ Petition lacks material in this regard. Hence, this court in the absence of their being any material on the record cannot widen the scope

of challenge to the advertisement and that too without any specific law or fact being pleaded, while invoking extraordinary jurisdiction under Article

226 of Constitution of India. Hence, this court feels that it is always the exclusive right of the employer to determine the requirement of his

department, to proceed with the recruitments. No employer can be asked not to make the recruitments according to his requirement, no employer can

be called upon and compelled not to make an appointment despite the fact that the vacancy exists.

18. Hence, the petitioners, since being a contractual employee and since their claim for regularization is pending consideration, they have no lien or

enforceable right to challenge an advertisement dated 15.10.2016. Consequently, this court finds no anomaly in the advertisement dated 15.10.2016.Â

19. Without prejudicing the rights of the petitioners on whatsoever decision, which may be taken in accordance with law by the respondent on the

resolution of the Board dated 14.9.2016, which according to the petitioners relates to the issue of their regularization, it would be always open to the

respondent no. 2 to consider and take appropriate decision in continuity thereto. Dismissal of this Writ Petition against the advertisement may not be

construed and the Writ petition also stands dismissed so far it relates to the second relief of mandamus for granting a regular status.

20. Subject to the above observations, this Writ Petition stands dismissed.

21. No order as to costs.Â Â