

(2020) 02 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25303 Of 2017 (O&M)

Dr. Shama Kalra

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Haryana Education (College Cadre) Group B Service Rules, 1986 — Rule 5

Citation : (2020) 02 P&H CK 0196

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : A.K. Viridi, Kiran Pal Singh, Vijay Pal

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J

Petitioner assails the action of the respondent authorities whereby her services as an Extension Lecturer (Sanskrit) on contractual basis with the

Government College for Women, Sector 16, Faridabad have been dispensed with. It is the specific assertion made in the writ petition that her services

have been dispensed with by way of oral directions and not in terms of passing any specific order. Further challenge is to the action of engaging

private respondent No.7 in place of the petitioner and that too by way of a similar contractual arrangement.

Brief facts which are not in dispute may be noticed at the very outset.

Petitioner is a doctorate in Sanskrit and retired from the post of Associate Professor while serving in respondent No.5-College itself on 31.03.2015

having attained the age of superannuation. She was engaged w.e.f. 06.04.2015 in the same very College as an Extension Lecturer (Sanskrit) purely on

contractual basis. Her services having been dispensed with on oral directions w.e.f. 11.10.2017 has led to the filing of the instant writ petition. It is also

the admitted position of fact that respondent No.7 stands engaged as Extension Lecturer purely on contractual basis and has joined on the same very

date i.e.11.10.2017.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the action of the

respondent authorities in having relieved the petitioner from her contractual engagement as Extension Lecturer cannot sustain.

Learned State counsel has sought to justify the action by placing reliance upon Memo dated 20.09.2017 (Annexure P-2) issued by the Principal

Secretary to Government of Haryana, Higher Education Department and addressed to all the Principals of the Government Colleges in the State. It

has been submitted that the petitioner was a retired Associate Professor and subsequent to retirement had been engaged as Extension Lecturer on

06.04.2015. To the contrary, respondent No.7 was a displaced Extension Lecturer having served previously at Govt.Post-Graduate College, Nahar,

Rewari and then subsequently at Pt.J.L.N.Govt.College, Sector 16-A, Faridabad. It is argued that respondent No.7 fell in a different category and as

per Memo dated 20.09.2017 (Annexure P-2) if there be a situation of a workload, which is not being met, it was open for the State Government to

have engaged services of a displaced eligible Extension Lecturer.

Counsel representing private respondent No.7 has reiterated the stand taken on behalf of the State.

This Court finds the justification put forth on behalf of the State as also private respondent No.7 by relying upon Memo dated 20.09.2017 (Annexure

P-2) to be not well founded. Perusal of Memo dated 20.09.2017 (Annexure P-2) would reveal that it was in the nature of a clarification of the

previous instructions/guidelines dated 20.07.2017 on the subject regarding engaging Extension Lecturers in Government Colleges purely on temporary

basis. The clarification had been issued to meet the teaching workload pertaining to academic session 2017-18 and the steps were to be taken in the

following order of preference :

â??* The workload will be met through the regular staff as far as possible as per prescribed norms.

* In case, the regular staff is not sufficient to meet the workload as per prescribed norms, to cover up this shortage, extension lecturers (eligible as per UGC/State Govt.Rules) who are/were working in previous years may be allowed to continue till joining of regular staff.

* The unmet workload after above may be met through the service of displaced eligible extension lecturers on merit basis.

* If workload is still lying unmet, the retired Assistant/Associate Professors may be allowed to work as extension lecturers in the college as per existing policy.

* Even after adopting all above procedures, the unmet workload is still available, then fresh eligible extension lecturers may be engaged for Science

subject only as per provision No.5 of letter dated 20.7.2017 as a last resort.??

The steps listed hereinabove have to be read as per order of preference and in sequence. The first preference is for workload to be met through the

regular staff as far as possible. If regular staff is not sufficient to meet the workload, then to cover up such situation Extension Lecturers who

are/were working in previous years be allowed to continue till joining of regular staff. The petitioner herein was already working as an Extension

Lecturer. As per second order of preference, she was vested with the right to continue to meet the workload in the absence of regular staff. The next

steps in order of preference have been stipulated in a situation where if workload is still unmet and after exhausting the first two steps, the services of

displaced eligible Extension Lecturers may be availed of. If the contention raised on behalf of the respondent was to be accepted, the clarification

Memo dated 20.09.2017 (Annexure P-2) would have to be read in a different order of preference. The same is not permissible. Even otherwise the

guidelines regarding engaging Extension Lecturers in Government Colleges purely on temporary basis were issued vide Memo dated 20.07.2017

(Annexure P-1) and which envisaged as follows :

??3. Existing extension lecturers, who are eligible/qualified as per Haryana Education (College Cadre) Group B Service Rules, will continue under

these guidelines without facing any interview, provided there is adequate workload as prescribed under these guidelines, duly approved by the

Department.??

Case of the petitioner is covered under the above stipulation as per original

guidelines dated 20.07.2017 (Annexure P-1). The Memo dated 20.09.2017 (Annexure P-2) upon which reliance has been placed by the respondents is only in the nature of a clarification of the original guidelines dated 20.07.2017. In law a clarification memo cannot be read in a manner so as to negate the original instructions which were sought to be clarified.

The action of the respondent authorities will have to be observed as arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is by now well settled that one adhoc arrangement cannot be replaced by another similar arrangement. Undoubtedly, an Extension Lecturer having been engaged on a temporary/adhoc basis has no absolute right to continue. Such right would have to be circumscribed by certain conditions i.e. work and conduct being satisfactory, there being existence of workload and such right being subservient to a regular employee being engaged.

Adverting to the facts of the present case it is the positive stand taken on behalf of the petitioner in the writ petition that her work and conduct has been without blemish. Such stand has not met with any rebuttal at the hands of the State.

There being workload as regards the post of Extension Lecturer (Sanskrit) would be a foregone conclusion as the respondent authorities themselves have engaged respondent No.7 after having relieved the petitioner by way of oral orders. It is not even the case whereby the petitioner has been replaced by any regular incumbent.

At this stage, learned counsel for the State has placed reliance upon a Division Bench judgment in LPA NO.1640 OF 2014 (Baljeet Singh Versus State of Haryana and others), decided on 09.07.2015, to assert that the petitioner had not been engaged on contractual basis and it has been held by the LPA Bench that an Extension Lecturer engaged for one academic session would have no right to be continued merely on the principle that he is sought to be replaced by another similar arrangement. The reliance placed upon the judgment in Baljeet Singh's case (supra) is also misplaced. The Division Bench had taken a view in the light of engagement of the appellant therein pursuant to a circular dated 05.06.2013 permitting the Principals of Government Colleges to engage the Extension Lecturer in a certain manner. In the present case the claim of the petitioner is founded pursuant to guidelines issued by the State Government vide memo dated 20.07.2017

(Annexure P-1) and thereafter clarified vide memo dated 20.09.2017

(Annexure P-2).

During the course of arguments counsel representing respondent No.7 has made a feeble attempt to impress upon the Court that the relieving of the

petitioner from the post of Extension Lecturer on temporary basis was justified as she was not eligible as per UGC/State Government rules. Even

though submission in this regard was raised but the UGC guidelines/State Government rules were not placed on record. Be that as it may, during the

course of hearing today counsel for respondent No.7 has referred to the Haryana Education (College Cadre) Group B Service Rules, 1986 (in short

'1986 Rules') to contend that the petitioner is a retiree and as on the date she was relieved from service had already attained the age of 60 years

whereas the rules postulate the age of recruitment between 21 years and 40 years on or before the 15th day of the month next preceding the last date

of submission of application forms. Even such submission is totally misconceived. The age stipulation is contained under Rule 5 of 1986 Rules

governing appointment of a person to any post in the service. By no stretch of imagination an Extension Lecturer engaged on a temporary basis is

deemed to be appointed to the 'service' which further has been defined under the rules as the Haryana Education (College Cadre) Group B Service.

For the reasons recorded above, writ petition is allowed. Action of the official respondents in having relieved the petitioner from the post of Extension

Lecturer (Sanskrit) merely on oral instructions is held to be bad in law. As a consequence thereto petitioner would be permitted to rejoin on the post of

Extension Lecturer (Sanskrit) in the respondent No.5-College forthwith.

Petitioner, however, would not be entitled to any salary/emoluments for the period that she has remained out of service.

It is, however, clarified that by virtue of instant writ petition being allowed, petitioner would not be vested with an absolute right to continue on the post

of Extension Lecturer(Sanskrit). Such temporary/stop gap arrangement would be governed in accordance with law and as per relevant government

instructions/guidelines on the subject.

In the light of such unfair treatment meted out to the petitioner, she is held entitled to costs which are quantified as Rs.25,000/- and to be paid by the

State Government.

Writ petition allowed.